



Article 15(c) Qualification Directive (2011/95/EU)

A judicial analysis

December 2014

EASO curriculum for members of courts and tribunals



Article 15(c) Qualification Directive (2011/95/EU)

A judicial analysis

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Contributors

The content has been drafted by a working group consisting of judges Mihai Andrei Balan (Romania), John Barnes retd. (United Kingdom, UK), Bernard Dawson (UK), Michael Hoppe (Germany), Florence Malvasio (working group coordinator, France), Marie- Cécile Moulin-Zys (France), Julian Phillips (UK), Hugo Storey (working group coordinator, UK), Karin Winter (Austria), legal assistants to the court Carole Aubin (France), Vera Pazderova (Czech Republic) and in addition, Roland Bank, legal officer, (United Nations High Commissioner for Refugees, UNHCR).

They have been invited for this purpose by the European Asylum Support Office (EASO) in accordance with the methodology in Appendix B. The scheme for the recruitment of the members of the working group was discussed at a number of meetings throughout 2013 between EASO and the two bodies with whom it has a formal exchange of letters, the International Association of Refugee Law Judges (IARLJ) and the Association of European Administrative Judges (AEAJ) as well as the national judicial associations of each Member State linked through EASO's network of courts and tribunals.

The working group met on 3 occasions in April, June and September 2014 in Malta. Comments on a discussion draft were received from individual members of the EASO Judges' Network, namely judges Johan Berg (Norway), Uwe Berlit (Germany), Jakub Camrda (Czech Republic), Jacek Chlebny (Poland), Harald Dörig (Germany), Hesther Gorter (Netherlands), Andrew Grubb (UK), Fedora Lovricevic-Stojanovi (Croatia), John McCarthy (UK), Walter Muls (Belgium), John Nicholson (UK), Juha Rautiainen (Finland), Marlies Stapels-Wolfrath (Netherlands) and Boštjan Zalar (Slovenia). Comments were also received from members of the EASO Consultative Forum, namely the European Council on Refugees and Exiles and Forum Réfugiés-Cosi. The Global Migration Centre (Graduate Institute of International and Development Studies, Geneva), the National Centre for Competence in Research — On the Move (University of Fribourg) & Refugee Survey Quarterly (Oxford University Press) also expressed their views on the text. All these comments were taken into account during the meeting on 18-19 September 2014. The working group is grateful to all those who have made comments which have been very helpful in finalising the chapter.

This chapter will be regularly up-dated in accordance with the methodology set out in Appendix B.

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List of abbreviations

AEAJ	Association of European Administrative Judges
CJEU	Court of Justice of the European Union
CNDA	Cour Nationale du Droit d'Asile
EASO	European Asylum Support Office
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
FAC	Federal Administrative Court
IARLJ	International Association of Refugee Law Judges
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International Humanitarian Law
IHRL	International Human Rights Law
MPSG	Membership of a Particular Social Group
QD	Qualification Directive
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UKAIT	United Kingdom Asylum and Immigration Tribunal
UKUT	United Kingdom Upper Tribunal
UNHCR	United Nations High Commissioner for Refugees

Preface

The purpose of this judicial analysis is to put at the disposal of courts and tribunals dealing with international protection cases, a helpful tool for the understanding of protection issues, in this chapter, Article 15(c) of the Qualification Directive (QD) ⁽¹⁾. This provision, which by its nature can potentially affect the outcome of many cases dealing with international protection, has not proved easy for judges to apply. Studies show that in different Member States there have been divergent interpretations ⁽²⁾. The commentary is intended to assist the reader towards an understanding of the QD through the case law of the Court of Justice of the European Union (CJEU) as well as that of the European Court of Human Rights (ECtHR) and relevant decisions of the courts and tribunals of the Member States. Citation of national case law is not exhaustive but intended to be illustrative of the way in which the QD has been transposed and interpreted. The chapter reflects the understanding of the working group on the current state of the law. It must be remembered that Article 15(c) is likely to be subject to further rulings by the CJEU and the reader is reminded of the importance of keeping up to date with such developments.

It is assumed that the reader is familiar with the broad structure of the European Union (EU) asylum law as reflected in the EU asylum *acquis*; the chapter aims to assist not only those with little or no experience of its application to judicial decision-making but also those who are more specialist.

This analysis deals with just one limb of Article 15 which contains three categories for persons in need of subsidiary protection who are otherwise not entitled to protection under the Refugee Convention. In due course, further chapters will be produced which examine the other categories which in summary provide for protection from risks comparable to those that breach Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

The chapter is in two parts. Part I analyses the constituent elements of Article 15(c). Part II examines how the provision is to be applied in practice. In Appendix A there is a 'decision tree' which sets out the questions courts and tribunals need to ask when applying Article 15(c).

The CJEU has emphasised that the approach to Article 15(c) must be in the context of the QD as a whole. Furthermore, this analysis does not deal with all legal elements, such as exclusion, which are indispensable for an assessment of subsidiary protection. They too will be the subject of future chapters. The QD provides for minimum standards to be adopted by Member States; it is open to them to expand on the categories and nature of protection provided.

The relevant parts of the QD for this analysis including recitals are as follows:

Recitals

- Recital (6) — The Tampere conclusions [...] provide that rules regarding refugee status should be complemented by measures on subsidiary forms of protection, offering an appropriate status to any person in need of such protection.
- Recital (12) — The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States.

⁽¹⁾ Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), in: *Official Journal* L 337/9, 20/12/2011, pp. 9-26, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>. As explained in recital (50) and (51), Denmark, Ireland and the UK are not bound by the recast QD, because they did not take part in the adoption of it. Ireland and the UK remain bound by the 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, in: *Official Journal* L 304/12, 30/09/2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>. Member States bound by the recast QD were required to bring into force domestic legislation necessary to comply with it by 21 December 2013. The recast QD makes a number of substantial changes to the Directive 2004/83/EC but retains the identical wording of Article 15(c) and its corresponding recital albeit the latter is now differently numbered (recital (35), formerly recital (26)).

⁽²⁾ See e.g. *Safe at Last? Law and Practice in Selected Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, UNHCR July 2011, <http://www.unhcr.org/4e2d7f029.pdf>. Recital (8) of the recast QD notes that 'considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes.'

- Recital (33) — Standards for the definition and content of subsidiary protection status should also be laid down. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.
- Recital (34) — It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.
- Recital (35) — 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.

Article 2(f)

‘Person eligible for subsidiary protection means’ a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

Article 15

‘Serious harm’ consists of: (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

The other parts of the QD where referred to in this analysis are set out in relevant sections.

Article 78 of the Treaty on the Functioning of the European Union (TFEU) states that the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection. Such a policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and ‘other relevant treaties’.

In its proposal for the QD, in 2001, the European Commission expressed the general goal of the Directive:

‘The Charter of Fundamental Rights of the European Union reiterated the right to asylum in its Article 18. Flowing from this the Proposal reflects that the cornerstone of the system should be the full and inclusive application of the Geneva Convention, complemented by measures offering subsidiary protection to those persons not covered by the Convention but who are nonetheless in need of international protection ⁽³⁾.’

The European Commission submitted its proposal for a recast of the QD on qualification and status of persons in need of international protection in October 2009 ⁽⁴⁾.

It proposed, inter alia, to clarify important concepts, such as ‘actors of protection’, ‘internal protection’ and ‘membership of a particular social group’, in order to enable national authorities to apply the criteria more robustly and to identify persons in need of protection more quickly.

The Commission did not propose any amendments to Article 15(c) as it understood that the CJEU had given interpretive guidance in *Elgafaji* ⁽⁵⁾ and had also stated that, although it had an additional scope to Article 3 ECHR, its provisions were broadly compatible with the ECHR ⁽⁶⁾.

Reference to ‘Article’ in this chapter is to the provisions of the QD unless indicated otherwise.

⁽³⁾ European Commission, proposal for a Council Directive on 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 2001, COM(2001) 510 final.

Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0510:FIN:EN:PDF>.

⁽⁴⁾ See Press Release IP/09/1552, at http://europa.eu/rapid/press-release_IP-09-1552_en.htm?locale=en.

⁽⁵⁾ CJEU (Grand Chamber), judgment of 17 February 2009, Case C-465/07, *Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie*.

⁽⁶⁾ European Commission, proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, 21 October 2009, COM(2009) 551 final, Explanatory Memorandum, p. 6.

Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009PC0551&from=EN>.

Approach to interpretation

Given that the CJEU has yet to rule on a number of key elements of Article 15(c), it is imperative that national judges tasked with interpreting them should bear in mind and apply an EU approach to interpretation of EU legislation. As set out by the CJEU in its judgment *Diakité* ⁽⁷⁾ at paragraph 27, the meaning and scope of key elements ‘must...be determined by considering [their] usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part (Case C-549/07 *Wallentin-Hermann* [2008] ECR I-11061, paragraph 17 and Case C-119/12 *Probst* [2012] ECHR, paragraph 20).’

The CJEU’s approach has been described as a systemic or ‘meta-teleological’ one that focuses not only on the object and purpose of the relevant provisions but also those of the EU regime as a whole, relying on the human rights standards contained in the Charter of Fundamental Rights of the European Union (Charter) and the founding values of the organisation ⁽⁸⁾.

Holistic approach

It follows from adoption of the above approach that when seeking to interpret key elements of Article 15(c) they are understood to be interconnected and not to be read in isolation from each other. Such an approach ensures harmony with the approach taken to key elements of the refugee definition. It must be remembered that EU law takes precedence over national law.

Context of Article 15(c) in deciding applications for international protection

In its judgment of 8 May 2014 in Case C-604/12, *HN v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, the CJEU confirmed that:

‘29 Article 2(e) of Directive 2004/83 defines persons eligible for subsidiary protection as third country nationals or stateless persons who do not qualify as a refugee.

30 The use of the term ‘subsidiary’ and the wording of Article 2(e) of Directive 2004/83 indicate that subsidiary protection status is intended for third country nationals who do not qualify for refugee status.

31 Moreover, it is apparent from recitals 5, 6 and 24 in the preamble to Directive 2004/83 that the minimum requirements for granting subsidiary protection must serve to complement and add to the protection of refugees enshrined in the Geneva Convention through the identification of persons genuinely in need of international protection and through such persons being offered an appropriate status (Case C-285/12 *Diakite* EU:C:2014:39, paragraph 33).

32 It is clear from the above that the subsidiary protection provided by Directive 2004/83 is complementary and additional to the protection of refugees enshrined in the Geneva Convention.’

It follows that when deciding international protection cases, courts and tribunals must first examine whether a person is eligible for refugee protection. If the answer is in the negative, consideration must be given to whether that person is eligible for subsidiary protection under Article 15(a), (b) ⁽⁹⁾ or (c). Focus on Article 15(c) must not lead courts and tribunals to overlook the broader framework of protection.

⁽⁷⁾ CJEU, judgment of 30 January 2014, case C-285/12, *Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides*.

⁽⁸⁾ e.g. by Violeta Moreno Lax ‘Of Autonomy, Autarky, Purposiveness and Fragmentation: The Relationship between EU Asylum Law and International Humanitarian Law’ in D. Cantor and J.-F. Durieux (eds.), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Martinus Nijhoff, 2014), p. 298.

⁽⁹⁾ The scope of Article 15(b) is more limited than Article 3 ECHR, see the Advocate General’s opinion in Case C-542/13 *M’Bodj v Conseil des Ministres*, 17 July 2014.

Where a person is not entitled to international protection, for example because of exclusion, it may also be necessary to consider Article 3 ECHR and, where appropriate, Articles 4 and 19(2) of the Charter (see recital (16) QD).

The roles of the CJEU and ECtHR

The CJEU is responsible for ensuring that Union Law is interpreted and applied uniformly. By Article 267 of the TFEU it has jurisdiction to answer questions concerning EU law put to it by national courts (the preliminary reference procedure) and the Court thereby provides interpretative judgments.

Under its Article 267 procedure, the CJEU does not actually decide the substance of the case. Having given its interpretation, the case is returned to the national court for a decision based on the interpretation provided. Decisions of the CJEU are binding on Member States ⁽¹⁰⁾.

The ECtHR hears applications by individuals and references by States where it has been alleged that there has been a breach of a right under the ECHR by one of the 47 State parties to the Convention. Unlike the CJEU, it decides the case before it and where required, this includes factual findings. Its judgments are binding on the parties to the application made. Otherwise the Court's judgments are persuasive where there are similar facts or issues before courts and tribunals.

⁽¹⁰⁾ For a helpful guidance to making references to the CJEU see Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (2012/C 338/01), in: *Official Journal* C 338, 06.11.2012, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:EN:PDF>. See also the Guide on preliminary references published by the IARLJ on its website in May 2014 available on www.iarjlj.org.

Part 1: The elements

1.1. Real risk of serious harm

Article 2(f) refers to a ‘real risk of suffering serious harm as defined in Article 15’.

Subsidiary protection concerns third country nationals who do not qualify for asylum but for whom substantial grounds have been shown for believing that they would face a ‘real risk of suffering serious harm’ if returned to their country of origin (see Article 2(f); previously Article 2(e)). As regards the need to show substantial grounds, Member States may consider it is the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application for international protection. On the other hand, it is the duty of the Member State to assess, in cooperation with the applicant, the relevant elements of the application (Article 4(1)). Advocate General Sharpston pointed out in her opinion in *Joined Cases A, B and C* ⁽¹¹⁾ that:

‘[t]he process of cooperation under Article 4(1) of the Qualification Directive is not a trial. Rather it is an opportunity for the applicant to present his account and his evidence and for the competent authorities to gather information, to see and hear the applicant, to assess his demeanour and to question the plausibility and coherence of that account. The word ‘cooperation’ implies that both parties work towards a common goal. It is true that that provision allows Member States to require the applicant to submit the elements needed to substantiate his claim. It does not follow, however, that it is consistent with Article 4 of the Qualification Directive to apply any requirement of proof which has the effect of making it virtually impossible or excessively difficult (for example a high standard of proof, such as beyond reasonable doubt, or a criminal or quasi-criminal standard) for an applicant to submit the elements needed to substantiate his request under the Qualification Directive. [...] However, when information is presented which gives strong reasons to question the veracity of an asylum seeker’s submissions, the individual must provide a satisfactory explanation for the alleged discrepancies.’

The ‘real risk’ element determines the standard of proof required for eligibility for subsidiary protection ⁽¹²⁾. In other words, it denotes the degree of likelihood that the situation of indiscriminate violence will be one that gives rise to serious harm.

To date, the CJEU has not provided a precise interpretation of the notion of ‘real risk’. Nonetheless, the Court has confirmed that in relation to Article 15(c), a risk linked merely to the general situation in a country is not, as a rule, sufficient ⁽¹³⁾. However, there may be exceptional situations where the degree of indiscriminate violence is of such a high level that an individual would face a real risk solely on account of his presence ⁽¹⁴⁾. In addition, it can be assumed that the ‘real risk’ standard excludes risks that are at the level of mere possibility or so remote as to be unreal ⁽¹⁵⁾. The degree of risk required under this provision is described in more detail below in Section 1.3 ‘Indiscriminate violence’ and Section 1.6 ‘Serious and individual threat’.

The ‘serious harm’ element characterises the nature and intensity of interference with a person’s rights; for that interference to be serious it must be of sufficient severity. Article 15 defines three specific types of harm which constitute the qualification for subsidiary protection. Further, subsidiary protection cannot be granted for any kind of harm, discrimination or breach of rights which an individual may suffer, but only for one of those three types of serious harm which meet the criteria of Article 15(a), (b) or (c).

⁽¹¹⁾ Advocate General Opinion, *Joined Cases C-148/13, C-149/13 and C-150/13, A, B and C*, 17 July 2014, paragraphs 73 and 74.

⁽¹²⁾ Cf. Article 2(d) QD which requires ‘well-founded fear’ of persecution for the eligibility for refugee status.

⁽¹³⁾ *Elgafaji*, op. cit., fn. 5, paragraph 37.

⁽¹⁴⁾ *Ibid.*, paragraphs 35 and 43. At paragraph 36 the CJEU also said that Article 15(c) has its own ‘field of application’ which must mean that it has additional scope to the serious harms identified in letters (a) and (b). However, with reference to *Elgafaji* the ECtHR indicated in the judgment of 28 June 2011, *Sufi and Elmi v the United Kingdom*, applications no 8319/07 and 11449/07, at paragraph 226 that it ‘is not persuaded that Article 3 of the Convention, as interpreted in *N.A. v UK* [app.no. 25904/07, 17 July 2008] does not offer comparable protection to that afforded under the [QD]. In particular, it notes that the threshold set by both provisions may, in exceptional circumstances, be attained in consequence of a situation of general violence of such intensity that any person being returned to the region in question would be at risk simply on account of their presence there.’ As it stands therefore, it is doubtful that Article 15(c) goes significantly beyond Article 3 as interpreted by the ECtHR in *Sufi and Elmi*.

⁽¹⁵⁾ ECtHR, judgment of 7 July 1989, *Soering v the United Kingdom*, application no 14308/88, paragraph 88.

Bearing in mind the purpose of this document, the following text is focused primarily on serious harm as defined in Article 15(c) pursuant to which serious harm consists of ‘serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict’.

In *Elgafaji*, the CJEU, whilst not excluding overlap, confirmed that the harm defined in Article 15(c) covers a more general risk of harm than Article 15(a) and (b) ⁽¹⁶⁾. According to this judgment, what is required is a ‘threat ... to a civilian’s life or person’ rather than specific acts of violence. Furthermore, if the level of indiscriminate violence is sufficiently high, such a threat can be inherent in a general situation of ‘international or internal armed conflict’. Lastly, the violence in question which gives rise to that threat is described as ‘indiscriminate’, a term which implies that it may extend to people irrespective of their personal circumstances ⁽¹⁷⁾. The individual elements of this definition are thoroughly elaborated upon in the following parts of this document.

In addition, the types of harm referred to in the categories of Article 15 may to a certain extent overlap from a factual perspective not only with each other but also with acts of persecution as defined by Article 9 ⁽¹⁸⁾. In such a case, it is necessary to bear in mind the priority of granting refugee status provided that the other conditions of Article 2(d) are met. The CJEU has stated that Article 15(b) corresponds in essence to Article 3 ECHR ⁽¹⁹⁾.

1.2. Armed conflict

The phrase used in Article 15(c) is ‘international or internal armed conflict’.

1.2.1. Internal armed conflict

The meaning of this term was clarified by the CJEU in *Diakité*. At paragraph 35 the Court confirmed that

‘[...] on a proper construction of Article 15(c) of Directive 2004/83, [...] an internal armed conflict exists, for the purposes of applying that provision, if a State’s armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as ‘armed conflict not of an international character’ under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.’

This construction achieves two things:

Short definition — it furnishes a short definition of internal armed conflict (as existing where ‘a State’s armed forces confront one or more armed groups or if two or more armed groups confront each other’ ⁽²⁰⁾).

Rejection of International Humanitarian Law (IHL)-type approaches — it expressly rejects two alternative approaches to definition. The approaches rejected are described as an IHL approach and an approach which considers that an internal armed conflict only exists if the conflict is of certain intensity, features armed forces with a level of organisation or has a certain duration. Since the latter is essentially an IHL approach, it is reasonable to assume the CJEU rejects ‘IHL-type’ approaches ⁽²¹⁾.

⁽¹⁶⁾ *Elgafaji*, op. cit., fn. 5, paragraph 33.

⁽¹⁷⁾ *Ibid.*, paragraph 34.

⁽¹⁸⁾ Cf. Article 9(2) QD which includes a non-exhaustive list of types of harm which may constitute persecution. See CJEU pending case, Case C-472/13, *Andre Lawrence Shepherd v Federal Republic of Germany*.

⁽¹⁹⁾ *Elgafaji*, op. cit., para 28. See also CJEU pending case, Case C-562/13, *Centre public d’action sociale d’Ottignies-Louvain-La-Neuve v Moussa Abdida*, Advocate General Opinion delivered on 4 September 2014.

⁽²⁰⁾ *Diakité*, op. cit., fn. 7, paragraph 28.

⁽²¹⁾ *Ibid.*, paragraph 21.

1.2.1.1. Differentiation between defining internal armed conflict and establishing the level of violence

Of particular importance to the CJEU in *Diakité* was that courts and tribunals keep separate:

- assessment of the existence of an armed conflict; and
- assessment of the level of the violence.

The existence of an armed conflict is a necessary but not a sufficient condition for Article 15(c) to be engaged. In relation to general risk to civilians ⁽²²⁾, Article 15(c) will only be engaged if the latter assessment discloses that the armed conflict is characterised by indiscriminate violence at such a high level that civilians as such face a real risk of serious harm. Thus at paragraph 30 of *Diakité*, the CJEU observed:

‘Furthermore, it should be borne in mind that the existence of an internal armed conflict can be a cause for granting subsidiary protection only where confrontations between a State’s armed forces and one or more armed groups or between two or more armed groups are exceptionally considered to create a serious and individual threat to the life or person of an applicant for subsidiary protection for the purposes of Article 15(c) of Directive 2004/83 because the degree of indiscriminate violence which characterises those confrontations reaches such a high level that substantial grounds are shown for believing that a civilian, if returned to the relevant country or, as the case may be, to the relevant region, would — solely on account of his presence in the territory of that country or region — face a real risk of being subject to that threat (see, to that effect, *Elgafaji*, para 43).’

1.2.1.2. Basis of definition

The CJEU describes its definition of armed conflict as being based on ‘its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part’ (*Diakité*, para 27). We have already noted that thereby the Court makes clear that a specific EU approach to interpretation must be adopted in respect of Article 15(c).

Plainly the CJEU wishes to underline that courts and tribunals are not to seek to deny Article 15(c) protection on the basis that the armed confrontations taking place do not meet the threshold required under IHL or any comparable extrinsic body of standards.

In paragraph 17 of *Diakité*, the CJEU described the first question it had to answer as having two parts: (i) if the assessment of whether an internal armed conflict exists is to be carried out on the basis of the criteria established by IHL; and (ii) ‘if not, which criteria should be used in order to assess whether such a conflict exists [...]’.

1.2.1.3. Applying the CJEU definition

The CJEU gives a clear no to (i), but as to (ii) it does no more than offer its very short everyday language definition. As a consequence, it is left to courts and tribunals to unpack and/or operate this definition in practice. The CJEU definition is clearly broader than the IHL definition and could include, for example, armed confrontations flowing from the drug wars in some Latin American countries ⁽²³⁾. Accordingly, depending on the country situation it may still be necessary for courts and tribunals in certain circumstances to decide whether there is an armed confrontation in the sense described by the Court. For example, riots and insurrections wholly or mainly lacking any use of arms would not appear to qualify. Use of arms alone may not be enough unless there is use of them within or by armed groups. The existence of armed groups alone may not be enough, for example, if such groups do not in practice use arms. There would also need to be evidence of confrontation (i.e. fighting) between them or between an armed group and State forces.

⁽²²⁾ But see also Section 1.6.1 on specific risk and Section 1.6.2 on the notion of a ‘sliding-scale’.

⁽²³⁾ C. Bauloz, ‘The Definition of Internal Armed Conflict in Asylum Law’, *Journal of International Criminal Justice* (2014), p.11; C. Bauloz, ‘The (Mis)Use of IHL under Article 15(c) of the EU Qualification Directive’, in D. Cantor and J.-F. Durieux (eds.), *op. cit.*, p. 261.

1.2.1.4. Must be two or more armed groups

The CJEU's definition would appear to exclude a situation where there was only one armed group confronting the general populace, although Advocate General Mengozzi in his opinion in *Diakité* (as with the English Court of Appeal in *QD (Iraq)*)⁽²⁴⁾ advocated that this too should be covered. However, such a situation may be relatively rare.

1.2.2. International armed conflict

In *Diakité*, the CJEU did not seek in terms to define 'international armed conflict' but, *pari passu* with its reasoning in respect of 'internal armed conflict', it would seem that this term must also be given its usual meaning in everyday language and so must be one that does not impose an IHL threshold. Nonetheless it is likely (as in IHL) that there may be situations where a country is in a state of an internal and an international armed conflict at the same time.

1.3. Indiscriminate violence

'Indiscriminate violence' refers to the source of the specific type of serious harm identified in Article 15(c). As this provision aims to offer (subsidiary) protection to those civilians who are suffering from the consequences of an armed conflict, the meaning of 'indiscriminate violence' must be interpreted in a broad way.

The protection needs of a specific civilian population in a country or one of its regions should not be determined by a narrow approach to defining the terms 'indiscriminate' or 'violence', but by a careful and holistic assessment of the facts coupled with a close and exact analysis of the level of violence, as regards the nature of the violence and its extent.

1.3.1. CJEU definition of indiscriminate violence

In its judgment in *Elgafaji*, the CJEU has held that the term 'indiscriminate' implies that the violence 'may extend to people irrespective of their personal circumstances'⁽²⁵⁾.

The CJEU has highlighted the 'exceptional situation' needed for Article 15(c) to apply to civilians generally. In *Elgafaji* at paragraph 37, the Court made clear that, for this to be the case:

'[...] the degree of indiscriminate violence characterising the armed conflict taking place ... [must reach] such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat referred in Article 15(c) of the Directive.'

1.3.2. National Case Law

Since the *Elgafaji* ruling, national courts and tribunals, rather than trying to define the concept further, have sought to identify indicators of its nature and extent (see Part II Section 2.2. below). The United Kingdom Upper Tribunal (UKUT) has stated that bombings or shootings:

'can properly be regarded as indiscriminate in the sense that, albeit they may have specific or general targets, they inevitably expose the ordinary civilian who happens to be at the scene to what has been

⁽²⁴⁾ Court of Appeal (UK), *QD (Iraq) v Secretary of State for the Home Department* [2009] EWCA Civ. 620, para 35.

⁽²⁵⁾ *Elgafaji*, op. cit., fn. 5, paragraph 34.

described in argument as collateral damage. The means adopted may be bombs, which can affect others besides the target, or shootings, which produce a lesser but nonetheless real risk of collateral damage ⁽²⁶⁾.

As to general targets, the UKUT gave the example of the explosions of bombs in crowded places such as markets or where religious processions or gatherings are taking place ⁽²⁷⁾. The German Federal Administrative Court (FAC) interpreting the *Elgafaji* judgment came to the conclusion that it is not necessary to determine whether the acts of violence constitute a breach of international humanitarian law, because the notion of violence used in the QD was a broad one ⁽²⁸⁾. There has been considerable discussion in the national case law as to what extent indirect effects of indiscriminate violence should be taken into consideration.

The French Council of State has referred to attacks and abuses against the civil population and to forced displacements as possible characteristics of indiscriminate violence ⁽²⁹⁾. Such characteristics were satisfied where an applicant had to travel through regions of Afghanistan affected by such violence ⁽³⁰⁾; the assessment did not require analysing the nationwide general situation but the regions concerned ⁽³¹⁾.

In two judgments, the Administrative Court of the Republic of Slovenia put forward the following factors that should be taken into account in assessing the level of violence: battle deaths and injuries among the civilian population including possible temporal dynamics of numbers of deaths and injuries, number of internally displaced persons, basic humanitarian conditions in centres for displaced persons, including food supply, hygiene and safety and the degree of ‘State failure’ to guarantee basic material infrastructure, order, healthcare, food supply, drinking water. The Administrative Court pointed out that the protected value in relation to Article 15(c) is not mere ‘survival’ of asylum seekers, but also a prohibition against inhuman treatment ⁽³²⁾. The Slovenian Supreme Court decided that these factors are ‘legally relevant’ ⁽³³⁾.

1.3.3. UNHCR

To similar effect, UNHCR understands the term ‘indiscriminate’ to encompass ‘acts of violence not targeted at a specific object or individual, as well as acts of violence which are targeted at a specific object or individual but the effects of which may harm others’ ⁽³⁴⁾.

1.3.4. Typical forms of indiscriminate violence in armed conflicts

The nature of the violence can be one major factor in determining whether the violence appears to be indiscriminate. Examples of such acts of indiscriminate violence might include: massive targeted bombings, aerial bombardments, guerrilla attacks, collateral damage in direct or random attacks in city districts, siege, scorched earth, snipers, death squads, attacks in public places, lootings, use of improvised explosive devices etc.

1.3.5. The role of targeted violence

The more the assessment of the nature of violence indicates that the person concerned has been or would be a victim of a targeted assault, the more alert courts and tribunals should be to whether such a person is in fact eligible for refugee protection, not subsidiary protection. But in any event there is no reason to leave targeted violence out of the equation when analysing the level of indiscriminate violence in the relevant area or region of

⁽²⁶⁾ Upper Tribunal, Immigration and Asylum Chamber (UK), judgment of 13 November 2012, *HM and others* (Article 15(c)) *Iraq CG v. the Secretary of State for the Home Department*, [2012] UKUT 00409(IAC), paragraph 42.

⁽²⁷⁾ *Ibid.*

⁽²⁸⁾ Bundesverwaltungsgericht (Germany), judgment of 27 April 2010, 10 C 4.09, ECLI:DE:BVerwG:2010:270410U10C4.09.0, para 34.

⁽²⁹⁾ Conseil d’État (France), judgment of 3 July 2009, No 320295, *Office Français de Protection des Réfugiés et Apatrides c M. Baskarathas*, No 320295.

⁽³⁰⁾ CNDA (France), judgment of 11 January 2012, *M. Samadi* No 11011903 C.

⁽³¹⁾ CNDA (France), judgment of 28 March 2013, *M. Mohamed Adan* No 12017575 C.

⁽³²⁾ Administrative Court of Slovenia, judgments of 25 Sept 2013, I U 498/2012-17 and 29 Jan 2014 I U 1327/2013-10.

⁽³³⁾ Supreme Court of the Republic of Slovenia, judgment of 10 April 2014, I Up 117/2014.

⁽³⁴⁾ UNHCR, *Safe at last*, fn. 2, p. 103.

the country. Targeted violence encompasses both specific and general targeting: some violence, albeit targeted, can harm civilians in significant numbers ⁽³⁵⁾.

Further analysis of how to go about assessing the level of indiscriminate violence is given in Part II at Sections 2.2 and 2.3.

1.4. By reason of

Subsidiary protection under Article 15(c) is granted to any person in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, would face a real risk of a serious and individual threat to his or her life or person *by reason of* indiscriminate violence. A crucial element in considering causation will be the level of such violence ⁽³⁶⁾. Given the broad definition of indiscriminate violence, the requirement of a causal nexus should not be applied in narrow fashion. The effects of indiscriminate violence can be indirect as well as direct. Indirect effects of the acts of violence such as a complete breakdown of law and order arising out of the conflicts should be considered to a certain extent as well.

Should criminal acts that are the result of a breakdown of law and order and other indirect effects of indiscriminate violence be regarded as constituting indiscriminate violence within the meaning of Article 15(c)?

In 2008, the German FAC decided that criminal violence, which is not committed by one of the parties to the conflict, should be taken into account only when assessing the nature of the serious and individual threat to life or person ⁽³⁷⁾. According to the FAC, ‘the general threats to life that are purely a consequence of an armed conflict — for example, through a resulting deterioration in supply conditions — cannot be included in the assessment of the density of danger’ ⁽³⁸⁾ and therefore do not constitute a threat within the meaning of Article 15(c). The UKUT acknowledged in 2010 that general criminality which causes harm of the necessary degree of seriousness could be a consequence of an armed conflict where normal law and order provisions are disrupted. A serious breakdown of law and order permitting anarchy and criminality occasioning the serious harm referred to in Article 15(c) can lead to indiscriminate violence in effect even if not necessarily in aim ⁽³⁹⁾. There must be a sufficient causal nexus between the violence and the conflict, but indiscriminate violence affecting civilians does not necessarily need to be directly caused by the combatants participating in the conflict ⁽⁴⁰⁾. Likewise the French Council of State ⁽⁴¹⁾ as well as the Dutch Council of State ⁽⁴²⁾ have held that indirect effects of armed conflicts should be considered.

Similarly, UNHCR emphasises in this respect that a breakdown of law and order as a consequence of indiscriminate violence or the armed conflict needs to be taken into account. In particular, the source from which the indiscriminate violence emanates is immaterial ⁽⁴³⁾.

It is not yet foreseeable whether the new and broad approach to the notion of armed conflict taken by the CJEU in *Diakité* will also lead to wider acceptance that indirect effects of indiscriminate violence can constitute indiscriminate violence within the meaning of Article 15(c).

⁽³⁵⁾ *HM and Others*, op. cit., fn. 26, paragraph 292.

⁽³⁶⁾ See H. Lambert, ‘Causation in International Protection from Armed Conflict’, in D. Cantor and J.-F. Durieux (eds.), op. cit., p. 65.

⁽³⁷⁾ Bundesverwaltungsgericht (Germany), judgment of 17 November 2011, 10 C 13.10, ECLI: DE: BVerwG: 2011: 171 111U1 0C13.10.0, paragraph 23.

⁽³⁸⁾ Bundesverwaltungsgericht (Germany), judgment of 24 June 2008, 10 C 43.07, ECLI: DE: BVerwG: 2008: 240608U10C43.0 7.0, paragraph 35.

⁽³⁹⁾ *HM and Others*, op. cit., fn. 26, paragraphs 79-80.

⁽⁴⁰⁾ *Ibid.*, paragraph 45.

⁽⁴¹⁾ *Baskarathas*, op. cit., fn. 29.

⁽⁴²⁾ Raad van State (the Netherlands), judgment of 7 July 2008, 200802709/1, ECLI:NL:RVS:2008:BD7524.

⁽⁴³⁾ UNHCR, *Safe at last*, fn. 2, pp. 60 and 103.

1.5. Civilian

1.5.1. Personal scope of Article 15(c): confined to civilians

In logic, being a civilian is a necessary pre-requisite to being able to benefit from protection under Article 15(c) ⁽⁴⁴⁾. If an applicant is not a civilian and so falls outside Article 15(c), it will be necessary to check whether refugee eligibility or protection under Article 15(a) and (b) was considered or should be considered, unless the applicant comes within the scope of the exclusion clauses (Articles 12 and 17). Articles 2 and 3 of the ECHR (which are not subject to exclusion clauses) may also be relevant.

1.5.2. Approach to definition likely to reject IHL definition

Given the wide-ranging nature of the reasons advanced by the CJEU in *Diakité* for rejecting recourse to IHL criteria to help define armed conflict, it must be assumed that it would not accept an IHL definition of civilian. ⁽⁴⁵⁾ Instead, the Court would strive to give the term its usual meaning in everyday language whilst taking into account the context in which it occurs and the purposes of the rules of which it is a part (*Diakité*, paragraph 27). The fact that even within IHL there is no unanimity as to the definition of this term ⁽⁴⁶⁾ might be said to add to the unsuitability of an IHL-based definition.

Dictionary definitions, because they vary widely, offer little help and in any event do not assist with meaning which is in conformity with the objects and purposes of the QD. A simple everyday meaning might be that civilians are those who are not combatants or persons who do not fight; but this is so short as to add nothing of any substance.

1.5.3. Differentiation between military and non-military

From the fact that the CJEU in *Diakité* clearly contemplates that an armed conflict could arise even without State involvement or the State being a party ('or in which two or more armed groups confront each other'), it can be understood that the term is primarily used to differentiate non-military from military personnel. Military personnel may include both members of a State's armed forces or police and members of rebel or insurgent groups (sometimes called 'irregular fighters').

1.5.4. Civilians = all non-combatants?

If recourse was done to the meaning of the term 'civilian' in international human rights law (IHRL) ⁽⁴⁷⁾ (which increasingly recognises the complementarity of IHRL and IHL), the term may need to be accorded the same meaning it is given in common Article 3 to the four 1949 Geneva Conventions: 'persons taking no active part in hostilities, including members of armed forces who have laid down their arms or are otherwise *hors de combat*

⁽⁴⁴⁾ C. Bauloz, *op. cit.*, fn. 23, p. 253 — '*Subsidiary protection under 15(c) is carefully limited ratione personae to civilian third-country nationals or civilian stateless persons not qualifying as refugees.*'

⁽⁴⁵⁾ There is no fixed IHL definition but that by G. Mettraux, *International Crimes and the ad hoc Tribunals* (OUP, 2005) is widely seen to capture the customary law definition; it defines civilians as '*those who are not, or no longer, members of the fighting forces or of an organised military group belonging to a party to the conflict.*' In IHL there is a presumption in favour of protection and in Article 50(1) of Additional Protocol I it is stated that '*[i]n case of doubt whether a person is a civilian, that person shall be considered to be a civilian.*' See further E. Wilmshurst and S. Breau, *Perspective on the ICRC Study on Customary International Humanitarian Law* (CUP, 2007), pp. 10-11, 111-112, 406.

⁽⁴⁶⁾ Albeit it is crucial to the IHL principle of distinction: the ICRC study of customary IHL states at Rule 1: '*The parties to the conflict must at all times distinguish between civilians and combatants.*' [J. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law* (CUP, 2005)].

⁽⁴⁷⁾ Recital [24] QD states: '*It is necessary to introduce common criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.*' Advocate General Mengozzi stated in *Diakité* that it is clear from the *travaux préparatoires* that '*the notion of subsidiary protection is derived from the international instruments concerned with human rights.*'

[...]. The latter part of this statement suggests that no longer taking part in hostilities is not sufficient; a person must take steps to actively disengage⁽⁴⁸⁾.

There are a number of national decisions reflective of this approach. In *ZQ (serving soldier)*⁽⁴⁹⁾ the United Kingdom Asylum and Immigration Tribunal (UKAIT) pointed out that in IHL the fact that a soldier is off-duty or off-sick does not necessarily result in civilian status. The Tribunal cited the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) which observed in *Prosecutor v Blaskic*⁽⁵⁰⁾ at paragraph 114 that: ‘the specific situation of the victim at the time the crimes [war crimes or crimes against humanity] are committed may not be determinative of his civilian or non-civilian status. If he is indeed a member of an armed organisation, the fact that he is not armed, or in combat at the time of the commission of crimes, does not accord him civilian status.’ In *HM and Others* the UKUT concluded that the definition of civilian should not include ‘[a]nyone who involves himself in armed conflict’, which includes members of armed forces or police⁽⁵¹⁾. The International Committee of the Red Cross (ICRC) interprets civilians in non-international armed conflicts as ‘all persons who are not members of State armed forces or organised armed groups of a party to the conflict’.

1.5.5. Does the term ‘civilian’ exclude all members of the armed forces and police?

Bearing in mind that the CJEU considers the meaning of key terms requires accounting for the context in which they occur and the purposes of the rules of which they are part (*Diakité*, para 27), it may be that the term ‘civilian’ is susceptible of a broader meaning, so as to denote all those who are non-combatants or not fighters or all those who are *hors de combat*. Thus, for example, in contrast to the apparent position in IHL, a member of the armed forces or police service who would only face a real risk of suffering serious harm whilst off duty in his home region or area might arguably qualify. By reference to the reasoning in *Diakité*, it may be thought that the Court considered the term was to be given a factual definition rather than be seen to denote a preconceived legal status⁽⁵²⁾.

1.5.6. Is mere membership of an armed group sufficient to exclude status of a civilian?

From the CJEU’s reasoning in *B and D*⁽⁵³⁾, it would not be correct to simply try and deduce a person’s non-civilian status from his membership of an armed group. In *B and D*, which concerned the application of the exclusion clauses from refugee status in the QD, the Court refused to make automatic assimilations based on either UN Security Council Resolutions or EU instruments adopted within the Common Foreign and Security Policy. At paragraph 89 of *B and D*, the CJEU said there was no direct relationship between the definition of terrorist acts in this material and the QD ‘in terms of the aims pursued’. Therefore, ‘it [was] not justifiable for a competent authority, when considering whether to exclude a person from refugee status [...] to base its decision solely on that person’s membership of an organisation which is on a list adopted outside the framework setup by [the] Directive’. Inclusion in a list or in a stated definition could not substitute for an individual assessment of the specific facts. Neither could ‘participation in the activities of a terrorist group [...] come necessarily and automatically within the ground for exclusion laid down in [the] Directive’.

⁽⁴⁸⁾ In its judgment of 1 July 1997, *Kalac v Turkey*, application No 20704/92, the ECtHR stated that ‘in choosing a military career Mr Kalac was accepting of his own accord a system of military discipline that by its very nature implied the possibility of placing on him certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians’; see also judgment of the ECtHR of 8 June 1976, *Engel and others v the Netherlands*, applications No 5100/71 and others, para 57. More generally IHRL increasingly considers that in relation to situations of armed conflict, IHL plays a complementary role and is in fact *lex specialis*: see Orna Ben-Naftali (ed.) *International Humanitarian Law and International Human Rights Law*, OUP, 2011, pp. 3-10.

⁽⁴⁹⁾ Asylum and Immigration Tribunal (UK) (the predecessor to the UKUT), judgment of 2 December 2009, *ZQ (Serving Soldier) Iraq v. Secretary of State for the Home Department*, CG [2009] UKAIT 00048.

⁽⁵⁰⁾ ICTY, Appeals Chamber, judgment of 29 July 2004, *Prosecutor v Blaskic*, Case No IT-95-14-A.

⁽⁵¹⁾ *HM and others*, op. cit., fn. 26 cited also in judgment *ZQ (serving soldier)*, op.cit. fn. 49.

⁽⁵²⁾ C. Bauloz, op. cit., fn. 23, argues that ‘a factual definition should be preferred over fixed legal categories focusing on too rigid statuses’.

⁽⁵³⁾ CJEU (Grand Chamber), judgment of 9 November 2010, *Bundesrepublik Deutschland v B and D*, joined cases C-57/09 and C-101/09.

1.5.7. Indicators of civilian status

Assuming there is no automatic adoption of a definition from IHL or any other extrinsic body of law and that instead in similar fashion as was done in *B and D*, the CJEU requires a ‘full investigation into all the circumstances of each individual case’, the following indicators (not necessarily consonant with one another) may be of some assistance:

- A civilian is a person who is not party to the conflict and merely seeks to get on with life notwithstanding the situation of conflict.
- Not being armed may be insufficient to render a person a civilian, who is required to be neutral in the conflict as well.
- Persons who willingly participate in armed groups are unlikely to be considered civilians.
- The definition of a civilian would seem to be intended to exclude participants in a war and therefore covers persons who do not or would not participate actively in hostilities.
- The role of an individual in the organisation should be explored. The question of whether an individual acted (or would act) under duress should be taken into consideration. On the other hand, it should also be taken into consideration that, for example, seemingly civilian political representation in a rebel insurrection could be responsible for decisions resulting in killings.
- Individuals working for military institutions, including military hospitals, may have difficulty in being considered civilians, even if they are obliged to follow military rules of command.
- An individual having a civilian task in the army, such as a doctor, may be considered as a civilian, unless the post carries a military rank.
- Not having a military rank may make it easier for a person to argue de facto civilian status.
- Article 43 on Armed forces of the Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol 1), 8 June 1977 excludes from the definition of armed forces ‘medical personnel and chaplains covered by Article 33 of the Third Convention’. A non-combatant army doctor in a military hospital may be considered to be performing an essentially humanitarian, rather than military, duty promoting the right to life as protected under the Charter and the ECHR⁽⁵⁴⁾.
- Visual perception is one of the criteria for recognising civilians and differentiating them from combatants. For the determination of the status, it is necessary to examine only the person’s assignment as a non-civilian and the question whether the individual could be identified as a non-civilian upon return.

1.5.8. Future-oriented assessment

It should be borne in mind that, in assessing all international protection claims, courts and tribunals are primarily concerned with hypothetical risk on return, i.e. what an applicant’s situation will be if returned to his or her country of origin. Questions about whether someone was previously a civilian or combatant/fighter will not necessarily establish whether they will be (or be perceived to be) a civilian or combatant/fighter on return.

1.5.9. In case of doubt

If a fact-specific approach is taken to whether a person is a civilian (i.e. would be a civilian on return) then importance should be placed on the principle that, to quote from Article 50 of Additional Protocol I, which is headed ‘Definition of civilian and civilian population’ at subparagraph 1: ‘in case of doubt whether a person is a civilian, that person shall be considered to be a civilian’.

The Belgian Council of Alien Law Litigation⁽⁵⁵⁾ stated that in respect of an applicant who had cooperated with the asylum authorities in trying to establish a claim, the benefit of any doubt should be given in favour of considering such person a civilian.

⁽⁵⁴⁾ See e.g. Commission of Human Rights, decision of 10 July 1984, *Stewart v UK*, application No 10044/82, paragraph 15, ‘the concept that everyone’s right to life shall be protected by law’ enjoins the State not only to refrain from taking life ‘intentionally’ but, further, to take appropriate steps to safeguard life. This case was concerned with the application of Article 2(2) of the ECHR.

⁽⁵⁵⁾ Conseil du contentieux des étrangers/Raad voor Vreemdelingenbetwistingen (Belgium), judgment of 4 December 2007, case 4460.

1.5.10. Former combatants and forced enlistment

As regards former combatants (including child soldiers), it should be considered that the purpose of the QD was not to introduce additional exclusion clauses, but to identify persons in need of protection. Consideration of an exclusion clause should normally only be given at a later stage. The French National Asylum Court noted in an Afghan case that a former soldier, who left the Afghan army, can be considered as a civilian ⁽⁵⁶⁾.

UNHCR has recommended the following approach:

‘In this connection, the term ‘civilian’ in Article 15(c) should not serve to exclude former combatants who can demonstrate that they have renounced military activities. The fact that an individual was a combatant in the past does not necessarily exclude him or her from international protection if he or she has genuinely and permanently renounced military activities. The criteria for determining whether a person satisfies this test have been defined by the UNHCR Executive Committee ⁽⁵⁷⁾.’

This underlines that a former combatant, especially if previously affiliated to the state’s armed forces, might still be considered a combatant on return.

The UK Home Office stated in its Asylum Process Guidance on Humanitarian Protection of 15 May 2013 that only genuine non-combatants, i.e. those who are not party to the conflict, qualify for protection under 15(c): ‘This could include former combatants who have genuinely and permanently renounced armed activity.’

In general terms, an applicant who has been forcibly enlisted ⁽⁵⁸⁾ as a soldier/fighter does not thereby lose civilian status but, as with child soldiers, it would seem that in order to decide the issue, the approach to be adopted should be a fact-sensitive one, similar to that taken by the CJEU in *B and D*: see above 1.5.6.

1.6. Serious and individual threat

Article 15(c) requires an applicant to show a real risk of suffering a serious threat of harm and not necessarily of suffering specific acts of violence. The threat is understood as being inherent in a general situation of conflict and that is, in essence, why this provision covers a more general risk of harm than either Article 15(a) or (b): see *Elgafaji*, paragraphs 32-34. At paragraph 45 the CJEU stated:

‘On those grounds the Court (Grand Chamber) hereby rules: Article 15(c) of Council Directive 2004/83/EC ..., in conjunction with Article 2(e) thereof, must be interpreted as meaning that:

‘— the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;

‘— the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place — assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred — reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.’

⁽⁵⁶⁾ CNDA (France), judgment of 24 January 2013, *M. Miakhail* No 12018368 C+.

⁽⁵⁷⁾ UNHCR, *Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence*, January 2008, p. 7. Available at: <http://www.refworld.org/docid/479df7472.html>.

⁽⁵⁸⁾ A distinction needs to be drawn between persons recruited according to the law of the country of origin (which may make military service compulsory) and persons forced to join an armed group involuntarily: see further UNHCR *Guidelines on International Protection No 10: Claims to Refugee Status related to Military Service within the context of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 3 December 2013, especially paragraphs 35-41.

1.6.1. General risk and specific risk

From the CJEU's analysis in *Elgafaji*, it is clear that the existence of a serious and individual threat to the life or person of an applicant is not subject to the condition that an applicant adduces evidence of specific targeting by reason of factors particular to his personal circumstances. An applicant can be considered to be at general risk of such a threat if, exceptionally, the level of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian would face a real risk of being subject to that threat solely on account of his presence in the relevant area or region. Put another way, 'individualisation' necessary to show that the threat is 'individual' may be achieved either by reasons of 'specific risk' factors to do with a person's particular characteristics or circumstances or by the 'general risk' factors arising out of an exceptional situation of a very high level of violence.

1.6.2. Concept of a 'sliding-scale'

Under Article 15(c), whether a person shows either a general risk or a specific risk should not be seen as a dichotomy. Rather the CJEU articulated what is known as 'the sliding-scale' concept, i.e. that:

'the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required by him to be eligible for subsidiary protection' (*Elgafaji*, paragraph 39; *Diakité*, paragraph 31). The opposite also applies: exceptionally, the level of violence could reach such a high intensity that a civilian would, solely on account of his or her presence on the territory of the affected country or region, face a real risk of being subject to serious harm (paragraph 43). The Court found that this interpretation did not contradict [then] recital 26 of the Directive; as the wording of the latter allows for the possibility of such an exceptional situation.⁽⁵⁹⁾

By means of the sliding scale concept the CJEU succeeds in balancing individual threat and indiscriminate violence and making clear how the provision is to be operated in a case-specific way.

It can be seen that the CJEU's notion of 'general risk' is similar to the recognition in case law of the ECtHR relating to Article 3 ECHR, of the possibility that an individual can be said to be at real risk of serious harm merely by virtue of being present in a situation characterised by exceptionally high levels of violence. In *NA v UK*⁽⁶⁰⁾ at paragraphs 115-116 the ECtHR stated:

'115. From the foregoing survey of its case-law, it follows that the Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.

'116. Exceptionally, however, in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court has considered that the protection of Article 3 of the Convention enters into play when the applicant establishes that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned (see *Saadi v. Italy*, cited above, § 132). In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3. This will be determined in light of the applicant's account and the information on the situation in the country of destination in respect of the group in question (see *Salah Sheekh*, cited above, paragraph 148).'

In *Sufi and Elmi v. UK*, the ECtHR further clarified that application of this approach would also involve (what we have called) a sliding scale criterion. The ECtHR confirmed, first, that if a risk contrary to Article 3 is established 'the applicant's removal would necessarily breach this article regardless of whether the risk emanates from general situation of violence, a personal characteristic of the applicant, or a combination of the two' (paragraph 218).

⁽⁵⁹⁾ E. Tsourdi, 'What Protection for Persons Fleeing Indiscriminate Violence? The Impact of the European Courts on the EU Subsidiary Protection Regime', in D. Cantor and J-F Durieux (eds), *op.cit.*, p. 277.

⁽⁶⁰⁾ ECtHR, judgment of 17 July 2008, *NA v the United Kingdom*, application No 25904/07.

One commentator has noted:

‘In essence, the *Elgafaji* ‘sliding scale’ test does not seem to take much distance from this recent ECtHR jurisprudence, at least on the point of individualisation. Concerning cases of extremely generalised and indiscriminate violence, the test is phrased in similar terms. The CJEU has also made it clear that this situation would be ‘exceptional’. Where violence is of lower intensity, both courts require a certain degree of individualisation ⁽⁶¹⁾.’

If there is a ‘sliding scale’ under Article 3 ECHR, then there must also be one under Article 15(b) ⁽⁶²⁾. The challenge is how to approach such individualisation in the context of Article 15(c): ‘The second challenge stems from the sliding scale test when it comes to the identification of factors particular to the applicant’s personal circumstances in cases the violence is of a lower intensity’. ⁽⁶³⁾ Advocate General Maduro observed that ‘when explaining the relevant factors for assessing if a person is individually affected brought as an example their membership of a particular social group [MPSG]’ ⁽⁶⁴⁾. The MPSG mirrors the 1951 Refugee Convention.

However, if ‘personal circumstances’ are MPSG or any of the other four grounds of the 1951 Refugee Convention, then the appropriate framework to examine the claim may well be that of the refugee definition ⁽⁶⁵⁾.

In any event, the personal circumstances that need to be demonstrated here cannot be limited to the Refugee Convention reasons provided for in the refugee definition; they would in principle appear to encompass factors that would put the person concerned at enhanced risk compared to the rest of the population. It must be recalled that Article 4(3)(c) requires that assessment of an application for international protection must take into account ‘the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant’s personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm’.

Whilst therefore the Article 15(c) inquiry is one into specific as well as general risk, the difficulties national courts and tribunals have found in applying the ‘sliding scale’ suggest that its main utility will be in dealing with claims based on general risk. Claims based on specific risk may very often stand to be resolved under the refugee definition or (if there is no Refugee Convention ground) under Article 15(b) or Article 15(a). It bears repeating that when deciding international protection cases, courts and tribunals must examine first whether a person is eligible for refugee protection and hence application of the ‘sliding-scale’ under Article 15(c) will only arise if it has been decided an applicant has not established a well-founded fear of being persecuted.

1.7. [Civilian’s] life or person

Article 15(c), as stated in the case of *Elgafaji* ⁽⁶⁶⁾, has an additional scope to Article 3 ECHR and, therefore, has to be interpreted independently, but with due regard to fundamental rights as they are guaranteed under the ECHR.

Neither the QD, nor the CJEU in its decisions, has defined the terms ‘life or person’: two major values of a civilian that are affected by indiscriminate violence in situations of international or internal armed conflict.

By comparing the provisions of Article 15(a) and (b), which indicate a particular type of harm with the provision of Article 15(c), it is obvious that harm thereby defined covers a more general risk of harm ⁽⁶⁷⁾.

The harm that could affect an applicant is not restricted to the physical but can also be psychological or mental ⁽⁶⁸⁾. The harm could also derive from ‘indirect forms of violence, such as intimidation, blackmail, seizure of property, raids on homes and businesses, checkpoints and kidnapping’ ⁽⁶⁹⁾ which affect a civilian’s ‘person’. That

⁽⁶¹⁾ E. Tsourdi, op. cit., fn. 59, p. 281.

⁽⁶²⁾ E. Tsourdi, op. cit., p. 288.

⁽⁶³⁾ Ibid.

⁽⁶⁴⁾ Ibid.

⁽⁶⁵⁾ Ibid.

⁽⁶⁶⁾ *Elgafaji*, op. cit., fn. 5, paragraph 28.

⁽⁶⁷⁾ Ibid, para 33.

⁽⁶⁸⁾ UNHCR, *Safe at Last*, fn. 2, p. 60.

⁽⁶⁹⁾ *HM and others*, op. cit., fn. 26, paragraph 114.

is the reason why, when examining the risk in case of return, courts and tribunals need to thoroughly examine a wide range of elements to appraise the local situation and conditions.

The question remains open whether the risk to ‘life or person’ is confined to a real risk of suffering harm that violates non-derogable rights or whether it extends to cover important breaches of qualified rights of an applicant. It was noted in *KH (Iraq)* at paragraph 101 that:

‘[t]his provision, which concerns the focus of the threat, went through five drafting amendments. Dr McAdam (*supra* at p.75) notes that the original phrase ‘life, safety or freedom’ was, along with subsequent formulations, based around the concept of freedom [‘life or physical integrity or freedom from arbitrary detention’], eventually deleted due to concern by some Member States that it would unduly widen the scope of the Directive ⁽⁷⁰⁾.’

Common Article 3 to the 1949 Geneva Conventions uses the phrase ‘life and person’ (not ‘life or person’) and in *KH (Iraq)* it was noted that this phrase is clearly not apt to cover anything to do with civilian *objects*. The latter is defined in IHL as including the following: ‘dwellings, shops, schools and other places of non-military business, places of recreation and worship, means of transportation, cultural property, hospitals and medical establishments and units’. Whilst it is clear from *Diakité* that key terms of Article 15(c) should not be given an IHL reading, this differentiation would appear to be necessary on any definition.

In *KH* at paragraph 107 the UKAIT observed a differentiation within Article 3(1) between (a) violence to ‘life and person’ on the one hand and (c) ‘outrages upon personal dignity, in particular humiliating and degrading treatment’ on the other. This led the Tribunal to doubt that the material scope of the phrase ‘life and person’ could extend to threats which amount to inhuman and degrading treatment. The inherent limitation of the concept of ‘life or person’ within IHL is further indicated by the fact that in Additional Protocol II (by which time it was felt that the protection of civilians should be given a wider material scope) supplementary wording was used to make that protection more expansive. Article 4(2)(a) of the same convention proscribes: ‘violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment, such as torture, mutilation or any form of corporal punishment’. The Tribunal concluded that ‘[m]indful, however, that ‘life or person’ is to be given a broad meaning, we would accept that the phrase must encompass the means for a person’s survival’. The Administrative Court of Slovenia has held that the protected value in relation to Article 15(c) is not mere ‘survival’ of asylum seekers, but also a prohibition against inhuman treatment ⁽⁷¹⁾.

1.8. Geographical scope: country/area/region

It is fundamental to the consideration of Article 15(c) protection that the situation prevailing in the country of return be assessed ⁽⁷²⁾. However, it is not necessary to decide whether the armed conflict is nationwide; rather the focus must be on the region where an applicant lives (or area of destination) and on determining whether such a person is at risk in that area or the necessary route to it. Article 8 recognises, further, that even if an applicant can establish a real risk of Article 15(c) serious harm in the home area, eligibility for subsidiary protection can only be established if such an applicant is unable to achieve internal protection in another part of the country. The first question, therefore, is whether an applicant is at real risk of serious harm in the home area (or on the way to that home area). If the answer is yes, then the second question is whether serious harm can be avoided by achieving internal protection in another part of the country.

1.8.1. Identification of home area

In deciding the location of an applicant’s home area as a destination of return, a factual approach is required having regard to matters such as area of last place of residence and area of habitual residence ⁽⁷³⁾.

⁽⁷⁰⁾ Asylum and Immigration Tribunal (UK), judgment of 25 Mar 2008, *KH (Article 15(c) Qualification Directive) Iraq* CG [2008] UKAIT 00023.

⁽⁷¹⁾ Administrative Court of Slovenia, judgments of 25 Sept 2013, I U 498/2012-17 and 29 Jan 2014 I U 1327/2013-10.

⁽⁷²⁾ ‘The added value of Article 15(c) is its ability to provide protection from serious risks which are situational, rather than individually targeted.’ UNHCR Statement on Subsidiary Protection, *op. cit.*, fn. 57.

⁽⁷³⁾ Bundesverwaltungsgericht (Germany), judgment of 31 January 2013, 10 C 15.12, para 14.

1.8.2. Home area as area of destination

When considering risk in an applicant's home area, regard must therefore also be had to whether or not there is an ability to travel to that destination. If not — because of armed conflict affecting the routes that could reasonably be expected to be taken — then such an applicant is to be considered as having demonstrated Article 15(c) risk in his or her area of destination.

The ECtHR had regard to the geographical nature of the conflict in the context of generalised violence in *Sufi and Elmi* ⁽⁷⁴⁾. In national case law on Article 15(c), the German FAC and the French National Asylum Court have found that the assessment does not require analysing the nationwide general situation but the region concerned ⁽⁷⁵⁾ including the route to be taken from the point of return to the home area ⁽⁷⁶⁾. That is also the consistent position taken by UK courts and tribunals ⁽⁷⁷⁾.

1.8.3. Protection against serious harm in area of destination

It should be noted that when considering whether there exists an Article 15(c) risk in a person's home area, such a risk will only be established if there is no effective protection against it. Article 7 ⁽⁷⁸⁾ specifies that protection against serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned in Article 7(1)(a) and (b) take reasonable steps to prevent serious harm, *inter alia*, by operating an effective legal system for the prevention, detection, prosecution and punishment of acts constituting persecution or serious harm, and when an applicant has access to such protection.

1.8.4. Internal protection

If there is an Article 15(c) risk in the applicant's home area (as above), the question will be whether there is a part of the country that is not affected by the conflict to where the individual can reasonably be expected to relocate. This is known as the internal protection (or internal flight, internal relocation) alternative.

Article 8 states:

'Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she:

- (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or
- (b) has access to protection against persecution or serious harm as defined in Article 7; and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.

2. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the

⁽⁷⁴⁾ *Sufi and Elmi*, op. cit., fn. 14, paragraphs 210, 265-292.

⁽⁷⁵⁾ *M. Mohamad Adan*, op. cit, fn. 31.

⁽⁷⁶⁾ Bundesverwaltungsgericht (Germany), op. cit., para 13f; *M. Mohamad Adan*, op. cit.

⁽⁷⁷⁾ *HM and others*, op. cit., fn. 26.

⁽⁷⁸⁾ Article 7 QD — Actors of protection

'1. Protection against persecution or serious harm can only be provided by:

(a) the State; or

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State; provided they are willing and able to offer protection in accordance with paragraph 2.

2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.

3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Union acts.'

application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.

Recital (27) provides:

Internal protection against persecution or serious harm should be effectively available to the applicant in a part of the country of origin where he or she can safely and legally travel to, gain admittance to and can reasonably be expected to settle. Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant. When the applicant is an unaccompanied minor, the availability of appropriate care and custodial arrangements, which are in the best interest of the unaccompanied minor, should form part of the assessment as to whether that protection is effectively available.’

The relevance of internal protection was endorsed by the CJEU in *Elgafaji* when it stated that ‘in the individual assessment of an application for subsidiary protection [...] the following may be taken into account [...] the geographical scope of the situation of indiscriminate violence and the actual destination of the applicant in the event that he is returned’⁽⁷⁹⁾.

Geographical scope and internal protection are connected principles in that it may be considered implicit in its widest definition that internal protection not only includes protection afforded by third parties⁽⁸⁰⁾ but also self-protection by relocation to a part of the country where the conflict does not exist or where the threat of indiscriminate violence caused by the conflict is less.

Article 8(2) in the recast QD (but not the original — see further below) makes specific reference to access to protection. Article 7 defines actors of protection to include not only State actors but also non-State actors controlling the State or a substantial part of it. The internal protection principle is referable to Article 15 as a whole and it may be considered to have greater application to 15(a) and (b) where individual targeting is the issue rather than 15(c). This is because once a finding of a threat of indiscriminate violence as a result of armed conflict in the home area has been made, the possibility of internal protection within that area being available may not be sustainable because in many situations of armed conflict, there may be little doubt that effective protection is unavailable. ‘The capacity of actors of protection to provide protection and indicators relating to State failure’ are amongst the indicators for the assessment of the level of violence and serious threat identified by the UNHCR⁽⁸¹⁾.

The assessment of the situation not just in the applicant’s home area but in others parts of the country where it may be possible to find internal protection is therefore essential to the proper consideration of Article 15(c). This assessment with regard to the general circumstances prevailing and the personal circumstances of the applicant requires a thorough appraisal. The QD requires this assessment to take place in accordance with Article 4 (Assessment of elements) and for ‘precise and up to date information’ to be obtained.

Further analysis of geographical scope and internal protection is given in Part II, Sections 2.4 and 2.5.

⁽⁷⁹⁾ *Elgafaji*, op.cit., fn. 5, paragraph 40.

⁽⁸⁰⁾ However, Article 7(1)(b) specifies that protection can only be afforded by non-state actors if they control the State or a substantial part of the territory of the State and are willing and able to furnish protection in accordance with Article 7(2) QD. See Supreme Administrative Court of the Czech Republic, decision of 27 October 2011, *D.K.c.Ministry of Interior, Azs 22/2011*.

⁽⁸¹⁾ UNHCR, *Safe at Last?*, fn. 2.

Part 2: Application

2.1. Résumé: Holistic approach

In Part I the constituent elements of Article 15(c) were analysed. In this Part, the focus is on how this provision is to be applied in practice.

As noted earlier, the assessment of Article 15(c) requires a holistic approach. Courts and tribunals must take into account a number of elements: armed conflict, civilian's life or person, serious and individual threat, indiscriminate violence, threshold of the violence, geographical scope and the internal protection alternative. There is an interaction between these various elements.

At Appendix A there is a decision tree which aims to help identify the logical order of questions courts and tribunals need to ask when assessing eligibility for subsidiary protection under Article 15(c). In this section, the focus is on the main matters of application that call for further clarification.

2.2. Assessing the level of violence — a practical approach

The guidance given by the CJEU in *Elgafaji* ⁽⁸²⁾ and *Diakité* ⁽⁸³⁾ is limited in scope and clearly leaves the matter of how Article 15(c) is to be applied in practice very much to national courts and tribunals. In particular it does not assist the national courts or tribunals in answering the question as to how they should go about evaluating (i) the situation in the relevant area or region of the country so as to assess what is the level of violence and (ii) whether such violence has the effect of creating a real risk of suffering serious harm either to civilians generally or to individuals based on their personal circumstances, or on a combination of the two.

There is no guidance as yet from the CJEU on the criteria for assessing the level of violence in an armed conflict. Courts and tribunals will need to adopt a practical approach to the evaluation of evidence produced in support of the application. Any criteria applied by national courts and tribunals will require a test of practical possibility so as to give *effet utile* to Article 15(c). At the Member State level, Article 15(c) cases are special because the subject matter is a country where at least parts are in a situation of violence and conflict. As explained in Part 1, courts and tribunals are required to have regard to a number of factors or indicators; in that regard it is important to build on the learning to be found in the case law of the ECtHR and national courts and tribunals.

2.2.1. Strasbourg case law

The approach of the ECtHR to the assessment of the level of violence for the purposes of Article 3 ECHR — so as to decide whether all or most civilians are at real risk of suffering ill-treatment — is set out in *Sufi and Elmi* at paragraph 241 as follows:

‘In the present case the applicants submitted that the indiscriminate violence in Mogadishu was of a sufficient level of intensity to pose a real risk to the life or person of any civilian in the capital. Although the Court has previously indicated that it would only be ‘in the most extreme cases’ that a situation of general violence would be of sufficient intensity to pose such a risk, it has not provided any further guidance on how the intensity of a conflict is to be assessed. However, the Court recalls that the Asylum and Immigration Tribunal had to conduct a similar assessment in *AM and AM (Somalia)* ⁽⁸⁴⁾ (cited above), and in doing so it identified the following criteria: first, whether the parties to the conflict were either employing

⁽⁸²⁾ *Elgafaji*, op. cit., fn. 5, para 43.

⁽⁸³⁾ *Diakité*, op. cit., fn. 7, para 30.

⁽⁸⁴⁾ Asylum and Immigration Tribunal (UK), *AM & AM (armed conflict: risk categories)* Rev 1 Somalia CG [2008] UKAIT 00091 27 January 2009.

methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; secondly, whether the use of such methods and/or tactics was widespread among the parties to the conflict; thirdly, whether the fighting was localised or widespread; and finally, the number of civilians killed, injured and displaced as a result of the fighting. While these criteria are not to be seen as an exhaustive list to be applied in all future cases, in the context of the present case the Court considers that they form an appropriate yardstick by which to assess the level of violence in Mogadishu.

2.2.2. National courts and tribunals

A number of Member State courts and tribunals have adopted a similar approach when assessing the level of violence of armed conflicts for the purposes of Article 15(c). However, there are slight differences in the methods applied as well as in the emphases placed on different indicators.

The UKUT stated that the nexus between the generalised armed conflict and the indiscriminate violence posing a real risk to life or person is met when the intensity of the conflict involves means of combat (whether permissible under the laws of war or not) that seriously endanger non-combatants in a direct or indirect manner ⁽⁸⁵⁾. To the Tribunal this meant that focus on the evidence about the numbers of civilians killed or wounded is of prime importance when assessing the level of violence with regard to Article 15(c) ⁽⁸⁶⁾. Nonetheless the Tribunal stressed the need for an inclusive approach to assessment of the level of indiscriminate violence. This approach demands an analysis of the level of violence both in quantitative and qualitative terms. A quantitative analysis looks at the numbers of civilians killed or wounded, the number of security incidents etc. A qualitative analysis of the on-going violence has to take account of the impact of threats of violence as well as the physical violence itself, the conduct of the parties to the armed conflict, and long term cumulative effects whenever the conflict is already lasting for quite a while. An inclusive approach that is both quantitative and qualitative should go beyond ascertainment of the figures of civilian casualties — injuries or deaths — and has to bear in mind that population displacement and the degree of State failure are also relevant criteria when assessing the risk of becoming a victim of indiscriminate violence ⁽⁸⁷⁾. The UK Tribunal held that even carefully targeted killings that harm no civilians but only combatants, contribute to a climate of fear and insecurity which in an indirect way adds to the intensity of the violence ⁽⁸⁸⁾. This is why in the Tribunal's point of view 'it can never be right to attempt some simple subtraction of targeted violence from the overall sum of indiscriminate violence' ⁽⁸⁹⁾.

The German FAC stated that an approximate quantitative determination of the total number of civilians living in the area concerned, on the one hand, and on the other hand, the number of acts of indiscriminate violence committed by the parties to the conflict against the life or person of civilians in this region is necessary when assessing the level of violence. Additionally, a general assessment of the number of victims and the severity of the casualties (deaths and injuries) among the civilian population is necessary. To that extent, the criteria for a finding of a group persecution that have been developed under refugee law by the FAC may also be applied accordingly ⁽⁹⁰⁾. In addition to the quantitative determination of the level of violence, the approach of the FAC demands a general appraisal of the statistical material with an eye to the number of victims and the severity of the harm (fatalities and injuries) among the civilian population. This general appraisal would in any event also include an assessment of the status of medical care delivery in the territory concerned, on the quality and accessibility of which the severity of incurred bodily injuries may depend, with an eye to the permanent consequences that injuries may have for the victims ⁽⁹¹⁾.

In a case concerning safety in Mogadishu, the Dutch Council of State decided in 2010 that the identification of an exceptional situation in which Article 15(c) shall apply to any individual requires looking beyond the number of deaths and injuries in the area in question to other relevant factors such as internal displacement, refugees fleeing the country and the randomness of the violence ⁽⁹²⁾.

⁽⁸⁵⁾ *HM and others*, op. cit., fn. 26, paragraph 45.

⁽⁸⁶⁾ *Ibid.*, paragraph 43.

⁽⁸⁷⁾ *Ibid.*, paragraphs 271-274.

⁽⁸⁸⁾ *Ibid.*, paragraph 292.

⁽⁸⁹⁾ Upper Tribunal (UK), judgment of 18 May 2012, *AK (Article 15(c)) Afghanistan CG v. the Secretary of State for the Home Department*, [2012] UKUT 00163, paragraph 207.

⁽⁹⁰⁾ Judgment 10 C 4.09, op. cit., fn. 28, paragraph 34.

⁽⁹¹⁾ Judgment 10 C 13.10., op. cit., fn. 37, paragraph 23.

⁽⁹²⁾ *Raad van State* (Netherlands), judgment of 26 January 2010, 200905017/1/V2, ECLI:NL:RVS:2010:BL1483.

According to the French National Asylum Court and the French Council of State, the intensity of an armed conflict reaches the threshold of *Elgafaji* in situations of generalised violence. Forced displacements, violations of international humanitarian law and occupation of territory are also elements to measure the intensity of generalised violence⁽⁹³⁾.

2.2.3. UNHCR's position

UNHCR has likewise urged that courts and tribunals take into account both quantitative and qualitative elements as part of a 'pragmatic, holistic and forward-looking assessment' which 'cannot be reduced to a mathematical calculation of probability'⁽⁹⁴⁾. The organisation draws attention to the caution required when dealing with statistics given the variation in methodology and criteria in the collection of data, the under-reporting of violence, and the relevance of geographical and temporal scope against which incidents are considered⁽⁹⁵⁾. In addition to the number of security incidents and casualties (including death, injuries and other threats to the person), 'the general security environment in the country, population displacement and the impact of the violence on the overall humanitarian situation' should be taken into account⁽⁹⁶⁾.

2.2.4. Conclusions — non-exhaustive list of possible indicators

There is a general consensus between the UKUT, the French Council of State, the Dutch Council of State, the German FAC and the Slovenian Supreme Court that the level of violence has to be assessed by its quantity as well as by its quality. For German courts the assessment of the quantity of the violence is a necessary starting point for assessing its quality⁽⁹⁷⁾. The reported decisions by courts and tribunals elsewhere in Europe reveal a similar concern that assessment should consider both quantity and quality. There can be no doubt that a substantial quantity of violence is a necessity without which subsidiary protection shall not be granted. But defining the threshold of Article 15(c) is not a simple matter of analysing quantitative data.

In light of the fluid case law, it would be unwise to try and lay down a fixed list of possible indicators, but from an analysis of leading cases, including *Sufi and Elmi, K.A.B*⁽⁹⁸⁾ (dealing with Article 3 ECHR) and the German FAC, the Dutch Council of State, the UKUT, the French National Asylum Court, the Slovenian Supreme Court (to name but a few) and by reference to UNHCR's Eligibility Guidelines on such countries as Iraq and Somalia and Afghanistan, there are three principles that should govern assessment:

a) First, the approach must be holistic and inclusive. Courts and tribunals must take into account a wide range of relevant variables.

b) Second, courts and tribunals should not limit themselves to a purely quantitative analysis of figures of civilian death and injuries etc. The approach must be qualitative as well as quantitative. When assessing quantity and quality, courts and tribunals should bear in mind the likelihood of unreported incidents and other uncertainties.

c) Third, building on the case law, which in turn absorbs insights from academic studies, courts and tribunals should look in particular to see what the evidence tells us about the indicators of situations of violence and conflict (the following is intended as a non-exhaustive list):

- The ECHR '*Sufi and Elmi Criteria*':
 - the parties to the conflict and their relative military strengths;
 - methods and tactics of warfare applied (risk of civilian casualties);
 - type of weapons used;
 - the geographical scope of the fighting (localised or widespread);
 - the number of civilians killed, injured and displaced as a result of the fighting.

⁽⁹³⁾ *Baskarathas*, op. cit., fn. 29; see also CNDA, judgment of 18 October 2011, n 10003854.

⁽⁹⁴⁾ UNHCR, *Safe at Last?*, fn. 2, p. 104.

⁽⁹⁵⁾ *Ibid.*, pp. 46-47.

⁽⁹⁶⁾ *Ibid.*, p. 104.

⁽⁹⁷⁾ H. Lambert, '*The Next Frontier: Expanding Protection in Europe for Victims of Armed Conflict and Indiscriminate Violence*', IJRL 2013, 224.

⁽⁹⁸⁾ ECtHR, judgment of 5 September 2013, *K.A.B v Sweden*, application No 886/11.

- The ability or lack of it by the State to protect its citizens against violence (where practicable, it will assist to set out the various potential actors of protection and to address their actual role)/the degree of State failure).
- Socio-economic conditions (which should include assessment of economic and other forms of assistance by international organisations and NGOs).
- Cumulative effects of long lasting armed conflicts.

In principle, these non-exhaustive indicators will apply when a general or specific risk to an applicant has to be assessed. As every single armed conflict might follow different patterns, it is of the utmost importance to remember that a list of indicators — as above — can never be exhaustive. Characteristics of an armed conflict and its civilian victims may lead to other indicators that should be taken into account.

2.3. Application of the sliding scale assessment

The concept of sliding scale, derived from the *Elgafaji* judgment (although not specifically described as such), provides a framework for assessing the relative significance of the notions of general risk (where there is indiscriminate violence at such a high level that merely by being a civilian a person is at risk) and specific risk (where there is an individualised threat). This gives effect and context to the wording of recital (35) (ex (26)) in the preamble of the QD: the existence of a serious and individual threat to civilians generally can exceptionally be considered to be established where the degree of indiscriminate violence characterizing the armed conflict taking place reaches a high level: this is the general risk dimension of Article 15(c). If there is a general risk, the issue of credibility is not relevant; more precisely, credibility is limited to a check on whether the applicant comes from a particular country or region.

But it may still be able to succeed under Article 15(c) even when the level of indiscriminate violence is lower, if an applicant is able to show that he is specifically affected by reason of factors particular to personal circumstances: this is the specific risk dimension of Article 15(c). The sliding-scale gives shape to how specific risk is to be assessed: ‘the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required by him to be eligible for subsidiary protection’ (*Elgafaji*, paragraph 39, *Diakité*, paragraph 31). Here the assessment of credibility will be important.

Elements to be taken into account in assessing the level of indiscriminate violence have been listed above (see Section 1.3 ‘Indiscriminate violence’).

It is clear that assessment of specific risk under Article 15(c) must proceed in a similar fashion to assessment of claims to international protection based on Article 15(a) and (b). This follows from the CJEU insistence that ‘that provision [Article 15(c)] must be subject to a coherent interpretation in relation to the other two situations referred to in Article 15 of the Directive and must, therefore, be interpreted by close reference to that individualisation’⁽⁹⁹⁾. The challenge for judges in national case law to date (see Part II Section 2.31 below) is that when it comes to applying Article 15(c) to situations where the level of indiscriminate violence is not sufficiently high to place civilians in general at risk, it is often difficult to see why an applicant able to show risk-enhancing personal circumstances needs consideration under Article 15(c). As noted earlier, they may in fact be eligible for refugee protection or for subsidiary protection under Article 15(b)⁽¹⁰⁰⁾ or (a). It may be, therefore, that the main utility of Article 15(c) will be in cases where the issue is whether there is a general risk to all civilians.

National case law

Following *Elgafaji*, the French Council of State stated in *Baskarathas*⁽¹⁰¹⁾ that it is not required that an applicant proves specific targeting because of his personal situation when the level of indiscriminate violence reaches such a degree that there are a serious and proven reasons to believe that a civilian would be at risk solely by his presence on the territory, which was according to the Court the case in Sri Lanka in Summer 2009.

⁽⁹⁹⁾ *Elgafaji*, op.cit., fn. 5, paragraph 38.

⁽¹⁰⁰⁾ See the Advocate General’s opinion in *M’Bodj*, op. cit., fn. 9 as to the scope of Article 15(b).

⁽¹⁰¹⁾ *Baskarathas*, op. cit. fn. 29.

The French National Asylum Court took the young age of the asylum seeker into account as an individual element in the assessment of his real risk of serious harm in several Afghan cases. According to the Court, this element is an individual risk-enhancing element for the appraisal when the level of the violence is lower. And therefore subsidiary protection was granted. The Court also took into account elements related to this young age, such as the death of the parents, lack of family links, exposure to violence and forced enlistment in one of the armed forces ⁽¹⁰²⁾. Another individual element which the Court accepted as an enhanced risk arose in a case of a man from North Kivu (Democratic Republic of Congo), where the Court found that professionals who had to travel to and from Angola would face exposure to violent acts emanating from armed groups ⁽¹⁰³⁾. One relevant matter here was whether the particular profession of the applicant is fundamental to his or her identity such that it would not be reasonable to expect him or her to change it in order to avoid possible harm.

The German FAC has given examples of individual circumstances which increase the threat by indiscriminate violence: e.g. if an applicant's profession forces such a person to be close to the acts of violence, such as physicians or journalists. Also personal circumstances such as religion or ethnicity can be taken into account, if they do not lead to refugee status. The FAC required also in case of such personal circumstances a high level of indiscriminate violence or a high threat to the civilian population in the area. Indicators for this can be the number of acts of indiscriminate violence, victims and severity of civilian casualties ⁽¹⁰⁴⁾.

The High Administrative Court of Bayern did not consider the fact that the applicant belongs to the Hazara minority (Afghanistan) to be an individual 'risk-enhancing' circumstance. According to the information available to the Court, the overall situation of the Hazara, who have traditionally been discriminated against, has improved, even if traditional tensions persist and reappear from time to time. The Hazara have always lived in the provinces of Parwar and Kabul and, according to information from UNHCR, many Hazara returned to this region. Neither does an applicant's membership of the religious group of Shiites constitute an individual 'risk-enhancing' circumstance since 15 per cent of the Afghan population were Shiites ⁽¹⁰⁵⁾.

The High Administrative Court of North Rhine-Westphalia stated that a serious and individual threat had to be met. This was only the case if general risks accumulated in such a manner that all inhabitants of a region were seriously and personally affected, or if someone was particularly affected because of individual circumstances increasing the risk. Such individual, risk-enhancing circumstances could also result from someone's membership of a group ⁽¹⁰⁶⁾.

In *HM and others*, the UKUT explained its view on the reasoning of the CJEU in *Elgafaji*:

'The CJEU was seen to be considering in that case that a person who is at real risk of being either a specific or a more general target of indiscriminate violence may be accorded protection when the general level of violence would not be sufficient to establish the necessary risk to one who could not show any specific reason for being affected by violence unless it reached a high level ⁽¹⁰⁷⁾.'

The Tribunal considered whether by reference to the sliding scale there could be said to be enhanced risk to civilians in Iraq who were Sunni or Shia, or Kurds, or former Baathists. It concluded that in general there could not. At paragraph 297 the Tribunal stated:

'In our judgement the other evidence relating to Sunnis and Shi'as reveals a similar picture. However, whilst for the above reasons we find the evidence as a whole insufficient to establish Sunni or Shi'a identity as in itself an 'enhanced risk category' under Article 15(c), we do accept that depending on the individual circumstances, and in particular on their facing return to an area where their Sunni or Shi'a brethren are in a minority, a person may be able to establish a real risk of Article 15(c). (They may, of course, also be able to establish a real risk of persecution under the Refugee Convention or of treatment contrary to Article 3 of the ECHR).'

⁽¹⁰²⁾ CNDA (France), judgment of 21 March 2013, *M. Youma Khan*, No 12025577 C; CNDA, judgment of 2 July 2012, *M. Ahmad Zai* No 12006088 C; CNDA, judgment of 18 October 2011, *M. Hosseini* No 10003854 C+; CNDA, judgment of 3 June 2011 *M. Khogyani* No 09001675 C; CNDA, judgment of 20 December 2010 *M. Haidari* No 10016190 C+; CNDA, Judgment of 1 September 2010, *M. Habibi* No 09016933 C+.

⁽¹⁰³⁾ CNDA, judgment of 5 September 2013, *M. Muela* No 13001980 C.

⁽¹⁰⁴⁾ Bundesverwaltungsgericht (Germany), judgment of 2 February 2013, *BVerwG 10 C 23.12*, paragraph 33.

⁽¹⁰⁵⁾ High Administrative Court Bayern (Germany), judgment of 3 February 2011, 13a B 10.30394.

⁽¹⁰⁶⁾ High Administrative Court North Rhine-Westphalia (Germany), judgment of 29 October 2010, 9 A 3642/06.A.

⁽¹⁰⁷⁾ *HM and others*, op. cit., fn. 26, paragraph 40.

2.4. Geographical scope: country/area/region

The courts and tribunals having received evidence of the existence of an armed conflict in the country of origin, will need to ascertain the geographical extent of that conflict. If the indiscriminate violence throughout the country is at such a high level that persons are at Article 15(c) risk merely by virtue of being civilians, then the applicant will be entitled to subsidiary protection. However, if the area of the country affected by such a high level of indiscriminate violence is restricted in its geographical extent to part or parts of the country of origin only, then (unless the Member State in question does not apply Article 8) an applicant's ability to show real risk of serious harm in the home area under Article 15(c) merely because an applicant is a civilian will depend on whether the home area is one in which there exists such a high level of violence. The practicalities of travelling to and staying or settling in that part of the country also need to be assessed so that a finding can be made as to whether it is reasonable to expect an applicant to relocate there. Factors to take into account may include the security around the airport/town of return, together with the safety of the route that it is necessary to take to travel to the area where the conflict does not exist. In a country where internal freedom of movement is restricted, it may be that a finding will need to be made about the legality of settlement in the area. As set out earlier, if a person cannot safely reach the area of destination because of the situation of armed conflict in the country, then an Article 15(c) risk is considered as having been established in the home area.

2.5. Internal protection

The specific internal protection provisions of Article 8(2) refer to 'a part of the country of origin'. It goes without saying that where a finding has been made that there is a risk of serious harm due to indiscriminate violence contrary to Article 15(c), then (unless the Member State concerned does not apply Article 8) the courts and tribunals must have concluded that internal protection is unavailable.

An applicant cannot be said to have a viable internal protection alternative if the alternative part(s) of the country would either (i) also present a real risk of suffering serious harm (against which there is no effective protection); or (ii) it would be unreasonable to expect the applicant to resettle there; or (iii) the applicant could not gain practical access to such part(s) ⁽¹⁰⁸⁾. In considering whether there exists protection against serious harm in another part(s) of the country an examination of the nature of that protection is necessary and to do this, regard must be had to the source of the protection, its effectiveness and its durability in accordance with Article 7.

Article 8(2) requires Member States to have regard to the circumstances prevailing in the country of origin at the time of taking the decision. The UKUT has found that this does not create a legal burden on the State to prove that there is a part of the country where an applicant, who has established a well-founded fear in his or her home area, could reasonably be expected to go and live. The applicant bears the legal burden but in practice, the issue of internal relocation needs to be raised by the State and it will then be for the applicant to make good an assertion that it would not be reasonable to relocate there ⁽¹⁰⁹⁾.

2.5.1. Article 8 (original and recast QD)

There are differences between the original and recast Article 8 that have not been the subject of any examination by the CJEU so far but the changes may have practical implications. Article 8 in its original form ⁽¹¹⁰⁾ recognised that the threat may not exist throughout the country of origin and therefore that an applicant would not need international protection if such a person can reasonably be expected to stay in another part of the country

⁽¹⁰⁸⁾ (i) is sometimes called the 'safety' limb; (ii) the 'reasonableness' limb and (iii) the 'access' limb.

⁽¹⁰⁹⁾ Upper Tribunal (UK), judgment of 25 November 2011, *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia v. Secretary of State for the Home Department*, CG [2011] UKUT 00445 (IAC). For the most recent decision on the situation in Mogadishu see the decision of the Upper Tribunal in *MOJ and others (Return to Mogadishu) (Rev1) (CG) [2014] UKUT 442 (IAC)*.

⁽¹¹⁰⁾ Art. 8 — original (still applying to Ireland and the United Kingdom (see fn. 1)) provides:

'Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.'

despite technical obstacles to return. The recast QD (see above 1.8) modifies this by requiring not merely that an applicant can reasonably be expected to stay in that part of the country, but also can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there. There is no longer any reference to the term ‘technical obstacles’ the interpretation of which had caused difficulties. There may be a strong argument for considering that the recast formulation of these aspects of the provision is meant to clarify what was implicit in the original.

The use of the word ‘settle’ ⁽¹¹¹⁾ in the recast QD is distinct from ‘stay’ in the original Directive and it may be that a situation of greater stability is envisaged.

Article 8(2) in the recast QD imposes a specific duty on Member States when deciding whether an applicant has a viable internal protection alternative to obtain precise and up-to-date information from relevant sources about conditions in the proposed alternative part(s) of the country:

‘[...] Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.’

⁽¹¹¹⁾ Which is also applied by the ECtHR: see e.g. Judgment of 11 January 2007, *Salah Sakekh v Netherlands*, app.no. 1948/04 [2007] ECHR 36, paragraph 141: ‘The Court considers that as a precondition for relying on an internal flight alternative, certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, to gain admittance and be able to settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of the expellee ending up in a part of the country of origin where he or she may be subjected to ill-treatment.’

Appendix A — Decision Tree

A. Refugee protection denied?	
Subsidiary protection can only be granted to persons who do not qualify as a refugee (Article 2(f)).	
B. Situation in the home area giving rise to Article 15(c) risk?	
	1. Is the situation in the applicant’s home area one in which there is an armed conflict?
	2. If yes, is it one characterised by indiscriminate violence at such a high level that persons there are at real risk of suffering serious harm merely by being civilians? (<i>The question of ‘general risk’</i>)?
	3. Even if the answer to the second question is no, can an applicant nevertheless show a real risk of suffering serious harm by virtue of specific harm(s) faced because of personal circumstances combined with the background of (the lesser level) of indiscriminate violence? The more an applicant can show being specifically affected, the less the level of indiscriminate violence needs to be (<i>The question of ‘specific risk’</i>).
To answer yes to either of these questions the courts and tribunals must be satisfied there is no effective protection against such serious harm in accordance with Article 7 (<i>The protection question</i>).	
As an applicant’s home area is assumed to be the place of destination, it may be necessary to ask if that area can be reached safely. If not, then it must be assumed that the applicant has demonstrated a real risk of suffering serious harm en route to the area of destination and that this is sufficient to satisfy B.	
C. No possibility of internal protection?	
If the answer to questions 2 or 3 is yes, it is still necessary to ask (unless the Member State concerned does not apply Article 8) whether, in accordance with Article 8, an applicant can avoid serious harm by settling elsewhere in the country of origin.	
This inquiry (which must be based on precise and up-to-date information from relevant sources) requires asking whether an applicant:	
	<ul style="list-style-type: none"> • is safe from serious harm in this other part of the country; • can travel there safely and legally and gain admittance to this other part of the country; • can be reasonably expected to settle there.
For an alternative part of the country to be safe, it is necessary to ask whether it is one where there is no real risk of the applicant suffering serious harm (against which there is no effective protection).	
For an alternative part of the country to be accessible, an applicant needs to be able to travel/reach there and gain admittance to the area without being prevented from doing so by legal or practical obstacles (e.g. a requirement to have a particular type of identity document or all routes to there being impassable or by a lack of safety en route).	
For it to be considered reasonable for an applicant to settle in an alternative part of the country, it is necessary to ask if to do so will cause undue hardship.	
For an applicant to be able to settle there, it is necessary to be satisfied that there is an ability to stay on a non-temporary and non-contingent basis.	
D. Eligibility for subsidiary protection	
If the answer identified in Sections B and C is yes, the applicant meets the requirements of Article 15(c) and (if there are no exclusion or cessation issues) has established eligibility for subsidiary protection.	

Appendix B — Methodology

Methodology for professional development activities available to members of courts and tribunals

Background and introduction

Article 6 of the EASO founding Regulation ⁽¹¹²⁾ (hereinafter the Regulation) specifies that the Agency shall establish and develop training available to members of courts and tribunals in the Member States. For this purpose, EASO shall take advantage of the expertise of academic institutions and other relevant organisations, and take into account the Union’s existing cooperation in the field with full respect to the independence of national courts and tribunals.

With the purpose of supporting the enhancement of quality standards and harmonisation of decisions across the EU, and in line with its legal mandate, EASO provides for a two-fold training support that includes the development and publication of professional development materials and the organisation of professional development activities. With the adoption of this methodology, EASO aims to outline the procedures that will be followed for the implementation of its professional development activities.

In undertaking these tasks, EASO is committed to follow the approach and principles outlined in the field of EASO’s cooperation with courts and tribunals as adopted in 2013 ⁽¹¹³⁾.

Professional development curriculum

Content and scope — In line with the legal mandate provided by the Regulation and in cooperation with courts and tribunals, EASO will adopt a professional development curriculum aimed at providing courts and tribunal members with a full overview of the Common European Asylum System (hereinafter the CEAS). Taking into consideration the needs communicated by the EASO network, European and national jurisprudential developments, the level of divergence in the interpretation of relevant provisions and developments in the field, materials will be developed in line with, but not limited to, the following structure (in no particular order):

1. Introduction to the CEAS and the role and responsibilities of the Courts and Tribunals in the field of international protection;
2. Access to procedures governing International Protection and Non-Refoulement Principle;
3. Inclusion and subsidiary protection criteria in the light of the EU Qualification Directive ⁽¹¹⁴⁾;
4. Evidence assessment and credibility;
5. Exclusion and end of protection in the light of the EU Qualification Directive;
6. International protection in conflict situations;
7. Refugee protection in situations of conflict;
8. Implementation of article 15(c) of the EU Qualification Directive.
9. Reception in the context of the EU Reception Conditions Directive ⁽¹¹⁵⁾.

⁽¹¹²⁾ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, in: *Official Journal* L 132/11, 29/05/2010, pp. 11-28, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0439&qid=1421598180922&from=EN>.

⁽¹¹³⁾ Note on EASO’s cooperation with Member State’s Courts and Tribunals, 21 August 2013.

⁽¹¹⁴⁾ Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), in: *Official Journal* L 337/9, 20/12/2011, pp. 9-26, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421657126086&uri=CELEX:32011L0095>.

⁽¹¹⁵⁾ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), in: *Official Journal* L 180/96, 29/06/2013, pp. 96-116, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421656769650&uri=CELEX:32013L0033>.

10. Dublin processing in the light of the Dublin III Regulation ⁽¹¹⁶⁾.
11. Procedural aspects in the light of the EU Asylum Procedures Directive ⁽¹¹⁷⁾.
12. Access to rights conferred in the EU Legal framework following recognition of International Protection status.
13. Return procedures in the light of the EU Returns Directive ⁽¹¹⁸⁾.
14. Evaluation and use of country of origin information.
15. Access to an effective remedy in line with the legal instruments of the CEAS.

The detailed content of the curriculum as well as the order in which the chapters will be developed is to be established following a needs assessment conducted in cooperation with the EASO network of courts and tribunals (hereinafter the EASO network) which presently comprises EASO national contact points in the Member State's courts and tribunals, the Court of Justice of the EU (CJEU), the European Court of Human Rights (ECtHR) and, the two judicial bodies with whom EASO has a formal exchange of letters: the International Association of Refugee Law Judges (hereafter IARLJ) and the Association of European Administrative Judges (hereafter AEAJ). In addition, other partners including UNHCR, EU Agency for Fundamental Rights (FRA), European Judicial Training Network (EJTN) and Academy of European Law (ERA) will also be consulted as appropriate. It will also be reflected in the annual work plan adopted by EASO within the framework of EASO's planning and coordination meetings.

Involvement of experts

Drafting teams — The curriculum will be developed by EASO in cooperation with the EASO network through the establishment of specific working groups (drafting teams) for the development of each chapter. The drafting teams will be composed of experts nominated through the EASO network and chosen in line with specified selection criteria. In line with EASO's work programme and the concrete plan adopted at the annual planning and coordination meetings, EASO will launch a call for experts for the development of each chapter.

The call will be sent to the EASO network specifying the scope of the chapter to be developed, the expected timeline and the number of experts that will be required. EASO national contact points will then be invited to liaise with national courts and tribunals for the identification of experts who are interested and available to contribute to the development of the chapter.

Based on the nominations received, EASO will share with the EASO network a proposal for the establishment of the drafting team. This proposal will be elaborated by EASO in line with the following criteria:

1. Should the number of nominations received equal or be below the required number of experts, all nominated experts will automatically be invited to take part in the drafting team.
2. Should the nominations received exceed the required number of experts, EASO will make a motivated pre-selection of experts. The pre-selection will be undertaken as follows:
 - EASO will prioritise the selection of experts who are available to participate throughout the whole process, including participation in all expert meetings;
 - Should there be more than one expert nominated from the same Member State, EASO will contact the focal point and ask him/her to select one expert. This will allow for a wider Member State representation in the group;
 - EASO will then propose the prioritisation of court and tribunal members over legal assistants or rapporteurs;
 - Should the nominations continue to exceed the required number of experts, EASO will make a motivated proposal for a selection that takes into account the date when nominations were received (earlier ones would be prioritised) as well as EASO's interest in ensuring a wide regional representation.

⁽¹¹⁶⁾ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the MS by a third-country national or a stateless person (recast), in: *Official Journal* L 180/31, 29/06/2013, pp. 31-59, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en>.

⁽¹¹⁷⁾ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), in: *Official Journal* L 180/60, 29/06/2013, pp. 60-95, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>.

⁽¹¹⁸⁾ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, in: *Official Journal* L 348/98, 24/12/2008, pp. 98-107, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115&from=EN>.

EASO will also invite UNHCR to nominate one representative to join the drafting team.

The EASO network will be invited to express their views and/or make suggestions on the proposed selection of experts within a maximum period of 10 days. The final selection will take into account the views of the EASO network and confirm the composition of the drafting team.

Consultation process — In line with the Regulation, EASO will engage in a consultation process with respect to the development of the materials. For the purpose of implementing this consultation process, EASO will launch a call for expression of interest addressed to the members of the EASO Consultative Forum, including representatives from Member States, civil society organisations, other relevant organisations, academia, as well as other experts or academics recommended by the EASO courts and tribunals network.

Taking into consideration the expertise and familiarity with the judicial field of those who respond to the call, as well as the selection criteria of the EASO Consultative Forum, EASO will make a motivated proposal to the EASO network that will ultimately confirm the identity of those who are to be involved in the consultation process. Thereafter the submissions to the consultation process may be invited to either cover all developments or focus on areas related to their particular expertise.

The EU Agency for Fundamental Rights (FRA) will be invited to participate in the consultation process.

Curriculum development

Preparatory phase — Prior to the initiation of the drafting process, EASO will prepare a set of materials, including but not restricted to:

1. A bibliography of relevant resources and materials available on the subject;
2. A compilation of European and national jurisprudence on the subject.

The participants in the consultation process, together with the EASO network⁽¹¹⁹⁾, will play an important role in the preparatory phase. For this purpose, EASO will inform the participants in the consultation process and the EASO network of the scope of each chapter and share a draft of the preparatory materials together with an invitation to provide additional information that is deemed of relevance to the development. This information will be reflected in the materials which will then be shared with the respective drafting team.

Drafting process — EASO will organise at least two working meetings for each chapter development. In the course of the first meeting, the drafting team will:

- nominate a coordinator(s) for the drafting process;
- develop the structure of the chapter and adopt the working methodology;
- distribute tasks for the drafting process;
- develop a basic outline of the content of the chapter.

Under the coordination of the team coordinator, and in close cooperation with EASO, the team will proceed to develop a preliminary draft of the respective chapter.

In the course of the second meeting, the group will:

- review the preliminary draft and agree on the content;
- ensure consistency of all parts and contributions to the draft;
- review the draft from a didactical perspective.

On a needs basis, the group may propose to EASO the organisation of additional meetings to further develop the draft. Once completed, the draft will be shared with EASO.

⁽¹¹⁹⁾ UNHCR will also be consulted.

Quality review — EASO will share the first draft completed by the drafting team with the EASO network, UNHCR and the participants in the consultation process that will be invited to review the materials with a view to assisting the working group in enhancing the quality of the final draft.

All suggestions received will be shared with the coordinator of the drafting team who will coordinate with the drafting team to consider the suggestions made and prepare a final draft. Alternatively, the coordinator may suggest the organisation of an additional meeting to consider the suggestions when these are particularly extensive or would considerably affect the structure and content of the chapter.

On behalf of the drafting team, the coordinator will then share the chapter with EASO.

Updating process — In the context of the annual planning and coordination meetings, EASO will invite the EASO network to share their views regarding the need to update the chapters of the curriculum.

Based on this exchange, EASO may:

- undertake minor updates to improve the quality of the chapters including the inclusion of relevant jurisprudential developments. In this case, EASO will directly prepare a first update proposal, the adoption of which will be undertaken by the EASO network;
- call for the establishment of a drafting team to update one or several chapters of the curriculum. In this case, the update will follow the same procedure outlined for the development of the curriculum.

Implementation of the curriculum

In cooperation with the EASO network members and relevant partners (e.g. EJTN, ERA etc.) EASO will support the use of the training curriculum by national training institutions. EASO's support in this regard will involve:

Guidance note for facilitators — Following the same procedure outlined for the development of the different chapters composing the curriculum, EASO will establish a drafting team to develop a guidance note for facilitators. This will serve as a practical reference tool to facilitators and provide guidance for the organisation and facilitation of practical workshops on the professional development curriculum.

Workshops for facilitators — Furthermore, following the development of each chapter of the curriculum, EASO will organise a workshop for facilitators that provides an in depth overview of the chapter as well as the methodology suggested for the organisation of workshops at national level.

- **Nomination of facilitators and preparation of the workshop** — EASO will seek the support of at least two members of the drafting team to support the preparation and facilitate the workshop. Should no members of the drafting team be available for this purpose, EASO will launch a specific call for expert facilitators through the EASO network.
- **Selection of participants** — EASO will then send an invitation to the EASO network for the identification of a number of potential facilitators with specific expertise in the area, who are interested and available to organise workshops on the professional development curriculum at the national level. Should the nominations exceed the number specified in the invitation, EASO will make a selection that prioritises a wide geographical representation as well as the selection of those facilitators who are more likely to facilitate the implementation of the curriculum at national level. On a needs basis and in line with its work programme and the annual work plan, as adopted within the framework of EASO's planning and coordination meetings, EASO may consider the organisation of additional workshops for facilitators.

National workshops — In close cooperation with the EASO network, EASO will establish contact with relevant judicial training institutions at the national level to promote the organisation of workshops at the national level. In doing so, EASO will also support the engagement of court and tribunal members who contributed to the development of the curriculum or participated in EASO's workshops for facilitators.

EASO's advanced workshops

EASO will also hold an annual advanced workshop on selected aspects of the CEAS with the purpose of promoting practical cooperation and a high-level dialogue among court and tribunal members.

Identification of relevant areas — EASO's advanced workshops will focus on areas with a high level of divergence in national interpretation or on areas where jurisprudential development is deemed relevant by the EASO network. In the context of its annual planning and coordination meetings, EASO will invite the EASO network as well as UNHCR and members of the consultative group to make suggestions for potential areas of interest. Based on these suggestions, EASO will make a proposal to the EASO network that will finally take a decision on the area to be covered by the following workshop. Whenever relevant, the workshops will lead to the development of a chapter of specific focus within the curriculum.

Methodology — For the preparation of the workshops, EASO will seek the support of the EASO network, which will contribute to the development of the workshop methodology (e.g. case discussions, moot court sessions etc.) and preparation of materials. The methodology followed will determine the maximum number of participants for each workshop.

Participation in EASO's workshops — Based on the methodology, and in consultation with the judicial associations, EASO will determine the maximum number of participants at each workshop. The workshop will be open to members of European and national courts and tribunals and the EASO courts and tribunals network, including the EJTN, FRA, ERA and UNHCR.

Prior to the organisation of each workshop, EASO will launch an open invitation to the EASO courts and tribunals network and the above referred organisations specifying the focus of the workshop, methodology, maximum number of participants and registration deadline. The list of participants will ensure a good representation of court and tribunal members and prioritise the first registration request received from each Member State.

Monitoring and evaluation

In developing its activities, EASO will promote an open and transparent dialogue with the EASO network, individual court and tribunal members, UNHCR, individuals involved in the consultation process and participants in EASO's activities, who will be invited to share with EASO any views or suggestions that can potentially improve the quality of its activities.

Furthermore, EASO will develop evaluation questionnaires that will be distributed at its professional development activities. Minor suggestions for improvement will be directly incorporated by EASO that will inform the EASO network of the general evaluation of its activities in the context of its annual planning and coordination meeting.

On an annual basis, EASO will also provide the EASO network with an overview of its activities as well as relevant suggestions received for further developments which will be discussed at the annual planning and coordination meetings.

Implementing principles

- In undertaking its professional development activities, EASO will take in due regard EASO's public accountability and principles applicable to public expenditure.
- EASO and the European and national courts and tribunals will have a joint responsibility for the professional development curriculum. All partners shall strive to agree on the content of each of its chapters so as to assure '*judicial auspices*' of the final product.
- The resulting curriculum will be part of the EASO professional development curriculum, including related rights. As such, EASO will update it when necessary, and fully involve the European and national courts and tribunals in the process.

- All decisions related to the implementation of the curriculum and selection of experts will be undertaken by agreement of all partners.
- The drafting, adoption and implementation of the professional development curriculum will be undertaken in accordance with the methodology for professional development activities available to members of courts and tribunals.

Grand Harbour, Valletta, 11 December 2014

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Appendix D — Compilation of Jurisprudence on Article 15(c) of the Qualification Directive (QD)

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
International Jurisprudence								
EASO1	Conflict	Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides (Case C-285/12)	CJEU	French, also available in other languages	CJEU	30.1.13	Guinea	CJEU's ruling on the interpretation of the notion of 'armed conflict'.
EASO2	Cease of refugee status	Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi & Dier Jamal v Bundesrepublik Deutschland (Joined cases C-175/08, C-176/08, C-178/08, C-179/08)	CJEU	German, also available in other languages	CJEU	2.3.10	Iraq	In its decision, the CJEU interprets Article 7(1) (b) QD concerning the actors of protection.
EASO3	Armed conflict, indiscriminate violence, individual threat, serious harm	Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie (Case C-465/07)	CJEU	Dutch, also available in other languages	CJEU	17.2.09	Iraq	Judgment regarding the relation between Article 15(c) QD and Article 3 of the European Convention on Human Rights and interpreting the meaning of Article 15(c).

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>“on a proper construction of 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, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as ‘armed conflict not of an international character’ under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict”.</p>	
<p>The actors of protection referred to in Article 7(1)(b) of Directive 2004/83 may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.</p>	
<p>The fundamental right guaranteed under Article 3 of the European Convention on Human Rights forms part of the general principles of Community law, observance of which is ensured by the Court. In addition, the case-law of the European Court of Human Rights is taken into consideration in interpreting the scope of that right in the Community legal order. However, it is Article 15(b) of Directive 2004/83 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, which corresponds, in essence, to Article 3 of the ECHR. By contrast, Article 15(c) of that directive is a provision, the content of which is different from that of Article 3 of the ECHR, and the interpretation of which must, therefore, be carried out independently, although with due regard for fundamental rights as they are guaranteed under the ECHR. 2. Article 15(c) of Directive 2004/83 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, in conjunction with Article 2(e) thereof, must be interpreted as meaning that:</p> <ul style="list-style-type: none"> – the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances; – the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat. <p>That interpretation is fully compatible with the European Convention on Human Rights (ECHR), including the case-law of the European Court of Human Rights relating to Article 3 of the ECHR.</p>	<p>Referenced cases concern main principles of EU law and not asylum law (CJEU , C-106/89, Marleasing SA v La Comercial Internacional de Alimentacion SA ; CJEU, C-188/07 Commune de Mesquer v Total France SA and Total International Ltd.) ECtHR - NA v UK, Application No 25904/07</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO 4	Credibility assessment, individual threat, inhuman or degrading treatment or punishment, membership of a particular social group, previous persecution, relevant facts, well-founded fear	T.K.H. v. Sweden, Application No 1231/11	ECTHR	English	ECTHR	19.12.13	Iraq	No violation of Article 2 and Article 3 ECHR in the event of expulsion to Iraq.
EASO 5	Benefit of doubt, credibility assessment, individual threat, inhuman or degrading treatment or punishment, internal protection, membership of a particular social group, standard of proof, well-founded fear	B.K.A. v. Sweden, Application No 11161/11	ECTHR	English	ECTHR	19.12.13	Iraq	No violation of Article 3 ECHR in the event of expulsion to Iraq.
EASO 6	Credibility assessment, individual threat, inhuman or degrading treatment or punishment, membership of a particular social group, relevant documentation, well-founded fear	T.A. v. Sweden, Application No 48866/10	ECTHR	English	ECTHR	19.12.13	Iraq	No violation of Article 2 and Article 3 ECHR in the event of expulsion to Iraq.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Applicant, a Sunni Muslim from Iraq, faced deportation from Sweden back to Iraq, on account of his asylum claim having been rejected in 2010, three years after his arrival. T.K.H. served in the new Iraqi army from 2003 to 2006, was allegedly seriously injured in both a suicide bomb explosion and a drive-by shooting outside his home, and purported to be the recipient of death threats. He fled Iraq and relies on his rights under Articles 2 and 3 to resist his return. The Court first declared the general situation in Iraq to be not sufficiently serious to warrant the conclusion that any return to Iraq would violate Article 3 irrespective of personal circumstances. No violation of Article 2 or 3 was found in relation to T.K.H. Regarding the Applicant's particular situation, the Court noted that his service in the Iraqi army ended over seven years ago, and therefore no longer formed the basis of a risk of persecution. As to the two incidents of serious injury, the Court concluded that the first had not resulted from the Applicant being specifically targeted and the second was a historical incident with no evidence to suggest any future risk. The Court also regarded T.K.H.'s medical problems as neither untreatable in Iraq nor prohibitive of air travel. Two judges of the Court dissented from the majority opinion, on account of the Applicant's former employment placing him in a specific risk category, the escalating violence in Iraq in 2013, and the overall plausibility of his account.</p>	<p>ECtHR - Hilal v United Kingdom, Application No 45276/99 ECtHR - F.H. v Sweden (Application No 32621/06) ECtHR - Collins and Akaziebe v Sweden (Application No 23944/05) ECtHR - Mamatkulov Askarov v Turkey (Applications Nos 46827/99 and 46951/99) ECtHR - N v United Kingdom (Application No 26565/05) ECtHR - Saadi v Italy (Application No 37201/06) ECtHR - Chahal v the United Kingdom (Application No 22414/93) ECtHR - HLR v France (Application No 24573/94) ECtHR - NA v UK, Application No 25904/07 ECtHR - Üner v. the Netherlands [GC], Application No 46410/99 ECtHR - P.Z. and Others and B.Z. v. Sweden, Application Nos 68194/10 and 74352/11 ECtHR - Hakizimana v. Sweden, Application No 37913/05 ECtHR - A.G.A.M., D.N.M., M.K.N., M.Y.H. and Others, N.A.N.S., N.M.B., N.M.Y. and Others and S.A. v. Sweden, Application Nos 71680/10, 28379/11, 72413/10, 50859/10, 68411/10, 68335/10, 72686/10 and 66523/10 UK - HM and others (Article 15(c) Iraq CG, [2012] UKUT 00409 (IAC) ECtHR - Abdulaziz, Cabales and Balkandali v. the United Kingdom, Application Nos 9214/80, 9473/81 and 9474/81 ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI ECtHR - Kaboulov v. Ukraine, Application No 41015/04 ECtHR - T.A. v. Sweden, Application No 48866/10</p>
<p>The Applicant, a Sunni Muslim from Baghdad, faced deportation from Sweden back to Iraq, on account of his asylum claim having been rejected in 2010, three years after his arrival. In Iraq, the Applicant was a member of the Ba'ath party, and worked as a professional soldier for over a year for the regime of Saddam Hussein. He was also involved in a blood feud after unintentionally killing a relative. He fled Iraq and relied on his rights under Article 3 to resist his return. The Court first declared the general situation in Iraq to be not sufficiently serious to warrant the conclusion that any return to Iraq would violate Article 3 irrespective of personal circumstances. Turning to the Applicant's particular situation, the Court ruled that B.K.A.'s membership of the Ba'ath party and former military service no longer posed a threat to him, given the long time that had since passed, his low-level role in both, and the lack of any recent threats related to his involvement. The Court also dismissed his fears of persecution by Iraqi authorities, given he had successfully applied for a passport from them. The Court, however, accepted the risk posed by the blood feud, notwithstanding the lack of evidence, due to the obvious difficulties in obtaining such evidence. Despite this risk, a majority of the Court decided that it was geographically limited to Baghdad and Diyala, and that B.K.A. could reasonably relocate to the Anbar governorate, the largest province in Iraq. Judge Power-Forde dissents from the majority on the previous point, arguing instead that the possibility of relocation offered by the Swedish government and accepted by the majority as reasonable did not include the requisite guarantees for the individual set out in Salah Sheekh v. the Netherlands No 1948/04, §§ 141-142, 11 January 2007. In particular, no arrangements for safe travel to Anbar have been made. The dissenting judge therefore concluded that there was no reasonable relocation alternative to nullify the risk of Article 3 violation on return to Iraq.</p>	<p>ECtHR - Hilal v United Kingdom, Application No 45276/99 ECtHR - F.H. v Sweden (Application No 32621/06) ECtHR - Mamatkulov Askarov v Turkey (Applications Nos 46827/99 and 46951/99) ECtHR - Salah Sheekh v The Netherlands (Application No 1948/04) - resource ECtHR - Saadi v Italy (Application No 37201/06) ECtHR - HLR v France (Application No 24573/94) ECtHR - Collins and Akaziebe v Sweden (Application No 23944/05) ECtHR - NA v UK, Application No 25904/07 ECtHR - Abdulaziz, Cabales and Balkandali v. the United Kingdom, Application Nos 9214/80, 9473/81 and 9474/81 ECtHR - Hakizimana v. Sweden, Application No 37913/05 ECtHR - Sufi and Elmi v. the United Kingdom, Application Nos 8319/07 and 11449/07 ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI ECtHR - Üner v. the Netherlands [GC], Application No 46410/99 ECtHR - A.G.A.M., D.N.M., M.K.N., M.Y.H. and Others, N.A.N.S., N.M.B., N.M.Y. and Others and S.A. v. Sweden, Application Nos 71680/10, 28379/11, 72413/10, 50859/10, 68411/10, 68335/10, 72686/10 and 66523/10</p>
<p>The Applicant, a Sunni Muslim from Iraq, faced deportation from Sweden back to Iraq, on account of his asylum claim having been rejected in 2010, three years after his arrival. He worked for security companies in Baghdad who co-operated with the US military, and alleged that his house was completely destroyed by Shi'ite militias. He fled Iraq and relied on his rights under Articles 2 and 3 to resist his return. The Court first declared the general situation in Iraq to be not sufficiently serious to warrant the conclusion that any return to Iraq would violate Article 3 irrespective of personal circumstances. Turning to the Applicant's particular situation, the Court accepted that those associated with security companies employed by the international forces in Iraq faced a greater risk of persecution from militias than the general population. However, the Court was sceptical of an internal contradiction in the Applicant's account and evidence, namely his brother's documented claim that four people went into T.A.'s house a year after it was allegedly completely destroyed. This problem, coupled with the general lack of evidence for his claims and the near six year time lapse since the relevant acts of persecution, led the Court to reject T.A.'s Article 2 and 3 complaints. Two judges of the Court dissented from the majority opinion, on account of the Applicant's former employment placing him in a specific risk category, the escalating violence in Iraq in 2013, the overall plausibility of T.A.'s account, the overly onerous credibility test applied by the Swedish authorities, and the majority according too much weight to the alleged discrepancy in his account. Related complaints under Article 8 and Article 1 of Protocol 7 were rejected by the court as manifestly ill-founded. Regarding the former, the Applicant had been split up from his family since 2007, and a decision to deport would not change this. For the latter, the Applicant had had ample opportunity to make representations against his removal.</p>	<p>ECtHR - Hilal v United Kingdom, Application No 45276/99 ECtHR - F.H. v Sweden (Application No 32621/06) ECtHR - Mamatkulov Askarov v Turkey (Applications Nos 46827/99 and 46951/99) ECtHR - HLR v France (Application No 24573/94) ECtHR - Saadi v Italy (Application No 37201/06) ECtHR - Chahal v the United Kingdom (Application No 22414/93) ECtHR - Collins and Akaziebe v Sweden (Application No 23944/05) ECtHR - NA v UK, Application No 25904/07 ECtHR - Abdulaziz, Cabales and Balkandali v. the United Kingdom, Application Nos 9214/80, 9473/81 and 9474/81 UK - HM and others (Article 15(c) Iraq CG, [2012] UKUT 00409 (IAC) ECtHR - Kaboulov v. Ukraine, Application No 41015/04 ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI ECtHR - Üner v. the Netherlands [GC], Application No 46410/99 ECtHR - Hakizimana v. Sweden, Application No 37913/05</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO7	Credibility assessment, indiscriminate violence, real risk, religion	K.A.B. v. Sweden, Application No 886/11	ECTHR	English	ECTHR	5.9.13	Somalia	No violation of Article 2 and Article 3 ECHR in the event of expulsion to Somalia.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>By a 5-2 Majority, the Chamber decided against the Applicant, both due to recent improvements in the security situation in Mogadishu, and due to the applicant's personal circumstances.</p> <p>As to the former, the Chamber ruled that the situation had changed since Sufi and Elmi v. the United Kingdom (Nos 8319/07 and 11449/07, 28 June 2011). The general level of violence in Mogadishu had decreased and al-Shabaab was no longer in power. The Chamber relied on recent country reports from the Danish and Norwegian immigration authorities, which stated that there was no longer any front-line fighting or shelling and the number of civilian casualties had gone down. Despite continued unpredictability and fragility, the Chamber concluded that not everyone in Mogadishu faced a real risk of death or ill-treatment.</p> <p>As to the Applicant's own situation, the Chamber shared the Swedish authorities' scepticism regarding the Applicant's claims of persecution. The Chamber cited credibility and vagueness issues concerning the Applicant's purported residence in Mogadishu prior to leaving Somalia in 2009, his employment with American Friends Service Community, and the four year delay after his employment ended before alleged threats were made. The Chamber also placed weight on the Applicant not belonging to a group targeted by al-Shabaab, and on his having a home in Mogadishu (where his wife lives).</p>	<p>UK - Upper Tribunal, 28 November 2011, AMM and others v Secretary of state for the Home Department [2011] UKUT 00445</p> <p>ECtHR - Mamatkulov Askarov v Turkey, Applications Nos 46827/99 and 46951/99</p> <p>Sweden - Migration Court of Appeal, 22 February 2011, UM 10061-09</p> <p>ECtHR - Salah Sheekh v The Netherlands (Application No 1948/04) - resource</p> <p>ECtHR - Vilvarajah & Ors v United Kingdom, Application Nos 13163/87, 13164/87, 13165/87, 13447/87, 13448/87</p> <p>ECtHR - Saadi v Italy, Application No 37201/06</p> <p>ECtHR - HLR v France (Application No 24573/94)</p> <p>ECtHR - Hilal v United Kingdom, Application No 45276/99</p> <p>ECtHR - F.H. v Sweden (Application No 32621/06)</p> <p>ECtHR - N. v. Finland, Application No 38885/02</p> <p>ECtHR - Sufi and Elmi v. the United Kingdom, Application Nos 8319/07 and 11449/07</p> <p>ECtHR - Kaboulov v. Ukraine, Application No 41015/04</p> <p>ECtHR - Abdulaziz, Cabales and Balkandali v. the United Kingdom, Application Nos 9214/80, 9473/81 and 9474/81</p> <p>ECtHR - Chalal v. the United Kingdom, Application No 1948/04</p> <p>ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI</p> <p>ECtHR - Collins and Akaziebe v Sweden (Application No 23944/05)</p> <p>ECtHR - NA v UK, Application No 25904/07</p> <p>ECtHR - Üner v. the Netherlands [GC], Application No 46410/99</p> <p>ECtHR - Hakizimana v. Sweden, Application No 37913/05</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO8	How to assess the existence of a real risk in situations of indiscriminate violence and in respect of humanitarian conditions	Sufi and Elmi v. The United Kingdom, applications Nos 8319/07 and 11449/07	ECTHR	English, also available in Russian	ECTHR	28.6.11	Somalia	Violation of Article 3 in case of expulsion to Somalia.
EASO9	Level of violence and individual risk	NA v. The United Kingdom, application No 25904/07	ECTHR	English, also available in Russian	ECTHR	17.7.08	Sri Lanka	Violation of Article 3 in case of expulsion to Somalia.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The sole question in an expulsion case was whether, in all the circumstances of the case, substantial grounds had been shown for believing that the applicant would, if returned, face a real risk of treatment contrary to Article 3*.1 If the existence of such a risk was established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanated from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. However, not every situation of general violence would give rise to such a risk. On the contrary, a general situation of violence would only be of sufficient intensity to create such a risk "in the most extreme cases". The following criteria** were relevant (but not exhaustive) for the purposes of identifying a conflict's level of intensity: whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; whether the use of such methods and/or tactics was widespread among the parties to the conflict; whether the fighting was localised or widespread; and finally, the number of civilians killed, injured and displaced as a result of the fighting. Turning to the situation in Somalia, Mogadishu, the proposed point of return, was subjected to indiscriminate bombardments and military offensives, and unpredictable and widespread violence. It had substantial numbers of civilian casualties and displaced persons. While a well-connected individual might be able to obtain protection there, only connections at the highest level would be able to assure such protection and anyone who had not been in Somalia for some time was unlikely to have such connections. In conclusion, the violence was of such a level of intensity that anyone in the city, except possibly those who were exceptionally well-connected to "powerful actors", would be at real risk of proscribed treatment. As to the possibility of relocating to a safer region, Article 3 did not preclude the Contracting States from placing reliance on the internal flight alternative provided that the returnee could travel to, gain admittance to and settle in the area in question without being exposed to a real risk of ill-treatment. The Court was prepared to accept that it might be possible for returnees to travel from Mogadishu International Airport to another part of southern and central Somalia. However, returnees with no recent experience of living in Somalia would be at real risk of ill-treatment if their home area was in – or if they were required to travel through – an area controlled by al-Shabaab, as they would not be familiar with the strict Islamic codes imposed there and could therefore be subjected to punishments such as stoning, amputation, flogging and corporal punishment. It was reasonably likely that returnees who either had no close family connections or could not safely travel to an area where they had such connections would have to seek refuge in an Internally Displaced Persons (IDP) or refugee camp. The Court therefore had to consider the conditions in these camps, which had been described as dire. In that connection, it indicated that where a crisis was predominantly due to the direct and indirect actions of parties to a conflict – as opposed to poverty or to the State's lack of resources to deal with a naturally occurring phenomenon, such as a drought – the preferred approach for assessing whether dire humanitarian conditions had reached the Article 3 threshold was that adopted in <i>M.S.S. v. Belgium and Greece***</i>, which required the Court to have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time frame. Conditions in the main centres – the Afgooye Corridor in Somalia and the Dadaab camps in Kenya – were sufficiently dire to amount to treatment reaching the Article 3 threshold. IDPs in the Afgooye Corridor had very limited access to food and water, and shelter appeared to be an emerging problem as landlords sought to exploit their predicament for profit. Although humanitarian assistance was available in the Dadaab camps, due to extreme overcrowding, access to shelter, water and sanitation facilities was extremely limited. The inhabitants of both camps were vulnerable to violent crime, exploitation, abuse and forcible recruitment and had very little prospect of their situation improving within a reasonable time frame. Moreover, the refugees living in – or, indeed, trying to get to – the Dadaab camps were also at real risk of refolement by the Kenyan authorities. As regards the applicants' personal circumstances, the first applicant would be at real risk of ill-treatment if he were to remain in Mogadishu. Since his only close family connections were in a town under the control of al-Shabaab and as he had arrived in the United Kingdom in 2003, when he was only sixteen years old, there was also a real risk of ill-treatment by al-Shabaab if he attempted to relocate there. Consequently, it was likely that he would find himself in an IDP or refugee camp where conditions were sufficiently dire to reach the Article 3 threshold and the first applicant would be particularly vulnerable on account of his psychiatric illness. The second applicant would be at real risk of ill-treatment if he were to remain in Mogadishu. Although it was accepted that he was a member of the majority Isaaq clan, the Court did not consider this to be evidence of connections powerful enough to protect him. There was no evidence that he had any close family connections in southern and central Somalia and, in any case, he had arrived in the United Kingdom in 1988, when he was nineteen years old, and had had no experience of living under al-Shabaab's repressive regime. He would therefore be at real risk if he were to seek refuge in an area under al-Shabaab's control. Likewise, if he were to seek refuge in the IDP or refugee camps. Lastly, the fact that he had been issued with removal directions to Mogadishu rather than to Hargeisa appeared to contradict the Government's assertion that he would be admitted to Somaliland.</p>	<p>A. v. the United Kingdom, 23 September 1998, § 22, Reports of Judgments and Decisions 1998-VI Abdulaziz, Cabales and Balkandali v. the United Kingdom, judgment of 28 May 1985, Series A No 94, p. 34, § 67 Al-Agha v. Romania, No 40933/02, 12 January 2010 Boujlifa v. France, judgment of 21 October 1997, Reports 1997-VI, p. 2264, § 42 Chahal v. the United Kingdom, 15 November 1996, Reports of Judgments and Decisions 1996-V D. v. the United Kingdom, 2 May 1997, § 59, Reports of Judgments and Decisions 1997-III Dougoz v. Greece, No 40907/98, ECHR 2001-II H. v. the United Kingdom, cited above H.L.R. v. France, judgment of 29 April 1997, Reports 1997-III, § 40 Hilal v. the United Kingdom, No 45276/99, ECHR 2001-II</p>
<p>The Court never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.</p>	<p>Abdulaziz, Cabales and Balkandali v. the United Kingdom, judgment of 28 May 1985, Series A No 94, p. 34, § 67 Ahmed v. Austria, judgment of 17 December 1996, Reports 1996-VI Bahaddar v. the Netherlands, judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, §§ 47 and 48 Boujlifa v. France, judgment of 21 October 1997, Reports 1997-VI, p. 2264, § 42 Chahal v. the United Kingdom, judgment of 15 November 1996, Reports 1996-V, § 96 D. v. the United Kingdom, judgment of 2 May 1997, Reports 1997-III, § 59 Garabayev v. Russia, No 38411/02, § 74, 7 June 2007, ECHR 2007 (extracts) H. v. the United Kingdom, No 10000/82, Commission decision of 4 July 1983, Decisions and Reports (DR) 33, p. 247 H.L.R. v. France, judgment of 29 April 1997, Reports 1997-III, § 40 and § 41 Hilal v. the United Kingdom (dec.), No 45276/99, 8 February 2000</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO10	Prohibition of torture, expulsion	Saadi v. Italy - application No 37201/06	ECTHR	English and French, also available in Armenian, Azeri, Georgian, Italian, Macedo- nian, Romanian, Russian, Serbian, Turkish, Ukrainian.	ECTHR	28.2.08	Tunis	Violation of Article 3 in case of expulsion to Tunis.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The applicant is a Tunisian national. In 2001 he was issued with an Italian residence permit. In 2002 he was arrested and placed in pre-trial detention on suspicion of international terrorism. In 2005 he was sentenced by an assize court in Italy to imprisonment for criminal conspiracy, forgery and receiving stolen goods. On the date the Grand Chamber's judgment was adopted an appeal was pending in the Italian courts. Also in 2005 a military court in Tunis sentenced the applicant in his absence to 20 years' imprisonment for membership of a terrorist organisation acting abroad in peacetime and for incitement to terrorism. In August 2006 he was released from prison, having served his sentence in Italy. However, the Minister of the Interior ordered him to be deported to Tunisia under the legislation on combating international terrorism. The applicant's request for political asylum was rejected. Under Rule 39 of the Rules of Court (interim measures), the Court asked the Italian Government to stay his expulsion until further notice.</p> <p>The Court could not underestimate the danger of terrorism and the considerable difficulties States were facing in protecting their communities from terrorist violence. However, it was not possible to weigh the risk that a person might be subjected to ill-treatment against his dangerousness to the community if he was not sent back. The prospect that he might pose a serious threat to the community did not diminish in any way the risk that he might suffer harm if deported. For that reason it would be incorrect to require a higher standard of proof where the person was considered to represent a serious danger to the community or even a threat to national security, since such an approach was incompatible with the absolute nature of Article 3. It amounted to asserting that, in the absence of evidence meeting a higher standard, protection of national security justified accepting more readily a risk of ill-treatment for the individual. The Court reaffirmed that for a forcible expulsion to be in breach of the Convention it was necessary – and sufficient – for substantial grounds to have been shown for believing that there was a risk that the applicant would be subjected to ill-treatment in the receiving country. The Court referred to reports by Amnesty International and Human Rights Watch which described a disturbing situation in Tunisia and which were corroborated by a report from the US State Department. These reports mentioned numerous and regular cases of torture inflicted on persons accused of terrorism. The practices reported – said to be often inflicted on persons in police custody – included hanging from the ceiling, threats of rape, administration of electric shocks, immersion of the head in water, beatings and cigarette burns. It was reported that allegations of torture and ill-treatment were not investigated by the competent Tunisian authorities and that the latter regularly used confessions obtained under duress to secure convictions. The Court did not doubt the reliability of those reports and noted that the Italian Government had not adduced any evidence capable of rebutting such assertions. Given the applicant's conviction of terrorism related offences in Tunisia, there were substantial grounds for believing that there was a real risk that he would be subjected to treatment contrary to Article 3 if he were to be deported to Tunisia. Furthermore, the Tunisian authorities had not provided the diplomatic assurances requested by the Italian Government. The existence of domestic laws guaranteeing prisoners' rights and accession to relevant international treaties, referred to in the notes verbales from the Tunisian Ministry of Foreign Affairs, were not sufficient to ensure adequate protection against the risk of ill-treatment where, as in the applicant's case, reliable sources had reported practices manifestly contrary to the principles of the Convention. Furthermore, even if the Tunisian authorities had given the diplomatic assurances, that would not have absolved the Court from the obligation to examine whether such assurances provided a sufficient guarantee that the applicant would be protected against the risk of treatment.</p> <p>Conclusion: violation, if the decision to deport the applicant to Tunisia were to be enforced (unanimously).</p>	<p>Abdulaziz, Cabales and Balkandali v. the United Kingdom, judgment of 28 May 1985, Series A No 94, § 67</p> <p>Ahmed v. Austria, judgment of 17 December 1996, Reports 1996-VI, § 38 and § 39</p> <p>Al-Adsani v. the United Kingdom [GC], No 35763/97, § 59, ECHR 2001-XI</p> <p>Al-Moayad v. Germany (dev.), No 35865/03, §§ 65-66, 20 February 2007</p> <p>Aydin v. Turkey, judgment of 25 September 1997, Reports 1997-VI, § 82</p> <p>Belziuk v. Poland, judgment of 25 March 1998, Reports 1998-II, § 49</p> <p>Boujlifa v. France, judgment of 21 October 1997, Reports 1997-VI, § 42</p> <p>Chahal v. the United Kingdom judgment of 15 November 1996, Reports of Judgments and Decisions 1996-V, §§ 79, 80, 81, 85-86, 96, 99-100 and 105</p> <p>Chamaiev and Others v. Georgia and Russia, No 36378/02, § 335, ECHR 2005-III</p> <p>Fatgan Katani and Others v. Germany (dev.), No 67679/01, 31 May 2001</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO11	Burden of proof for members of persecuted groups	Salah Sheekh v. The Netherlands, application No 1948/04	ECTHR	English and French, also available in Azeri, Russian	ECTHR	11.1.07	Somalia	Violation of Article 3 in case of expulsion to Somalia.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Court observed that it was not the Government's intention to expel the applicant to any area in Somalia other than those that they considered 'relatively safe'. The Court noted that although those territories – situated in the north – were generally more stable and peaceful than south and central Somalia, there was a marked difference between the position of, on the one hand, individuals who originate from those areas and have clan and/or family links there and, on the other hand, individuals who hail from elsewhere in Somalia and do not have such links. As far as the second group was concerned, the Court considered that it was most unlikely that the applicant, who was a member of the Ashraf minority hailing from the south of Somalia, would be able to obtain protection from a clan in the "relatively safe" areas. It noted that the three most vulnerable groups in Somalia were said to be internally displaced persons, minorities and returnees from exile. If expelled to the "relatively safe" areas, the applicant would fall into all three categories. The Court observed that Somaliland and Puntland authorities have informed the respondent Government of their opposition to the forced deportations of, in the case of Somaliland, non-Somalilanders and, in the case of Puntland, "refugees regardless of which part of Somalia they originally came from without seeking either the acceptance or prior approval" of the Puntland administration. In addition, both the Somaliland and Puntland authorities have also indicated that they do not accept the EU travel document. The Netherlands Government insisted that expulsions are nevertheless possible to those areas and pointed out that, in the event of an expellee being denied entry, he or she would be allowed to return to the Netherlands. They maintained that Somalis are free to enter and leave the country as the State borders are hardly subject to controls. The Court accepted that the Government might well succeed in removing the applicant to either Somaliland or Puntland. However, this by no means constituted a guarantee that the applicant, once there, would be allowed or enabled to stay in the territory, and with no monitoring of deported rejected asylum seekers taking place, the Government would have no way of verifying whether or not the applicant would have succeeded in gaining admittance. In view of the position taken by the Puntland and particularly the Somaliland authorities, it seemed to the Court rather unlikely that the applicant would be allowed to settle there.</p> <p>Consequently, the Court found that there was a real chance of his being removed, or of his having no alternative but to go to areas of the country which both the Government and UNHCR consider unsafe. The Court considered that the treatment to which the applicant claimed he had been subjected prior to his leaving Somalia could be classified as inhuman within the meaning of Article 3 and that vulnerability to those kinds of human rights abuses of members of minorities like the Ashraf has been well-documented. The Court reiterated its view that the existence of the obligation not to expel is not dependent on whether the source of the risk of the treatment stems from factors which involve the responsibility, direct or indirect, of the authorities of the receiving country. Article 3 may thus also apply in situations where the danger emanates from persons or groups of persons who are not public officials. What is relevant in that context is whether the applicant was able to obtain protection against and seek address for the acts perpetrated against him. The Court considered that this was not the case. Given the fact that there had been no significant improvement of the situation in Somalia, there was no indication that the applicant would find himself in a significantly different situation from the one he fled. The Court took issue with the national authorities' assessment that the treatment to which the applicant fell victim was meted out arbitrarily. It appeared from the applicant's account that he and his family were targeted because they belonged to a minority and for that reason it was known that they had no means of protection. The Court considered, on the basis of the applicant's account and the information about the situation in the "relatively unsafe" areas of Somalia in so far as members of the Ashraf minority were concerned, that his being exposed to treatment in breach of Article 3 upon his return was foreseeable rather than a mere possibility. The Court concluded that the expulsion of the applicant to Somalia as envisaged by the respondent Government would be in violation of Article 3.</p>	<p>Ahmed v. Austria, judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, p. 2206, §§ 38-41</p> <p>Chahal v. the United Kingdom, judgment of 15 November 1996, pp. 1856 and 1859, §§ 86 and 97-98, Reports 1996-V</p> <p>Conka v. Belgium, No 51564/99, § 79, ECHR 2002-I</p> <p>H.L.R. v. France, 9 April 1997, Reports 1997-III, p. 758, § 37 and § 40</p> <p>Hilal v. the United Kingdom, No 45276/99, §§ 59, 60 and 67-68, ECHR 2001-II</p> <p>Mamatkulov and Askarov v. Turkey [GC], Nos 46827/99 and 46951/99, ECHR 2005-I, § 67 and § 69</p> <p>Selmouni v. France ([GC], No 25803/94, §§ 74-77, ECHR 1999-V</p> <p>T.I. v. the United Kingdom (dec.), No 43844/98, ECHR 2000-III</p> <p>Vilvarajah and Others v. the United Kingdom, judgment of 30 October 1991, Series A No 215, p. 36, § 107, and p. 37, §§ 111-112</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
National Jurisprudence (post-Elgafaji)								
EASO12	Article 15(c) QD application in relation to the situation in Mogadishu (Somalia)	MOJ and others (Return to Mogadishu) (Rev1) (CG) [2014] UKUT 442 (IAC).	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	3.10.14	Somalia	Return to Mogadishu.
EASO13	Interpretation of Article 15(c) QD, internal armed conflict, assessing the level of violence	I U 1327/2013-10	Slovenia	Slovene	Administrative Court of the Republic of Slovenia	29.1.14	Afghanistan	The Court added new factors to be taken into account when assessing the level of violence.
EASO14	Interpretation of Article 15(c) QD, internal armed conflict, assessing the level of violence	I U 498/2013-17	Slovenia	Slovene	Administrative Court of the Republic of Slovenia	25.9.13	Afghanistan	The Court stated that the meaning of provision of Article 15(c) of the QD must be based on the autonomous interpretation of EU law on asylum. The Court put forward factors that should be taken into consideration in assessing the level of violence.
EASO15	Existence of indiscriminate violence, assessment of past circumstances	CNDA 5 septembre 2013 M. MUELA n° 13001980 C	France	French	CNDA (National Asylum Court)	5.9.13	Congo (DRC)	The Court found that, at the date of its ruling, the province of North Kivu was plagued by indiscriminate violence but did not specify the level of this violence.
EASO16	High level of indiscriminate violence, surrogate character of international protection	CNDA 22 juillet 2013 Mme KABABJI ép. KHACHERYAN no 13001703 C+	France	French	CNDA (National Asylum Court)	22.7.13	Syria	The Court found that, at the date of its ruling, blind violence in Alep reached such a high level that the appellant would be exposed to a serious threat against his life. Nevertheless, the claim was rejected because appellant was also a Lebanese national and could avail herself of the protection of Lebanon.
EASO17	Absence of indiscriminate violence	CNDA 15 juillet 2013 M. ROSTAMI no 13000622 C	France	French	CNDA (National Asylum Court)	15.7.13	Afghanistan	The Court found that, at the date of its ruling, there was no indiscriminate violence in the province of Bamyan. Therefore subsidiary protection on the '15(c)' ground could not be granted to the appellant.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>(excerpt) - COUNTRY GUIDANCE</p> <p>(i) The country guidance issues addressed in this determination are not identical to those engaged with by the Tribunal in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC). Therefore, where country guidance has been given by the Tribunal in AMM in respect of issues not addressed in this determination then the guidance provided by AMM shall continue to have effect.</p> <p>(ii) Generally, a person who is 'an ordinary civilian' (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al Shabaab or by Al Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country.</p> <p>(iii) There has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM.</p> <p>(iv) The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab's resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.</p> <p>(v) It is open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of 'collateral damage' in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so.</p> <p>(vi) There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West.</p> <p>(vii) A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.</p> <p>(viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.</p> <p>(ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:(...)</p>	<p>AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC)</p>
<p>The Administrative Court added to the factors mentioned in its previous case I U 498/2013-17 a temporal dynamics of numbers of deaths and injuries, whether they raise or not during the certain period; The Administrative Court also added a factor of 'state failure' to guarantee basic material infrastructure, order, health care, food supply, drinking water - all these for the purpose of protection of a civilian's life or person in the sense of protection against inhuman treatment.</p>	
<p>In its judgment the Administrative Court stated that the determining authority in the assessment whether there is internal armed conflict in the country of destination may take as a certain guidance the Additional Protocol II to the Geneva Convention from 12. 8. 1949, but the determining authority cannot base its interpretation on that non-EU legal source; the meaning of provision of Article 15(c) of the QD must be based on the autonomous interpretation of EU law on asylum. With further references to the case-law of several courts of the Member States, ECtHR, opinion of Advocate General of the CJEU and academic work of researchers , the Administrative Court put forward the following factors that should be taken into account in assessing the level of violence: battle deaths and injuries among the civilian population, number of internally displaced persons, basic humanitarian conditions in centres for displaced persons, including food supply, hygiene, safety. The Administrative Court pointed out that the protected value in relation to Article 15(c) of the QD is not a mere "survival" of asylum seeker, but also a prohibition against inhuman treatment.</p>	<p>Judgments in case of GS Article 15(c) (indiscriminate violence), Afghanistan v . Secretary for the Home department CG, [2009] UKAIT 00044, 19.10.2009, Cour nationale du droit d'asile (CNDA, No 613430/07016562, 18. 2. 2010), judgment of the Conseil d'Etat (EC, 3.7. 2009, OFPRA v. Baskarathas, No 320295), judgment of the Federal Supreme Administrative Court of Germany, (BverwG 10 C.409, judgment of section 10, 27. 4. 2010, paragraph 25), judgment of the ECtHR in case of Sufi and Elmi</p>
<p>The Court noted that because of his many professional travels to and from Angola the appellant had been exposed to violent acts emanating from armed groups in the context of an armed conflict. This finding about past circumstances sufficed to admit that he would be exposed, in case of return, to the threats encompassed in Article L.712-1 c) CESEDA. Subsidiary protection was granted.</p>	
<p>Here the classic refugee law principle of surrogacy interferes with the positive finding on the threats originated in the blind violence prevailing in Alep.</p>	
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds.</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO18	Assessment of facts and circumstances, non-refoulement, subsidiary protection, serious harm, torture	M.R.D. v Office of Immigration and Nationality (OIN), 6.K.31.548/2013/3	Hungary	Hungarian	Administrative and Labour Court of Budapest	13.6.13	Cuba	The Court granted the applicant subsidiary protection status because he would be at risk of serious harm upon returning to his home country (torture, cruel, inhuman, degrading treatment or punishment).
EASO19	Actor of persecution or serious harm, burden of proof, medical reports/ medico-legal reports, inhuman or degrading treatment or punishment, internal armed conflict, subsidiary protection	S.M.A. v Office of Immigration and Nationality (OIN), 20.K.31072/2013/9	Hungary	Hungarian	Administrative and Labour Court of Budapest	23.5.13	Afghanistan	The Court recognised the subsidiary protection status of the applicant, as his return to the country of origin would lead to the risk of serious harm (inhuman, degrading treatment or indiscriminate violence).
EASO20	Assessment of risk/ due consideration to the situation in the region of origin and to the practical conditions of a return to this region	CNDA 28 mars 2013 M. MOHAMED ADAN n° 12017575 C	France	French	CNDA (National Asylum Court)	28.3.13	Somalia	The specific assessment of conditions described in Article L.712-1 c) CESEDA requires analysing not the nationwide general situation but the situation in the area of origin and also in the areas that the appellant would have to cross to reach this area. In the appellant's particular case, although the Court is convinced that he comes from Somalia it has not been possible to determine that he originates from the Afgooye province and therefore he would be eligible to subsidiary protection under Article L.712-1 c) CESEDA provisions.
EASO21	High level of indiscriminate violence	CNDA 21 mars 2013 M. YOUMA KHAN n° 12025577 C	France	French	CNDA (National Asylum Court)	21.3.13	Afghanistan	The Court found that, at the date of its ruling, blind violence in the province of Kunduz reached such a high level that the appellant would be exposed to a serious threat against his life.
EASO22	Absence of indiscriminate violence	CNDA 28 février 2013 M. ADDOW ISE no 12018920 C	France	French	CNDA (National Asylum Court)	28.2.13	Somalia	The Court found that, at the date of its ruling, there was no indiscriminate violence in Mogadishu. Therefore subsidiary protection on the '15(c)' ground could not be granted to the appellant.
EASO23	Conflict and internal protection	BVerwG 10C15.12 VGH A 11 S 3079/11	Germany	German	Federal Administrative Court	31.1.13	Afghanistan	The Court ruled on the conditions in which the return may take place depending on the situation in the region of origin.
EASO24	Real risk	M A-H (Iraq) v Secretary of State for the Home Department [2013] EWCA Civ 445	United Kingdom	English	Court of Appeal	30.1.13	Iraq	The Claimant claimed that, if returned to Iraq, he was likely to be targeted by militia who had killed two of his brothers. The Immigration Judge found that the Claimant did not fear the general lawlessness in Iraq, but feared Al-Dinai, that he had received threats and that he had been targeted and would continue to be targeted if returned. Further, that the Claimant could not realistically relocate outside Baghdad. The Upper Tribunal (IAC) found that the Immigration Judge had made a material error of law on the issue of relocation and in having not considered the country guidance in HM Article 15(c) (Iraq) v Secretary of State for the Home Department [2010] UKUT 331 (IAC). The claimant appealed.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Aside from an armed conflict, the risk of torture, inhuman or degrading treatment can arise in other more general situations too. Additionally, when defining protection categories it is not important whether the risk is general or not, but what the risk is based on. If an Applicant meets the requirements of a higher protection category as well, then he shall be given a higher level of protection.</p>	<p>Hungary - Metropolitan Court, 30 September 2009, D.T. v. Office of Immigration and Nationality 17.K.33.301/2008/15 Hungary - Metropolitan Court, 24.K.33.913/2008 Hungary - Metropolitan Court, 17.K.30.307/2009</p>
<p>The Court held that there is a serious threat to the life or physical integrity of the applicant as a consequence of indiscriminate violence in a situation of internal armed conflict, i.e. the risk of serious harm is present; and Afghanistan, including Kabul, does not provide a safe internal relocation option for him. The Court noted that even though the country information in this respect is not necessarily consistent and coherent, the escalation of the risk, the increase of violence and the dominance of internal anarchy can be established based on almost all of the available information. In this respect, since the life, basic safety and livelihood of the person is involved and based on the extent and nature of the danger described above (in such cases naturally the actual danger need not and cannot be proven beyond a doubt) persecution, harm or other significant detriment is likely to occur.</p>	<p>CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie ECtHR - D v The United Kingdom (Application No 30240/96) - resource ECtHR - Hussein v. Sweden, Application No 10611/09 ECtHR - JH v United Kingdom, Application No 48839/09 ECtHR - S.H. v. United Kingdom, Application No 19956/06 Hungary - Metropolitan Court, 3.K.31346/2012/11</p>
<p>This ruling directly originates in the difficult issue of unexploitable fingerprints that undermines the whole Dublin system. The failure of the fingerprints initial checking also challenges the inner credibility of the claim, making a sound assessment of facts and chronology virtually impossible. Here, impossibility to determine appellant's provenance leads to a necessarily negative assessment of his eligibility to subsidiary protection under Article L.712-1 c) CESEDA provisions. Claim is rejected both on Geneva Convention and subsidiary protection grounds.</p>	
<p>The Court nevertheless notes that the appellant's young age enhances the risk inherent to the situation of indiscriminate violence. Subsidiary protection was granted.</p>	
<p>The Court notes in fine that appellant has rendered the checking of his fingerprints impossible, thus preventing asylum authorities from establishing with certainty his identity. This statement is not part of the reasoning in the determination but underlines once again the frequency of this phenomenon. Claim was rejected both on Geneva Convention and subsidiary protection grounds.</p>	
<p>Where there is an armed conflict that is not nationwide, the prognosis of danger must be based on the foreigner's actual destination in the event of a return. This will regularly be the foreigner's region of origin. If the region of origin is out of the question as a destination because of the danger threatening the complainant there, he can be expelled to another region of the country only under the conditions established in Article 8 of Directive 2004/83/EC. In assessing whether extraordinary circumstances exist that are not the direct responsibility of the destination state of expulsion, and that prohibit the expelling state from deporting the foreigner under Article 3 of the European Convention on Human Rights, normally the examination should be based on the entire destination state of expulsion, and should first examine whether such conditions exist at the place where the deportation ends. Poor humanitarian conditions in the destination state of expulsion may provide grounds for a prohibition of deportation only in exceptional cases having regard to Article 3 of the European Convention on Human Rights. The national prohibition of deportation under Section 60 (5) of the Residence Act, with reference to Article 3 of the European Convention on Human Rights, is not superseded by the prohibition of deportation under Union law pursuant to Section 60 (2) of the Residence Act.</p>	<p>(Confirmation of the judgment of 14 July 2009 – BVerwG 10 C 9.08 – BVerwGE 134, 188 – paragraph. 17, and the decision of 14 November 2012 – BVerwG 10 B 22.12 –). (Poor humanitarian conditions may provide grounds for a prohibition of deportation only in exceptional cases: denied for Afghanistan, following European Court of Human Rights judgments of 21 January 2011 – No 30696/09, M.S.S. – NVwZ 2011, 413; of 28 June 2011 – No 831/07, Sufi and Elmi – NVwZ 2012, 681; and of 13 October 2011 – No 10611/09, Hussein – NJOZ 2012, 952).</p>
<p>The Court of Appeal allowed the appeal holding that it would be wrong to read the Immigration Judge's decision as intending to exclude the KRG from his conclusion that the Claimant would be an easy target. He had been expressing his conclusion on the risk posed to the appellant in Baghdad, the administrative areas of Iraq and the KRG. Further, the Immigration Judge had considered <i>HM</i>. Personalised targeting was not addressed in <i>HM</i>; it was premised on the risk of generalised, indiscriminate violence. The Claimant had not advanced his case on a fear of generalised violence, therefore, the Immigration Judge had been required to concentrate on the specific threat posed to the Claimant. There was no basis on which to contend that it had been an error of law for the Immigration Judge to have found that the Claimant would be a target of Al-Diani even in the KRG.</p>	<p>HM (Article 15) (Iraq) v Secretary of State for the Home Department [2010] UKUT 331 (IAC)</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO25	Low level of indiscriminate violence, personal scope of Article 15 QD, civilian	CNDA 24 janvier 2013 M. Miakhail no 12018368 C+	France	French	CNDA (National Asylum Court)	24.1.13	Afghanistan	The Court found that, at the date of its ruling, indiscriminate violence in the province of Laghman reached only a moderate level so that the appellant had to demonstrate that he would be personally threatened in case of return. The appellant failed to do so and subsidiary protection was denied.
EASO26	Indiscriminate violence and real risk	HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	13.11.12	Iraq	The evidence did not establish that the degree of indiscriminate violence characterising the armed conflict taking place in the five central governorates in Iraq, namely Baghdad, Diyala, Tameen (Kirkuk), Ninawah, Salah Al-Din, was at such a high level that substantial grounds were shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat. Nor did the evidence establish that there was a real risk of serious harm under Article 15(c) QD for civilians who were Sunni or Shi'a or Kurds or had former Ba'ath Party connections: these characteristics did not in themselves amount to 'enhanced risk categories' under Article 15(c)'s 'sliding scale' (see [39] of <i>Elgafaji</i>).
EASO27	Armed conflict, subsidiary protection	No RG 10952/2011	Italy	Italian	Rome Court	14.9.12	Pakistan	The concept of a local conflict as referred to in Article 14 of Legislative Decree 251/2007 (c) and which is a sufficient reason for granting subsidiary protection, should not be understood as applying only to civil war. It should cover all circumstances where conflicts or outbreaks of violence, whatever their origins, between opposing groups or various factions appear to have become permanent and ongoing and widespread, not under the control of the state apparatus or actually benefiting from cultural and political ties with this apparatus.
EASO28	Internal protection, indiscriminate violence, individual threat, internal armed conflict, subsidiary protection	M.A., No 11026101	France	French	CNDA (National Asylum Court)	30.8.12	Somalia	The situation in Somalia, in particular in the south and central regions , should be regarded as a situation of generalised violence resulting from an internal armed conflict.
EASO29	Armed conflict, burden of proof, standard of proof, vulnerable person, serious harm	5114/2012	Spain	Spanish	Supreme Court. Chamber for Contentious Administrative Proceedings, third section	12.7.12	Colombia	The Court held that there was no armed conflict in Colombia.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Court notes that the appellant, a former soldier who left the Afghan army in July 2008, can be considered as a civilian and falls therefore within the personal scope of Article L.712-1 c) CESEDA. Claim was rejected both on Geneva Convention and subsidiary protection grounds.</p>	
<p>Of particular importance was the observation that decision-makers ensured that following <i>Elgafaji</i>, Case C-465/07 and <i>QD (Iraq)</i> [2009] EWCA Civ 620, in situations of armed conflict in which civilians were affected by the fighting, the approach to assessment of the level of risk of indiscriminate violence was an inclusive one, subject only to the need for there to be a sufficient causal nexus between the violence and the conflict.</p>	<p>Many cases cited, significant cases are: AK (Afghanistan) [2012] UKUT 163 MK (documents - relocation) Iraq CG [2012] UKUT 126 AMM [2011] UKUT 445 EA (Sunni/Shi'a mixed marriages) Iraq CG [2011] UKUT 342 HM (Iraq) [2011] EWCA Civ 1536 MSS v Belgium & Greece [2011] 53 EHRR2 HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 Elgafaji v Staatssecretaris van Justitie Case C-465/07; [2009] 1 WLR 2100 FH v. Sweden, No 32621/06, § 9320, January 2009 NA v United Kingdom [2009] 48 EHRR 15 QD (Iraq) [2009] EWCA Civ 620 ZQ (serving soldier) Iraq CG [2009] UKAIT 00048 SR (Iraqi/Arab Christian: relocation to KRG) Iraq CG [2009] UKAIT 00038 KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 46 SI (expert evidence – Kurd- SM confirmed) Iraq CG [2008] UKAIT 00094</p>
<p>The subsidiary protection was granted on the basis of the situation of generalised violence that exists in Pakistan. In fact, on the basis of an interpretation of the requirements provided in the Act, the court considered the Applicant's request, which included abundant supporting documentation (international reports), to be justified. In particular, the court held that there did not have to be a real civil war as such, but that it is sufficient if violence appears to have become permanent and ongoing and has spread to a significant degree.</p>	<p>Italy - Court of Cassation, No 27310/2008</p>
<p>Relying on a variety of information on the country of origin, deriving in particular, from the United Nations Security Council and the UNHCR, the Court concluded that the conflicts between the forces of the Transitional Federal Government, various clans and a number of Islamist militias were characterised, in certain geographical areas and in particular the southern and central regions, by a climate of generalised violence. Citing the 28 June 2011 ruling of the European Court of Human Rights in the case of <i>Sufi and Elmi v. the United Kingdom</i>, the Court moreover expressed doubts about the feasibility of internal relocation for a person who, having landed at Mogadishu, would need to cross a zone controlled by Al-Shabaab, and who had no family ties. The Court concluded that this situation must be regarded as a situation of generalised violence resulting from an armed conflict. Lastly, the Court considered that, taking account of the level of intensity that this situation of generalised violence had attained in the region from which the Applicant originated, he was currently exposed to a serious, direct and individual threat to his life or person and was unable at present to secure of any kind of protection within his country.</p>	<p>ECtHR - Sufi and Elmi v United Kingdom (Application Nos 8319/07 and 11449/07)</p>
<p>The Supreme Court held that the appellant has not provided a basis to allow him to reside in Spain on grounds of humanitarian considerations. In this sense, the Supreme Court abided by the same definition of 'serious harm' contained in Article 15(c) of the Qualification Directive, as well as the CJEU's interpretation in case C-465/07, affirmed the non-existence of an armed conflict in Columbia (that is, a situation of widespread violence). In effect, according to the arguments raised, the Supreme Court deemed that the violent situation that existed in some areas of Columbia did not extend to the whole territory or affect the entire population. Furthermore, it emphasised the implausibility of the appellant's narrative, as well as his inability to provide evidence of a real risk of serious threats to his life and physical integrity in the event of his returning to his country. Therefore, the Supreme Court's assessment was that in this particular case there were no grounds for humanitarian considerations which justified the appellant's right to reside in Spain.</p>	<p>CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie Spain - Supreme Court, 22 December 2006, No 2956/03 Spain - High National Court, 22 February 2008, No 832/2005 Spain - High National Court, 14 December 2007, No 847/2005 Spain - High National Court, 14 July 2006, No 449/2006</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO30	Assessment of facts and circumstances, credibility assessment, internal protection, obligation/duty to cooperate, subsidiary protection	S.N. v Office of Immigration and Nationality (OIN), 3. K.31.192/2012/6	Hungary	Hungarian	Administrative and Labour Court of Budapest	4.7.12	Afghanistan	The Court held that since the life, basic safety and livelihood chances of people are involved, based on the amount and nature of danger (in such cases naturally the actual danger need not and cannot be undoubtedly proved) the very likely occurrence of persecution, harm or other significant detriment cannot be risked.
EASO31	High level of indiscriminate violence	CNDA 2 juillet 2012 M. CHIR n° 12008517 C	France	French	CNDA (National Asylum Court)	2.7.12	Afghanistan	The Court found that, at the date of its ruling, blind violence in the province of Nangarhar reached such a high level that the appellant would be exposed to a serious threat against his life.
EASO32	Low level of indiscriminate violence	CNDA 2 juillet 2012 M. AHMAD ZAI n° 12006088 C	France	French	CNDA (National Asylum Court)	2.7.12	Afghanistan	The Court found that, at the date of its ruling, indiscriminate violence in the province of Logar reached only a moderate level so that the appellant had to demonstrate that he would be personally threatened in case of return.
EASO33	Internal protection, internal armed conflict, subsidiary protection, serious harm	G.N. v Office of Immigration and Nationality, 20.K.31.576/2012/3	Hungary	Hungarian	Metropolitan Court of Budapest (currently: Budapest Administrative and Labour Court)	28.6.12	Afghanistan	The Court granted subsidiary protection status to the single female applicant and her minor children, as their return to the country of origin would lead to the risk of serious harm (indiscriminate violence).

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Based on the country information obtained as part of the investigation as well as the information available in the public domain, the Court held that it can be ascertained that Afghanistan is increasingly characterised by unpredictable and indiscriminate violence that significantly affects the civilian population. "The relative assessment whether the situation is slightly better (or worse) in certain regions by itself does not make a major difference with regards to harm or persecution. Objectively, all the Afghan regions that the applicant could reside in are regions at increasing risk, and can be classified as ones with deteriorating security situation. Undoubtedly, the security situation, as well as the events in Afghanistan, are under frequent and intensive change, thus the above mentioned situation certainly cannot be considered as an improving one. (...) This uncertain situation in relation to constantly deteriorating domestic politics, economics and security jeopardises an increasing number of the civilian population and means more and more civilians suffering serious harm. (...) Since the life, basic safety and livelihood chances of people are involved, based on the above described amount and nature of danger (in such cases naturally the actual danger need not and cannot be undoubtedly proved) the very likely occurrence of persecution, harm or other significant detriment cannot be risked.</p> <p>In relation to the internal protection alternative, the Court held that Section 92 of the Governmental Decree on the Implementation of Act II of 2007 on the Entry and Stay of Third-country Nationals determines the cumulative conditions concerning what can be reasonably expected. 'According to this, the applicant must have family or kinship ties, or his/her basic livelihood and accommodation must be provided by other means in a certain part of the country.' No evidence justifying the above was produced, thus the internal protection alternative in Afghanistan cannot be applicable in respect of this applicant.</p>	
<p>Subsidiary protection was granted regardless of any personal reason.</p>	
<p>The Court notes that because of his young age and the death of his father the appellant would be particularly exposed to the threats encompassed in Article L.712-1 c) CESEDA. Subsidiary protection was granted.</p>	
<p>The Court held that the risk of indiscriminate violence existed both in the part of the country where she is originally from (Herat) and in the capital. This was ascertainable based on the information available both at the time when the administrative decision was made and the country information available at the time when the judgment was made. Thus the Court took the most up-to-date information into account. With respect to the internal relocation alternative, the Court highlighted that 'not only the situation present at the time of the judgment of the application should be taken into account, but also the fact that neither persecution nor serious harm is expected to persist in that part of the country in the foreseeable future', in other words the protection shall last. Based on the country information, the applicant cannot be sent back to Kabul either, as it cannot be expected that she could find internal protection there. According to the ministerial reasoning, 'countries experiencing armed conflict cannot provide safe internal refuge for the above reason, as the movement of the front lines can make previously seemingly safe areas dangerous'.</p>	<p>ECtHR - Chahal v the United Kingdom (Application No 22414/93) ECtHR - Salah Sheekh v The Netherlands, Application No 1984/04,</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO34	Consideration of Article 15(c) QD	AK (Article 15(c)) Afghanistan CG [2012] UKUT 163	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	18.5.12	Afghanistan	The level of indiscriminate violence in Afghanistan as a whole was not at such a high level so that within the meaning of Article 15(c) QD, a civilian, solely by being present in the country, faced a real risk which threatened his life or person. Nor was the level of indiscriminate violence, even in the provinces worst affected (which included Ghazni but not Kabul), at such a level. Whilst when assessing a claim in the context of Article 15(c) in which the respondent asserted that Kabul city was a viable internal relocation alternative, it was necessary to take into account (both in assessing 'safety' and 'reasonableness') not only the level of violence in that city but also the difficulties experienced by that city's poor and the many Internally Displaced Persons (IDPs) living there, these considerations would not in general make return to Kabul unsafe or unreasonable. This position was qualified (both in relation to Kabul and other potential places of internal relocation) for certain categories of women.
EASO35	Assessment of risk under Article 15(c) QD provisions, balancing scale, personal elements not required beyond a certain threshold of indiscriminate violence, obligation to assess the level of indiscriminate violence	CE 7 mai 2012 M.Umaramanam N° 323667 C	France	French	Council of State	7.5.12	Sri Lanka	It is not required by Article L.712-1 c) CESEDA that indiscriminate violence and armed conflict should coincide in every way in the same geographic zone. When assessing subsidiary protection on this ground, the asylum judge has to verify that indiscriminate violence reaches such a level that a person sent back to the area of conflict should be at risk because of his mere presence in this territory.
EASO36	Country of origin information, credibility assessment, internal protection, refugee status, subsidiary protection	KF v Bevándorlási és Állampolgársági Hivatal (Office of Immigration and Nationality, OIN) 6.K.31.728/2011/14	Hungary	Hungarian	Metropolitan Court of Budapest	26.4.12	Afghanistan	The Court held that the authority must make sure that the applicant is not at risk of serious harm or persecution in the relevant part of the country, not only at the time the application is assessed but also that this is not likely to occur in the future either. Countries struggling with armed conflicts do not normally provide safe internal flight options within the country, as the movement of front lines can put areas at risk that were previously considered safe.
EASO37	High level of indiscriminate violence	CNDA 11 avril 2012 M. MOHAMED JAMAL n° 11028736 C	France	French	CNDA (National Asylum Court)	11.4.12	Somalia	The Court found that, at the date of its ruling, blind violence in Mogadiscio reached such a high level that the appellant would be exposed to a serious threat against his life.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Tribunal continued to regard as correct the summary of legal principles governing Article 15(c) of the Qualification Directive as set out in <i>HM</i> and others (Article 15(c)) <i>Iraq CG</i> [2010] <i>UKUT</i> 331 (IAC) and more recently in <i>AMM and Others</i> (conflict; humanitarian crisis; returnees; FGM) <i>Somalia CG</i> [2011] <i>UKUT</i> 00445 (IAC) and <i>MK</i> (documents - relocation) <i>Iraq CG</i> [2012] <i>UKUT</i> 00126 (IAC). The need, when dealing with asylum-related claims based wholly or significantly on risks arising from situations of armed conflict and indiscriminate violence, to assess whether Article 15(c) of the Qualification Directive was engaged, should not have led to judicial or other decision-makers going straight to Article 15(c). The normal course was to deal with the issue of refugee eligibility, subsidiary (humanitarian) protection eligibility and Article 3 ECHR in that order.</p>	<p>Many cases cited, significant cases are: AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC) HK (Afghanistan) and Ors v Secretary of State for the Home Department [2012] EWCA Civ 315 MK (documents - relocation) Iraq CG [2012] UKUT 00126 (IAC) AMM and Others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) DS (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 305 HM (Iraq) v Secretary of State for the Home Department [2011] EWCA Civ 1536 SA v Federal Office for Migration 2011 E-7625/2008 – ATAF (FAC) – 2011/7 ZG v The Federal Republic of Germany International Journal of Refugee Law, Vol 23, No 1, March 2011 HH (Somalia) v Secretary of State for the Home Department [2010] EWCA Civ 426 HK and Others (minors – indiscriminate violence – forced recruitment by the Taliban) Afghanistan CG [2010] UKUT 378 (IAC) HM and others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC) Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 1 WLR 2100 GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 00044 Husseini v Sweden Application No 10611/09 JH v UK Application No 48839/09 N v Sweden Application No 23505/09, 20 July 2010 QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091 NA v UK Application No 25904/07 Secretary of State for the Home Department v AH (Sudan) [2007] UKHL 49 Sufi and Elmi v UK Applications Nos 8319/07 and 11449/07 Januzi v Secretary of State for the Home Department [2006] UKHL 5 Salah Sheekh v Netherlands Application No 1948/04</p>
<p>The Council stated that the asylum judge commits an error of law if he grants subsidiary protection on the ground of Article L.712-1 c) CESEDA without referring to any personal elements justifying the threats, if he does not assess beforehand the level of indiscriminate violence existing in the country of origin.</p>	
<p>It was justified in granting the claimant subsidiary protection status since according to the latest country of origin information when the decision was made, the security situation in Afghanistan is extremely volatile, and the claimant cannot be expected to seek refuge in the capital city from the threats brought on by the armed conflict in his province of origin. Countries struggling with armed conflicts do not normally provide safe internal flight options within the country, as the movement of front lines can put areas at risk that were previously considered safe.</p>	<p>ECtHR - Salah Sheekh v The Netherlands (Application No 1948/04) - resource ECtHR - Husseini v. Sweden, Application No 10611/09 ECtHR - Chalal v. the United Kingdom, Application No 1948/04</p>
<p>Subsidiary protection is granted regardless of any personal reason and despite remaining doubts about him having resided recently in Mogadiscio.</p>	<p>ECHR 28 June 2011, Sufi et Elmi c/ UK No 8319/07 and No 11449/07</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO38	Conflict and serious harm	FM, Re Judicial Review [2012] ScotCS CSOH_56	United Kingdom	English	Court of Session	30.3.12	Yemen	The Claimant petitioned for judicial review of a decision refusing his application under paragraph 353 of the Immigration Rules, based on Article 2(e) of the Qualification Directive, for humanitarian protection on account of the outbreak of internal armed conflict in Yemen in early 2011 and the effect thereof. He submitted that the Secretary of State had been sent a substantial amount of information about the aforementioned outbreak of internal armed conflict and had erred in concluding that another immigration judge, applying the rule of anxious scrutiny, would not come to a different conclusion and that there was no reason why he could not return to the Yemen in safety. Consideration was given to the definition of 'serious harm' pursuant to Article 15 QD.
EASO39	Delay, credibility assessment, medical reports/ medico-legal reports, indiscriminate violence, subsidiary protection	Ninga Mbi v Minister for Justice and Equality & Ors, [2012] IEHC 125	Ireland	English	High Court	23.3.12	Democrat Republic of Congo (DRC)	The Court found that the level of violence in the DRC was not as high as to engage Article 15(c) QD taking into account the situation of the applicant.
EASO40	Child specific considerations	HK (Afghanistan) & Ors v Secretary of State for the Home Department, [2012] EWCA Civ 315	United Kingdom	English	Court of Appeal	16.3.12	Afghanistan	The case concerns the State's obligation to attempt to trace the family members of unaccompanied minor asylum seekers.
EASO41	High level of indiscriminate violence, internal flight alternative	CNDA 28 février 2012 M. MOHAMED MOHAMED n° 11001336 C+	France	French	CNDA (National Asylum Court)	28.2.12	Somalia	The Court found that, at the date of its ruling, blind violence in Mogadishu reached such a high level that the appellant would be exposed to a serious threat against his life.
EASO42	High level of indiscriminate violence	CNDA 28 février 2012 Mme HAYBE FAHIYE n° 10019981 C	France	French	CNDA (National Asylum Court)	28.2.12	Somalia	The Court found that, at the date of its ruling, blind violence in the Afgooye district reached such a high level that the appellant would be exposed to a serious threat against his life.
EASO43	Level of violence and individual risk	CE, arrêt n° 218.075 du 16 février 2012.	Belgium	French	Council of State	16.2.12	Unknown	In this decision, the Council of State interprets Article 15 (b) QD according to the ECtHR's case-law concerning Article 3 of ECHR. Based on this interpretation the Council rejects the Elgafaji interpretation according to which the asylum applicant is not absolved of showing individual circumstances except in case of indiscriminate violence.
EASO44	Indiscriminate violence	72787	Belgium	Dutch	Council of Alien Law Litigation (Raad voor Vreemdelingenbetwistingen) - adopted by a special seat of three judges	31.1.12	Iraq	Held that there is no more indiscriminate violence in Central Iraq. Comes to that conclusion after analysing the factual information presented by the administration and recent ECtHR jurisprudence.
EASO45	Assessment of risk, due consideration to the practical conditions of a return to the region of origin	CNDA 11 janvier 2012 M. SAMADI+D54 n° 11011903 C	France	French	CNDA (National Asylum Court)	11.1.12	Afghanistan	The Court found that, at the date of its ruling, the appellant in order to return to the faraway province of Nimruz would have to travel through several provinces plagued by indiscriminate violence and was exposed therefore to the threats encompassed in Article L.712-1 c) CESEDA.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Granting the prayer of a judicial review, the Court held that the serious and individual threat to life or person by reason of indiscriminate violence had to be assessed not separately or alternatively but in the context of internal armed conflict. The Secretary of State had erred in law both in her statement of the test to be applied and in reaching a perverse conclusion in relation to internal armed conflict on the material before her. Further, her consideration that the violence could not be considered to be indiscriminate was problematic, particularly when the 'activists' who were allegedly targeted were unarmed civilians according to the information before her.</p>	<p>HM (Iraq) and Another v Secretary of State for the Home Department [2011] EWCA Civ 1536 HM (Article 15(c)) (Iraq) v Secretary of State for the Home Department [2010] UKUT 331 (IAC) Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 1 WLR 2100 GS (Article 15(c) Indiscriminate violence) Afghanistan CG [2009] UKAIT 44 QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 0023 WM (Democratic Republic of Congo) v Secretary of State for the Home Department [2006] EWCA Civ 1495</p>
<p>The level of violence in the DRC did not amount to an internal or international armed conflict and therefore the applicant did not run a real risk of serious and individual threat by reason of indiscriminate violence in situations of armed conflict.</p>	<p>ECtHR - R.C. v. Sweden (Application No 41827/07) - resource CJEU - C-277/11 MM v Minister for Justice, Equality and Law Reform, Ireland, Attorney General (UP)</p>
<p>The Court noted that there was an obligation on the UK government to trace the family members of a child asylum applicant, under Article 19(3) of the Reception Directive, as enshrined in domestic law. It held that this duty was 'intimately connected' with the asylum application decision-making process as the question of whether a child has a family to return to or not is central to the asylum decision. Thus the duty to trace falls to the government, not the child. That said, however, the Court held that the government's failure to trace an applicant's family would not automatically lead to the grant of asylum – every case depends on its own facts and is a matter for the fact-finding Tribunal to determine.</p> <p>The Court also pointed out that if the government's efforts to trace families in Afghanistan are slow, this should not be allowed to delay a decision on an asylum case, particularly if the decision would be to grant protection. In such cases, the best interests of the child may require asylum to be granted. Later on, if the families are successfully traced, that may justify a revocation of refugee status, if the need for asylum is no longer deemed present.</p>	<p>ZK (Afghanistan) v Secretary of State for the Home Department [2010] EWCA Civ 749 UK - Court of Appeal, 22 March 2011, DS (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 305 UK - Asylum and Immigration Tribunal, 15 March 2007, LQ, Afghanistan [2008] UKAIT 00005 UK - ZH (Tanzania) (FC) v Secretary of State for the Home Department [2011] UKSC 4 CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie UK - Upper Tribunal, AA (unattended children) v Secretary of State for the Home Department, [2012] UKUT 00016</p>
<p>Subsidiary protection was granted regardless of any personal reason. The Court noted that internal relocation in another area of Somalia was not possible.</p>	
<p>Subsidiary protection was granted regardless of any personal reason.</p>	
<p>The Council of State reminds that firstly, based on the CJEU's judgment in <i>Elgafaji</i>, Article 15(b) QD must be interpreted according with the case-law of the ECtHR.</p> <p>Secondly, the Council of State underlines that the judgment of the ECtHR in <i>Saadi v. Italy</i> enshrines the principle according to which a person's membership to a 'group systematically exposed to inhuman and degrading treatments' frees him/her from the obligation to present other individual circumstances to establish a real risk of a violation of Article 3 of the ECHR.</p> <p>The Council of State concluded that by requiring the asylum seeker to show individual circumstances other than the membership to a specific group there had been a violation of the obligation of the lower court to reason its decision. The lower court should have first answer to the question if the said group was systematically exposed to inhuman or degrading treatments.</p>	<p>(CJEU) Elgafaji (C-465/07) (ECtHR) Saadi c. Italie (37201/06)</p>
<p>The Council of State reminds that firstly, based on the CJEU's judgment in <i>Elgafaji</i>, Article 15(b) QD must be interpreted according with the case-law of the ECtHR.</p> <p>Secondly, the Council of State underlines that the judgment of the ECtHR in <i>Saadi v. Italy</i> enshrines the principle according to which a person's membership to a 'group systematically exposed to inhuman and degrading treatments' frees him/her from the obligation to present other individual circumstances to establish a real risk of a violation of Article 3 of the ECHR.</p> <p>The Council of State concluded that by requiring the asylum seeker to show individual circumstances other than the membership to a specific group there had been a violation of the obligation of the lower court to reason its decision. The lower court should have first answer to the question if the said group was systematically exposed to inhuman or degrading treatments.</p>	<p>ECJ, Elgafaji, case C-465/07; ECtHR, NA. v. UK, 25904/07; ECtHR, Sufi and Elmi v. UK, 8319/07; ECtHR, J.H. v. UK, 48839/09; E.Ct.H.R., F.H. v. Sweden, 32621/06</p>
<p>The Court here does not specify the level of violence prevailing in the province of Nimruz but focuses mostly on the practical aspects of a return trip to a province located in the southwestern border : when assessing the prospective risk the Court takes due consideration of the dangers inherent to this journey. Subsidiary protection was granted.</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO46	Serious risk and children	AA (unattended children) Afghanistan CG [2012] UKUT 00016	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	6.1.12	Afghanistan	The evidence demonstrated that unattached children returned to Afghanistan, depending upon their individual circumstances and the location to which they were returned, may have been exposed to risk of serious harm, inter alia from indiscriminate violence, forced recruitment, sexual violence, trafficking and a lack of adequate arrangements for child protection. Such risks had to be taken into account when addressing the question of whether a return was in the child's best interests, a primary consideration when determining a claim to humanitarian protection.
EASO47	High level of indiscriminate violence	CNDA 23 décembre 2011 M. MOHAMED ALI n° 11021811 C	France	French	CNDA (National Asylum Court)	23.12.11	Somalia	The Court found that, at the date of its ruling, blind violence in Mogadishu reached such a high level that the appellant would be exposed to a serious threat against his life.
EASO48	Indiscriminate violence, procedural guarantees, internal armed conflict, subsidiary protection	HM (Iraq) and RM (Iraq) v Secretary of State for the Home Department [2011] EWCA Civ 1536	United Kingdom	English	Court of Appeal	13.12.11	Iraq	Country Guidance on application of Article 15(c) QD quashed.
EASO49	Real risk and level of violence	Upper Tribunal, 28 November 2011, AMM and others v Secretary of State for the Home Department [2011] UKUT 00445	United Kingdom	English	Upper Tribunal	28.11.11	Somalia	In this case the Tribunal considered the general country situation in Somalia as at the date of decision for five applicants, both men and women from Mogadishu, south or central Somalia, Somaliland and Puntland. The risk of female genital mutilation (FGM) was also considered.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The evidence did not alter the position as described in HK and Others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC), namely that when considering the question of whether children were disproportionately affected by the consequences of the armed conflict in Afghanistan, a distinction had to be drawn between children who were living with a family and those who were not. That distinction was reinforced by the additional material before the Tribunal. Whilst it was recognised that there were some risks to which children who had the protection of the family were nevertheless subject, in particular the risk of landmines and the risks of being trafficked, they were not of such a level as to lead to the conclusion that all children would qualify for international protection. In arriving at this conclusion, account was taken of the necessity to have regard to the best interests of children.</p>	<p>AD Lee v SSHD [2011] EWCA Civ 348 DS (Afghanistan) [2011] EWCA Civ 305 FA (Iraq) (FC) (Respondent) v SSHD (Appellant) [2011] UKSC 22 ZH (Tanzania) v SSHD [2011] UKSC 4 FA (Iraq) v SSHD [2010] EWCA Civ 696 HK and Others (minors-indiscriminate violence-forced recruitment by Taliban-contact with family members) Afghanistan CG [2010] UKUT 378 (IAC) HM (Article 15(c)) (Iraq) v Secretary of State for the Home Department [2010] UKUT 331 (IAC) Elgafaji (Case C-465/07); [2009] 1WLR 2100 GS (Article 15(c): Indiscriminate Violence) Afghanistan CG [2009] UKAIT 0044 GS (Existence of internal armed conflict) Afghanistan [2009] UKAIT 00010 RQ (Afghan National Army, Hizb-i-Islami, risk) Afghanistan CG [2008] UKAIT 00013 HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 R (Mlloja) v SSHD [2005] EWHC 283 (Admin) R (Q & Others) v SSHD [2003] EWCA Civ 364, R (on the application of Howard League for Penal Reform) v Secretary of State for the Home Department & Anor [2002] EWHC 2497 (Admin)</p>
<p>Subsidiary protection was granted regardless of any personal reason.</p>	<p>ECHR 28 June 2011, Sufi et Elmi c/ UK No 8319/07 and No 11449/07</p>
<p>The Court quashed a country guidance decision on the application of Article 15(c) QD in Iraq because the Tribunal had not considered what was necessary to ensure that it heard proper argument in a case designed to give binding guidance for other applicants.</p>	<p>UK - Court of Appeal, 24 June 2009, QD & AH (Iraq) v Secretary of State for the Home Department with the United Nations High Commissioner for Refugees Intervening [2009] EWCA Civ 620 UK - Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd [1921] 2AC 438 UK - OM (Zimbabwe) v. Secretary of State for the Home Department, CG [2006] UKAIT 00077 UK - KH (Iraq) CG [2008] UKIAT 00023 UK - HM and Others (Iraq) v. Secretary of State for the Home Department, CG [2010] UKUT 331 (IAC) UK - In re F [1990] 2 AC UK - Clarke v Fennoscandia Ltd [2007] UKHL 56</p>
<p>The Tribunal considered the 'significance' of <i>Sufi and Elmi</i> and the rulings of the ECtHR in general. It observed that more extensive evidence was available to it than was considered by the ECtHR and so it was entitled to attribute weight and make its own findings of fact in these cases, which otherwise would have been disposed of by reference to <i>Sufi and Elmi</i>.</p> <p>It received the submissions of UNHCR but reiterated the view that it was not bound to accept UNHCR's recommendation that at the time of hearing nobody should be returned to central and southern Somalia. It concluded that at the date of decision 'an Article 15(c) risk exists, as a general matter, in respect of the majority of those in Mogadishu and as to those returning there from the United Kingdom.' The Tribunal did identify a category of people who might exceptionally be able to avoid Article 15(c) risk. These were people with connections to the 'powerful actors' in the TFG/AMISOM.</p> <p>The Tribunal was not satisfied that the conditions in southern or central Somalia would place civilians at risk of Article 15(c) mistreatment. The Tribunal was satisfied that a returnee to southern or central Somalia would be at risk of harm which would breach Article 3 of ECHR, but reached its conclusion by a different route and on different evidence from that taken in <i>Sufi and Elmi</i>.</p> <p>Given the general findings on risk of persecution (Article 2 of the Qualification Directive) and serious harm (Article 15) there was a similar finding that internal flight to Mogadishu or to any other area would not be reasonable. From Mogadishu international airport to the city, notwithstanding the risk of improvised explosive devices, was considered safe under TFG/AMISOM control. There may be safe air routes, but overland travel by road was not safe if it entailed going into an area controlled by Al Shabab. Safety and reasonableness would also be gauged by reference to the current famine. Individuals may be able to show increased risk e.g. women who were not accompanied by a protecting male.</p>	<p>(ECtHR): Aktas v France (2009) (Application No 43568/08); D v The United Kingdom (Application No 30240/96); Kokkinakis v Greece (1994) (Application No 14307/88); Moldova v Romania (Application No 41138/98 and 64320/01); MSS v Belgium and Greece (Application No 30696/09); N v United Kingdom (Application No 26565/05); NA v United Kingdom (Application No 25904/07); Salah Sheekh v The Netherlands (Application No 1948/04); Sufi and Elmi v United Kingdom (Application Nos 8319/07 and 11449/07); CJEU: Elgafaji v Staatssecretaris van Justitie C-465/07; UK and other national: R v Horseferry Road Magistrates Court ex-parte Bennett [1993] UKHL 10; Adan [1998] UKHL 15; Shah and Islam v Secretary of State for the Home Department [1999] UKHL 20 Omoruyi v Secretary of State for the Home Department [2001] Imm AR 175 Sepet & Anor, R (on the application of) v Secretary of State for the Home Department [2003] UKHL 15 R (Alconbury Developments Ltd) v Environment Secretary [2003] 2 AC 395 (...) See the judgment for more related cases</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO50	Level of violence and individual risk	AMM and others (conflict, humanitarian crisis, returnees, FGM) Somalia CG [2011] UKUT 445	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	25.11.11	Somalia	Despite the withdrawal in early August 2011 of Al-Shabab conventional forces from at least most of Mogadishu, there remained a real risk of Article 15(c) QD harm for the majority of those returning to that city after a significant period of time abroad. Such a risk did not arise in the case of those connected with powerful actors or belonging to a category of middle class or professional persons, who lived to a reasonable standard in circumstances where the Article 15(c) risk, which existed for the great majority of the population, did not apply. The significance of this category should not be overstated and was not automatically assumed to exist, merely because a person had told lies. Outside Mogadishu, the fighting in southern and central Somalia was both sporadic and localised and not such as to place every civilian in that part of the country at real risk of Article 15(c) harm. In individual cases, it was necessary to establish where a person came from and what the background information said was the present position in that place.
EASO51	High level of indiscriminate violence	CNDA 25 novembre 2011 M. SAMER n° 11003028 C	France	French	CNDA (National Asylum Court)	25.11.11	Afghanistan	The Court found that, at the date of its ruling, blind violence in the province of Nangarhar reached such a high level that the appellant would be exposed to a serious threat against his life.
EASO52	Real risk and level of violence	Federal Administrative Court, 17 November 2011, 10 C 13.10	Germany	German	Federal Administrative Court	17.11.11	Iraq	Concerned questions of fundamental significance regarding the definition of Section 60(7)(2) Residence Act/Article 15(c) QD: When establishing the necessary 'density of danger' in an internal armed conflict within the meaning of Section 60(7) (2) Residence Act/Article 15(c) QD, it is not sufficient to quantitatively determine the number of victims in the conflict. It is necessary to carry out an 'evaluating overview' of the situation, which takes into account the situation of the health system.
EASO53	Actors of protection, internal protection	D.K. v Ministry of Interior, 6 Azs 22/2011	Czech Republic	Czech	Supreme Administrative Court	27.10.11	Nigeria	The Court held inter alia that effective protection cannot be provided by non-governmental organisations which do not control the state or a substantial part of its territory.
EASO54	Level of violence and individual risk	CNDA, 18 October 2011, M. P., Mme P. & Mme T., n°11007041, n°11007040, n°11007042	France	French	CNDA (National Asylum Court)	18.10.11	Sri Lanka	Since the situation of generalised violence which prevailed in Sri Lanka ended with the military defeat of LTTE combatants in May 2009, the only valid ground for claiming subsidiary protection would be Article L.712-1 b) CESEDA [which transposes Article 15(b) QD]. The CNDA added that the <i>Elgafaji</i> Case, (C-465/07) was restricted to stating principles on the assessment of the individual risks in case of return to the country of origin, considering both the personal and current risk claimed by the applicant and the degree of violence prevailing in the country.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Despite the suggestion in <i>Sufi & Elmi</i> that there was no difference in the scope of Article 3 of the ECHR and Article 15(c) of the Qualification Directive, the binding Luxembourg case law of <i>Elgafaji</i> [2009] EUECJ C-465/07 made it plain that Article 15(c) could be satisfied without there being such a level of risk as was required for Article 3 in cases of generalised violence (having regard to the high threshold identified in <i>NA v United Kingdom</i> [2008] ECHR 616). The difference involved the fact that Article 15(c) covered a 'more general risk of harm' than Article 3 of the ECHR; that Article 15(c) included types of harm that were less severe than those encompassed by Article 3; and that the language indicating a requirement of exceptionality was invoked for different purposes in <i>NA v United Kingdom</i> and <i>Elgafaji</i> respectively). A person was not entitled to protection under the Refugee Convention, the Qualification Directive or Article 3 of the ECHR, on the basis of a risk of harm to another person, if that harm would be willingly inflicted by the person seeking such protection.</p>	<p>Significant cases cited: <i>Sufi v United Kingdom</i> (8319/07) (2012) 54 EHRR 9 <i>AM (Armed Conflict: Risk Categories)</i> [2008] UKAIT 91</p>
<p>Subsidiary protection was granted regardless of any personal reason.</p>	
<p>There were no individual 'risk enhancing' circumstances, nor was the degree of danger in the applicant's home region high enough to justify the assumption that any civilian would face a serious risk. However, the High Administrative Court failed to carry out an 'evaluating overview' of the situation which should not only include the number of victims and the severity of harm, but also the situation of the health system and thus access to medical help. However, this omission in the findings of the High Administrative Court does not affect the result of the decision as the applicant would only face a low risk of being injured.</p>	<p>(ECTHR) <i>Saadi v Italy</i> (Application No 37201/06) (CJEU) <i>Elgafaji v Staatssecretaris van Justitie C-465/07</i> (Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07 Federal Administrative Court, 14 July 2009, 10 C 9.08 Federal Administrative Court, 27 April 2010, 10 C 5.09 Federal Administrative Court, 8 September 2011, 10 C 14.10</p>
<p>Fulfilling the conditions of internal protection (the availability of protection, the effectiveness of moving as a solution to persecution or serious harm in the area of origin, and a minimal standard of human rights protection) must be assessed cumulatively in relation to specific areas of the country of origin. It also must be clear from the decision which specific part of the country of origin can provide the applicant refuge from imminent harm.</p> <p>For the purposes of assessing the ability and willingness to prevent persecution or serious harm from non-State actors, possible protection provided by the state, parties or organisations which control the state or a substantial part of its territory, must be examined. Effective protection cannot be provided by non-governmental organisations which do not control the state or a substantial part of its territory.</p>	<p>ECTHR - <i>Collins and Akaziebie v Sweden</i> (Application No 23944/05) ECTHR - <i>Izevbekhai and Others v Ireland</i> (Application No 43408/08) Czech Republic - Supreme Administrative Court, 30 September 2008, <i>S.N. v Ministry of Interior</i>, 5 Azs 66/2008-70 Czech Republic - Supreme Administrative Court, 28 July 2009, <i>L.O. v Ministry of Interior</i>, 5 Azs 40/2009 Czech Republic - Supreme Administrative Court, 16 September 2008, <i>N.U. v Ministry of Interior</i>, 3 Azs 48/2008-57 Czech Republic - Supreme Administrative Court, 24 January 2008, <i>E.M. v Ministry of Interior</i>, 4 Azs 99/2007-93 Czech Republic - Supreme Administrative Court, 25 November 2011, <i>D.A. v Ministry of Interior</i>, 2 Azs 100/2007-64</p>
<p>The CNDA noted that the CJEU judgment dating from 17 February 2009 on a preliminary ruling relating to the interpretation of the provisions of Article 15(c) of the Qualification Directive (<i>Elgafaji Case</i>, C-465/07) was restricted to stating principles on the assessment of the individual risks in case of return to the country of origin, considering both the personal and current risk claimed by the applicant and the degree of violence prevailing in the country. It concluded that these judgments did not exempt an applicant for subsidiary protection from establishing an individual risk of persecution or ill-treatment, by attempting to prove personal factors of risk that he/she would face in case of return to his/her country of origin.</p> <p>The Court insisted that the only valid ground for subsidiary protection was Article L.712-1 b) CESEDA [which transposes Article 15(b) of the Qualification Directive] since the situation of generalised violence which prevailed in Sri Lanka ended with the military crushing of the LTTE combatants in May 2009.</p>	<p>(ECTHR) <i>NA v United Kingdom</i> (Application No 25904/07) (CJEU) <i>Elgafaji v Staatssecretaris van Justitie C-465/07</i></p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO55	Low level of indiscriminate violence	CNDA 18 octobre 2011 M. HOSSEINI n° 10003854 C+	France	French	CNDA (National Asylum Court)	18.10.11	Afghanistan	The Court found that at the date of its ruling indiscriminate violence in the province of Parwan reached only a moderate level so that the appellant had to demonstrate that he would be personally threatened in case of return.
EASO56	High level of indiscriminate violence	CNDA 18 octobre 2011 M. TAJIK n° 09005623 C	France	French	CNDA (National Asylum Court)	18.10.11	Afghanistan	The Court found that, at the date of its ruling, blind violence in the province of Kunduz reached such a high level that the appellant would be exposed to a serious threat against his life.
EASO57	Low level of indiscriminate violence	CNDA 3 octobre 2011 M. DURANI n° 10019669 C	France	French	CNDA (National Asylum Court)	3.10.11	Afghanistan	The Court found that, at the date of its ruling, indiscriminate violence in the province of Nangarhar reached only a moderate level so that the appellant had to demonstrate that he would be personally threatened in case of return. The appellant failed to do so and subsidiary protection was denied.
EASO58	Indiscriminate violence	AJDCoS, 8 September 2011, 201009178/1/V2	Netherlands	Dutch	Administrative Jurisdiction Division of the Council of State	8.9.11	Zimbabwe	The fact that riots took place in poorer neighbourhoods which resulted in sudden police charges to dispel the riots is insufficient for the application of Article 15(c) QD.
EASO59	Situation of trouble and unrest not amounting to indiscriminate violence	CNDA 1er septembre 2011 M. PETHURU n° 11003709 C	France	French	CNDA (National Asylum Court)	1.9.11	Sri Lanka	The Court found that, at the date of its ruling, the prevailing situation of tension and unrest in the Jaffna peninsula did not reach the level of indiscriminate violence within the meaning of Article L.712-1 c) CESEDA provisions. Therefore subsidiary protection on the '15c' ground could not be granted to the appellant.
EASO60	Conflict	High Administrative Court Hessen, 25 August 2011, 8 A 1657/10.A	Germany	German	High Administrative Court Hessen	25.8.11	Afghanistan	The applicant was eligible for subsidiary protection as an internal armed conflict was taking place in Logar .
EASO61	Assessment of risk under Article 15(c) QD provisions, balancing scale, personal elements not required beyond a certain threshold of indiscriminate violence, obligation to assess the level of indiscriminate violence	CE 24 Août 2011 M.Kumarasamy n° 341270 C	France	French	Council of State	24.8.11	Sri Lanka	When indiscriminate violence reaches such a level that a person sent back to the area of conflict is at risk because of his mere presence in this territory, an appellant does not have to prove that he is specifically targeted to meet the requirements of Article L.712-1 c) CESEDA. Thus, for denying a claim for subsidiary protection, it is not sufficient to discard the credibility of the alleged personal circumstances and the asylum judge has to verify that the level of violence does not entail by itself a real risk against life and security.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Court noted that because of his young age and lack of family links the appellant would be particularly exposed to the threats encompassed in Article L.712-1 c) CESEDA. Subsidiary protection was granted.</p>	
<p>Subsidiary protection was granted regardless of any personal reason.</p>	
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds. This assessment of the situation in the Nangarhar province has evolved very quickly: see EASO 31.</p>	(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07
<p>The Council of State referred to case C-465/07 of the Court of Justice EU of 17 February 2009 (<i>Elgafaji vs. Staatssecretaris van Justitie</i>) and held that Article 15(c) of the Qualification Directive is only applicable in extraordinary cases in which the degree of indiscriminate violence characterising the armed conflict reaches such a high level that substantial grounds are shown for believing that a civilian would, solely on account of presence, face a real risk of being subject to a serious threat.</p> <p>Travel advice of the Minister of Foreign Affairs concerning Zimbabwe dated 1 December 2009 described that in the poor neighbourhoods riots take place and sudden police charges may take place. However, it did not follow from this that the level of indiscriminate violence was so high that substantial grounds were shown for believing that a civilian would, solely on account of presence, face a real risk of being subject to a serious threat.</p>	(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds.</p>	
<p>The High Administrative Court upheld its position according to which the applicant was eligible for subsidiary protection under Article 15(c) of the Qualification Directive. At the time of its first decision (January 2010), the Court found that an internal armed conflict took place in the applicant's home region, the province of Logar, in the form of civil war-like clashes and guerrilla fighting. The situation had worsened to such an extent that the armed conflict reached a high level of indiscriminate violence which involved a high 'density of danger' for the civilian population. It could be established that virtually the whole population of the province of Logar was subject to 'acts of arbitrary, indiscriminate violence' by the parties to the conflict. The Court found that the applicant was facing an even higher risk due to his Tajik ethnicity, his Shiite religion, his previous membership of the youth organization of the PDPA, which had become known in the meantime, and due to the fact that his family (formerly) owned real estate in his hometown. These circumstances had to be taken into consideration in the existing context as they suggested that the applicant was not only affected more severely than others by the general indiscriminate violence, but since they exposed him additionally to the risk of target-oriented acts of violence. It was precisely such target-oriented assaults which could be expected to intensify in the province of Logar which, to a great extent, was dominated by insurgents.</p>	(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07 (Germany) Federal Administrative Court, 14 July 2009, 10 C 9.08 Federal Administrative Court, 14 July 2010, 10 B 7.10
<p>The asylum judge commits an error of law if he denies subsidiary protection on the sole basis of a negative assessment of personal circumstances without any reference to the level of indiscriminate violence possibly existing in the country of origin.</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO62	Assessment of facts and circumstances, country of origin information, inadmissible application, relevant documentation, subsequent application, subsidiary protection	II OSK 557/10	Poland	Polish	Supreme Administrative Court of Poland	25.7.11	Russia	The administrative authorities, when carrying out an assessment of whether a subsequent application for refugee status is inadmissible (based on the same grounds), should compare the factual basis for the administrative case on which a final decision has been made with the testimony of the foreigner provided in the subsequent application and should also examine whether the situation in the country of origin of the applicant and also the legal position have changed.
EASO63	Absence of indiscriminate violence	CNDA 22 juillet 2011 M. MIRZAIE n° 11002555 C	France	French	CNDA (National Asylum Court)	22.7.11	Afghanistan	The Court found that, at the date of its ruling, there was no indiscriminate violence in the province of Parwan. Therefore subsidiary protection on the «(15c)» ground could not be granted to the appellant.
EASO64	Level of violence and individual risk	ANA (Iraq) v Secretary of State for the Home Department [2011] CSOH 120	United Kingdom	English	Court of Session	8.7.11	Iraq	The Claimant sought judicial review of the Secretary of State's refusal to treat representations as a fresh claim for asylum or humanitarian protection. The Claimant arrived in the UK in 2010 and sought asylum or humanitarian protection on the basis that as a medical doctor, he was at risk of violence in Iraq. His application and subsequent appeals were refused and his rights of appeal were exhausted. Further representations were made on the basis that the findings in the country guidance case of <i>HM (Iraq) v Secretary of State for the Home Department</i> [2010] UKUT 331 (IAC) to the effect that persons such as medical doctors were at greater risk of violence than other civilians and were likely to be eligible for either refugee or humanitarian protection under Article 15 QD, were in accordance with the Secretary of State's own Iraq country of origin information report.
EASO65	Conflict	High National Court, 8 July 2011, 302/2010	Spain	Spanish	High National Court	8.7.11	Côte d'Ivoire	The applicant claimed asylum in November 2009 alleging a well-founded fear of persecution for reasons of race and religion. The application was refused by the Ministry of Interior on the grounds that the application did not amount to persecution in accordance with the 1951 Refugee Convention. On appeal, the High National Court re-examined the application and held that the conflict which had arisen in the Ivory Coast had to be taken into account and on that basis subsidiary protection should be granted.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Supreme Administrative Court of Poland found that, when an assessment is being made of whether a subsequent application for refugee status is based on the same grounds, the administrative authorities should not limit themselves only to a simple comparison between the facts set out in the subsequent application and the facts cited by the applicant in the previous applications. This is because the grounds on which basis a subsequent application has been drawn up should be set against all relevant facts established by the authorities in the previous proceedings and not just those contained in previous applications.</p> <p>The facts cited by the foreigner in his application for refugee status, for the purposes of the authority, are just a source of information about the circumstances of the case and serve to provide direction for the Court's investigations. The administrative authority is not bound by the legal or factual basis indicated by the foreigner in his application; it is obliged to investigate the facts in accordance with the principle of objective truth. Furthermore, the facts that form the basis for an application frequently change or are added to during the course of the proceedings. At the same time, the scope of information contained in the application by the foreigner is not identical to the factual findings established by the administrative authority during the course of the proceedings (as the findings of the authority are supposed to be broader in scope). One cannot assess whether two administrative cases are identical by comparing the two applications that initiated these proceedings. Rather, the content of the subsequent application must be compared with the totality of facts considered to form the factual basis for the administrative case on which a final decision was made.</p> <p>The factual basis of an application consists in information concerning the individual position of the foreigner and the situation in his country of origin. The administrative authorities should therefore, when performing a subsequent assessment, examine whether the situation has changed in the country of origin of the applicant from the position found in the course of the previous proceedings for refugee status.</p> <p>If the foreigner cites only personal circumstances in his application, this does not relieve authorities of this obligation, as the situation in the country of origin may be unknown to the applicant, who typically assesses his situation subjectively, unaware of what has happened since he left his country of origin.</p> <p>The assessment of how similar two or more cases are cannot be limited just to an analysis of the facts; the assessor also needs to examine whether the legal position in relation to the proceedings in question has changed. An application is found inadmissible if it is based on the same grounds. This concerns not just the facts but also the legal basis. If the law changes, an application made on the same factual grounds as before will not prevent a subsequent application from being examined on the merits.</p>	<p>CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie</p>
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds.</p>	
<p>The Secretary of State's decision was reduced. The question was whether there was any possibility, other than a fanciful possibility, that a new immigration judge might take a different view given the material. The Secretary of State had failed to explain in her decision why she was of the view that a new immigration judge would come to the view that <i>HM</i> and the country of origin information report were not matters which might lead to a decision favourable to the claimant. Moreover, she had placed weight on the finding of an immigration judge who had heard the claimant's appeal that his claim lacked credibility but did not explain why that was relevant in considering the view which could be taken by a new immigration judge in light of <i>HM</i>.</p>	<p>Ruddy v Chief Constable of Strathclyde [2011] CSIH 16 Colstoun Trust v AC Stoddart & Sons, Colstoun (1995) [2010] CSIH 20 HM (Article 15(c)) (Iraq) v Secretary of State for the Home Department [2010] UKUT 331 (IAC) GM (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 833</p>
<p>When assessing if the applicant qualified for subsidiary protection, the Court relied on a report issued by UNHCR (UNHCR Position on Returns to Côte d'Ivoire, 20 January 2011) stating that serious human rights violations were taking place due to the conflict in Ivory Coast. These violations had been inflicted by both Gbagbo's government and Ouattara's political opposition. Also, the recommendation by UNHCR in the above report to cease forced returns to Côte d'Ivoire had to be taken into account. The Court held that there was a real risk to the applicant if returned to his country of origin. Therefore, subsidiary protection could be granted since the applicant faced a real risk of suffering serious harm (Article 4, Law 12/2009).</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO66	Internal protection	AWB 08/39512	Netherlands	Dutch	District Court Almelo	23.6.11	Somalia	This was an appeal against the first instance decision to refuse the applicant's asylum claim on the basis of an internal protection alternative. The District Court held the respondent had interpreted the requirements of sub (c) of the Dutch policy concerning internal protection alternative too restrictively by only assessing whether the situation in southern and central Somalia fulfilled the requirements of Article 15(c) QD and amounted to a violation of Article 3 of the ECHR. The interpretation used by the respondent would entail that requirement sub (c) of the Dutch policy has no independent meaning, since the assessment regarding Article 15(c) QD and Article 3 of the ECHR is already made when examining whether requirement sub (a) is fulfilled.
EASO67	Existence of indiscriminate violence	CNDA 3 juin 2011 M. KHOGYANAI n° 09001675 C	France	French	CNDA (National Asylum Court)	03/06/2011	Afghanistan	The Court found that, at the date of its ruling, the province of Nangarhar was plagued by indiscriminate violence but did not specify the level of this violence.
EASO68	Level of violence and individual risk	MAS, Re Application for Judicial Review [2011] ScotCS CSOH_95	United Kingdom	English	Court of Session	2.6.11	Somalia	The claimant sought judicial review of the Secretary of State's refusal to treat further submissions as a fresh claim for asylum. He claimed to be a member of a Somali minority clan and thereby at risk of persecution if returned there. On an unsuccessful appeal, an immigration judge rejected his claim to be from a minority clan and had found that, on the authorities, returning someone from a minority clan to Somalia would not, of itself, lead to danger for that person unless there was anything further in the special circumstances of the case to justify it. The claimant made additional submissions, under reference to further authorities including <i>Elgafaji</i> , that having regard to armed conflict in Somalia, the demonstration of a serious and individual threat to him was no longer subject to the requirement that he would be specifically targeted by reason of factors peculiar to his personal circumstances.
EASO69	Internal protection	EA (Sunni/Shi'a mixed marriages) Iraq CG [2011] UKUT 00342	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	16.5.11	Iraq	In general there was not a real risk of persecution or other significant harm to parties to a Sunni/Shi'a marriage in Iraq. There may, however, have been enhanced risks, crossing the relevant risk thresholds, in rural and tribal areas, and in areas where though a Sunni man may marry a Shi'a woman without risk, the converse may not pertain. Even if an appellant was able to demonstrate risk in his/her home area, in general it was feasible for relocation to be effected, either to an area in a city such as Baghdad, where mixed Sunni and Shi'a families live together, or to the Kurdistan region.
EASO70	Level of violence and individual risk	Metropolitan Court, 22 April 2011, 17.K30. 864/2010/18	Hungary	Hungarian	Metropolitan Court	22.4.11	Afghanistan	The applicant could not substantiate the individual elements of his claim with respect to his well-founded fear of a blood feud; however, he was able to satisfy the criteria for subsidiary protection. As a result of the armed conflict that was ongoing in the respective province in his country of origin (Ghazni , Afghanistan), the high intensity of the indiscriminate violence was deemed to be sufficient to be a threatening factor to the applicant's life. As a result, the criteria of subsidiary protection were fulfilled.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The District Court ruled that the applicant did not fall under any of the categories of persons who, in principle, cannot rely on internal protection. Therefore, it had to be considered whether there is the possibility of internal protection in this individual case. According to Dutch policy, an internal protection alternative is available if:</p> <p>a) it concerns an area where there is no well-founded fear of persecution or a real risk of torture, inhuman or degrading treatment or punishment for the asylum seeker;</p> <p>b) the asylum seeker can enter that area safely;</p> <p>c) the asylum seeker can settle in the area and he/she can reasonably be expected to stay in that part of the country.</p>	
<p>The Court noted that because of his young age and the death of his parents, the applicant had to be considered a vulnerable claimant exposed to violence and forced enlistment in one of the conflicting armed forces. The applicant was exposed to the threats encompassed in Article L.712-1 c) CESEDA. Subsidiary protection was granted.</p>	
<p>The Secretary of State had erred in refusing to treat further submissions made on behalf of a foreign national as a fresh claim for asylum where she had lost sight of the test of anxious scrutiny and proceeded on the basis of her own opinion as to the merits of the case. Where, in general, judges should not adjudicate on the issue before the Secretary, the decision should be reduced and remitted to her for further consideration. The key issue was whether there was a sufficient level of indiscriminate violence in southern Somalia or on the route from Mogadishu airport as to satisfy the requirements of Article 15(c) of the Qualification Directive; whereas, in the main, the previous hearing dealt with the petitioner's claim to be from a minority clan.</p>	<p>KD (Nepal) v Secretary of State for the Home Department [2011] CSIH 20 R (on the application of MN (Tanzania)) v Secretary of State for the Home Department [2011] EWCA Civ 193 Colstoun Trust v AC Stoddart & Sons, Colstoun (1995) [2010] CSIH 20 MA (Somalia) v Secretary of State for the Home Department [2010] EWCA Civ 426 R (on the application of YH (Iraq)) v Secretary of State for the Home Department [2010] EWCA Civ 116 Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 1 WLR 2100 QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 WM (Democratic Republic of Congo) v Secretary of State for the Home Department [2006] EWCA Civ 1495</p>
<p>Given the general lack of statistics, any risk on account of being a party to a mixed marriage on return in an Article 15(c) of the Qualification Directive sense had to be seen in the context of the general violence and general insecurity. The evidence showed an improvement in the situation for couples to mixed marriages which mirrored an overall improvement in the security situation in Iraq since 2006/2007. That was subject to the caveat set out in a letter from the British Embassy of 9 May 2011, that there may have been enhanced risks in rural and tribal areas where mixed marriages were less common. This had to be established by proof.</p>	<p>HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC)</p>
<p>Regarding the applicant's claim for subsidiary protection, the Court assessed the risk of serious harm and stated that 'during the armed conflict in the Ghazni province, the indiscriminate violence has spread to such an extent as to threaten the applicant's life or freedom.' According to available country of origin information, the court pointed out that the conditions in the country of origin of the applicant could qualify as serious harm that would threaten the applicant's life or freedom.</p> <p>The Court examined the possibility of internal protection alternatives; however, since the applicant did not have family links in other parts of Afghanistan, it would not be reasonable for him to return back.</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO71	Conflict and individual risk	High Administrative Court of Niedersachsen, 13 April 2011, 13 LB 66/07	Germany	German	High Administrative Court of Niedersachsen	13.4.11	Iraq	The question of whether the situation in Iraq was an internal armed conflict (nationwide or regionally) according to Section 60(7)(2) Residence Act/Article 15(c) QD was left open. Even if one assumes that such a conflict takes place, subsidiary protection is only to be granted if the applicant is exposed to a serious and individual threat to life or physical integrity 'in the course of' such a conflict. That could not be established regarding the applicant in the case.
EASO72	Conflict and level of violence	CNDA, 31 March 2011, Mr. A., No 100013192	France	French	CNDA (National Asylum Court)	31.3.11	Somalia	The situation which prevailed at the time of the evaluation in some geographical areas of Somalia, in particular in and around Mogadishu, must be seen as a situation of generalised violence resulting from a situation of internal armed conflict, in the meaning of Article L.712-1 c) CESEDA [which transposed Article 15(c) QD].
EASO73	Indiscriminate violence and serious risk	A v Immigration Service, 28.3.2011/684	Finland	Finnish	Supreme Administrative Court	28.3.11	Afghanistan	Appeal against refusal to grant international protection on the ground that the security situation in the Ghazni province did not give rise to a need for protection.
EASO74	Conflict and country of origin information	M.A.A. v Minister for Justice, Equality, and Law Reform, High Court, 24 March 2011	Ireland	English	High Court	24.3.11	Iraq	Documentation that assesses the security situation in a volatile area which is three years old is of limited value. A decision maker who relies on such information could be subject to criticism and challenge.
EASO75	Conflict	CNDA, 11 March 2010, Mr. C., n° 613430/07016562	France	French	CNDA (National Asylum Court)	11.3.11	Iraq	The situation which prevailed at the time of the evaluation in the region of Mosul, as well as in the whole territory of Iraq, could no longer be considered as a situation of armed conflict, within the meaning of Article L.712-1 c) CESEDA [which transposed Article 15(c) QD].

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Court held that it could be left open whether the situation in Iraq justified the assumption that an internal armed conflict was taking place (either nationwide or regionally). Even if one assumed that such a conflict was taking place, deportation would only be prohibited if the applicant was exposed to a serious and individual threat to life and limb 'in situations of' (i.e., 'in the course of') the conflict. Such a threat cannot be established regarding the applicant. According to the decision by the Federal Administrative Court of 14 July 2009, 10 C 9.08 (asyl.net, M16130) an 'individual accumulation of a risk', which is essential for granting subsidiary protection, may on the one hand occur if individual circumstances lead to an enhancement of the risk for the person concerned. On the other hand, it may also, irrespective of such circumstances, arise in extraordinary situations which are characterised by such a 'density of danger' that practically any civilian would be exposed to a serious individual threat simply by being present in the relevant territory.</p> <p>Regarding the applicant, who was born in Germany, there were no individual risks which could enhance the general risk in case of return. Though she was born in Germany and therefore was influenced by a 'western lifestyle', she shared this characteristic with many other Kurds who were born in western countries or with those Kurds who had been living there for a long time. Without further 'risk-enhancing' circumstances, an 'individualisation of a real risk' could not be derived from that fact. Furthermore, it could be assumed that the applicant, being a child, would easily be able to adapt to the cultural realities of her home region.</p> <p>Furthermore, the necessary individualisation cannot be deduced from an exceptional 'density of danger' which the applicant may be exposed to and against which she may not find internal protection in other parts of Iraq. A degree of danger which would expose virtually any civilian to a serious and individual threat solely by being present in the relevant territory could not be established for the province of Dohuk, where the applicant's parents came from. According to the country of origin information, the number of attacks in Dohuk was rather low in comparison to other regions and the security situation was considered to be good.</p>	<p>(Germany) Administrative Court Göttingen, 18 January 2006, 2 A 506/05 Federal Administrative Court, 14 July 2009, 10 C 9.08</p>
<p>Regarding subsidiary protection, CNDA recalled that the well-founded nature of the protection claim of the applicant has to be assessed in light of the situation which prevails in Somalia. The Court stated in particular that this country experienced a new and significant deterioration of the political and security situation since the beginning of 2009; that this deterioration resulted from violent fighting against the forces of the Federal Transitional Government and several clans and Islamic militia; that this fighting was currently characterised, in some geographical areas, in particular in and around Mogadishu, by a climate of generalised violence including the perpetration of extortion, slaughters, murders and mutilations targeting civilians in these areas; that consequently this situation must be seen as a situation of generalised violence resulting from a situation of internal armed conflict, in the meaning of Article L.712-1 c) CESEDA [which transposes Article 15(c) of the Qualification Directive].</p> <p>The Court added that this situation of generalised violence, due to its intensity in the region of origin of the applicant, who is moreover made vulnerable by his isolation because of the disappearance of his family, is sufficient to allow the court to consider that this individual currently faces a serious, direct and individual threat against his life or his person, without being able to avail himself of any protection.</p> <p>The applicant therefore has a well-founded claim for subsidiary protection under Article L.712-1 c) CESEDA [which transposes Article 15(c) of the Qualification Directive].</p>	
<p>The Supreme Administrative Court accepted that the security situation in the Ghazni province did not give rise to a need for protection. However, the Court also considered the safety of the travel route for those returning to Jaghori: 'The return to an area judged to be relatively safe also necessitates that the individual has a reasonable possibility of travelling to and entering that area safely. In assessing the possibility for a safe return, regard must be had to whether possible restlessness in the neighbouring regions would prevent or substantially impede the returnees' possibilities to access the basic needs for a tolerable life. Furthermore, the return cannot be considered safe, if the area would run an imminent risk of becoming isolated.'</p> <p>Having regard to current and balanced country of origin information (COI) the Supreme Administrative Court concluded that the road from Kabul to Jaghori could not be considered safe. Nor could the detour or the flight connection from Kabul to Jaghori, as suggested by the Immigration Service, be considered feasible for an individual asylum seeker.</p> <p>Finally, the Supreme Administrative Court found that internal relocation was not a practical or reasonable alternative taking into account that A. had left his Hazara village in Jaghori as a teenager and thereafter lived outside Afghanistan for over ten years.</p>	
<p>Obiter: Documentation that assesses the security situation in a volatile area which is three years old is of limited value. A decision maker who relies on such information could be subject to criticism and challenge. Information relating to societal attitudes and tribal customs may evolve more slowly and therefore be more reliable. There is also a burden on all parties to submit the most up-to-date information available.</p> <p>The representative of the Minister for Justice's claim that the security situation in Iraq was 'not yet ideal' was a markedly optimistic choice of language.</p> <p>The conclusions of the decision of the UK's Immigration and Asylum Chamber in <i>HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC)</i> were consistent with the findings of the Minister's representative.</p>	<p>(UK) <i>HM and Others (Article 15(c)) Iraq v. Secretary of State for the Home Department</i>, CG [2010] UKUT 331 (IAC) (Ireland) <i>D.C. v The Director of Public Prosecutions</i> [2005] 4 IR 281 <i>F.N. v Minister for Justice, Equality and Law Reform</i> [2008] IEHC 107 <i>G. v Director of Public Prosecutions</i> [1994] 1 IR 374</p>
<p>The CNDA found that 'if the context of diffuse insecurity which prevails in the region of Mosul and in the Governorate of Ninive translates in particular into attacks against minorities, including Christians, this situation of unrest does not amount to a situation of internal armed conflict'. The CNDA considered that 'in particular, the acts committed by radical Kurdish groups and extremist Sunnite groups are real but they do not reach an organisational degree or objectives which correspond to this definition'.</p> <p>The CNDA therefore concluded that the situation which prevailed in the region of Mosul, as well as in the whole Iraqi territory, could no longer be considered as a situation of armed conflict, within the meaning of Article L.712-1 c) CESEDA [which transposes Article 15(c) of the Qualification Directive].</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO76	Armed conflict, exclusion from protection, internal armed conflict, subsidiary protection	UM 10061-09	Sweden	Swedish	Migration Court of Appeal	24.2.11	Somalia	The Migration Court of Appeal held that internal armed conflict prevailed in all parts of southern and mid Somalia.
EASO77	Absence of indiscriminate violence	CNDA 23 février 2011 M. SAID ALI n° 08015789 C	France	French	CNDA (National Asylum Court)	23.2.11	Irak	The Court found that, at the date of its ruling, there was no indiscriminate violence in autonomous region of Kurdistan. On the contrary this area may be regarded as a safe place of relocation for those fleeing violence in the southern part of Iraq. Therefore subsidiary protection on the '15(c)' ground could not be granted to the appellant.
EASO78	Existence of indiscriminate violence, internal flight alternative (IFA)	CNDA 8 février 2011 M. AMIN n° 09020508 C	France	French	CNDA (National Asylum Court)	8.2.11	Afghanistan	The Court found that, at the date of its ruling, the province of Helmand was plagued by indiscriminate violence and that the appellant may be considered as exposed to the threats encompassed in Article L.712-1 c) CESEDA. CNDA nevertheless rejected his claim on the ground of internal flight alternative.
EASO79	Individual risk	High Administrative Court Bayern, 3 February 2011, 13a B 10.30394	Germany	German	High Administrative Court Bayern	3.2.11	Afghanistan	The Court held that the applicant, being a young, single man and fit for work, was at no substantial individual risk, neither in his home province Parwan nor in Kabul. Therefore, it could remain undecided if the conflict in Afghanistan constituted an internal armed conflict.
EASO80	Level of violence and individual risk	KHO:2010:84, Supreme Administrative Court, 30 Dec 2010	Finland	Finnish	Supreme Administrative Court	30.12.10	Iraq	The applicant was granted a residence permit on the grounds of subsidiary protection. Based on up-to-date accounts of the security situation in central Iraq he was found to be at risk of suffering serious harm from indiscriminate violence in Baghdad, his region of origin, in accordance with Section 88(1)(3) of the Aliens' Act. The ruling of the CJEU in <i>Elgafaji v Staatssecretaris van Justitie</i> (C-465/07) was taken into consideration in the case. At issue in the case was whether the security situation in central Iraq, and especially in Baghdad, met the requirements of subsidiary protection in this specific case.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Regarding internal armed conflict, the Court stated that it had established the requirements for an internal armed conflict in its previous case law, and that such had been found to prevail in Mogadishu (MIG 2009:27). The Court then stated that the security situation at this point had worsened so that the internal armed conflict now had extended to all of Somalia, except Somaliland and Puntland. The Court based its conclusion on the extent of the conflict, its character, geography and the consequences for civilians as well as the lack of further information on the events in southern and mid part of Somalia. The Migration Court of Appeal concluded that as the applicant is a resident of Mogadishu and has no previous connection to Somaliland or Puntland (and therefore cannot rely on internal protection in those regions) he must be found eligible for international protection and for subsidiary protection status in Sweden. His criminal record had no bearing on this decision as the Aliens Act, Chapter 4 Section 2 c (transposing Article 17.1 of the Qualification Directive) stated that exclusion from protection could apply only where there were particularly strong reasons to believe that the applicant has been guilty of a gross criminal offence. This requirement was not fulfilled in this case.</p>	Sweden - MIG 2007:29
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds. The finding on applicability of Article L.712-1 c) CESEDA was an implicit one.</p>	
<p>IFA is very seldom used in French jurisprudence. The rationale here lies predominantly on the lack of links between the appellant and the Helmand which he left twenty years before to live in Iran, Turkey and Pakistan. Having no compelling reasons to return to this province, he can be expected to relocate in any area where indiscriminate violence does not prevail. The assumption that IFA is possible in a war-torn country is a matter of dissenting opinions within the Court.</p>	
<p>The High Administrative Court found that the applicant was not eligible for subsidiary protection but the issue of whether there is an internal armed conflict according to Article 15(c) Qualification Directive in Afghanistan or in parts of Afghanistan can be left open, since the applicant would not be exposed to a serious and individual threat to life or physical integrity in case of return.</p> <p>According to the case law of the Federal Administrative Court, the assumption of such an individual risk requires a sufficient 'density of danger'. In order to establish if such a 'density of danger' exists, it is necessary to determine the relation between the number of inhabitants with the number of victims in the relevant area. In addition, it is necessary to make an evaluating overview of the number of victims and the severity of casualties (deaths and injuries) among the civilian population.</p> <p>It is true that the security situation in Afghanistan has deteriorated nationwide in 2010. However, it cannot be established that the security situation in the provinces of Parwan and Kabul deteriorated in 2010 or will deteriorate in 2011 to such an extent that practically any civilian would be exposed to a serious and individual threat solely by being present in the relevant territory.</p> <p>Furthermore, one cannot assume that there are individual 'risk-enhancing' circumstances which would lead to a concentration of risks for the applicant. Such circumstances do not arise from the fact that the applicant belongs to the Hazara minority. According to the information available to the Court, the overall situation of the Hazara, who have traditionally been discriminated against, has improved, even if traditional tensions persist and reappear from time to time. The Hazara have always lived in the provinces of Parwar and Kabul and, according to information from UNHCR, many Hazara returned to this region. Neither does the applicant's membership of the religious group of Shiites constitute an individual 'risk-enhancing' circumstance since 15 per cent of the Afghan population are Shiites.</p>	(Germany) Federal Administrative Court, 14 July 2009, 10 C 9.08 Federal Administrative Court, 27 April 2010, 10 C 4.09
<p>The Court stated that an assessment of international protection includes assessments of both law and fact. The previous experience of the applicant in his country of origin should be taken into account, as well as current information concerning the security situation.</p> <p>Regarding subsidiary protection, the Supreme Administrative Court (SAC) stated that both collective and individual factors must be reviewed. The SAC applied the reasoning of the CJEU in <i>Elgafaji v Staatssecretaris van Justitie</i> (C-465/07), stating that the more the applicant can prove a serious and individual threat, the less indiscriminate violence is required.</p> <p>According to the Government Bill on the Aliens' Act, international or internal armed conflict does not only cover armed conflict which is defined by the Geneva Conventions 1949 and its protocols of 1977, but also other forms of armed violence and disturbances. Concerning humanitarian protection the Government Bill states that the risk of harm can also include that from the general situation in the country where anyone could be at risk, as opposed to individual targeting.</p> <p>The SAC found that the applicant's family members had personal and severe experiences of arbitrary violence and that the applicant himself has been threatened. These experiences did not prove that the risk of being a target of arbitrary violence concerned the applicant because of his individual features. These experiences must, however, be taken into consideration when evaluating the security situation, and especially how the violence, undeniably occurring in Baghdad, may be targeted at anyone indiscriminately.</p> <p>The SAC also held there was no internal flight alternative in Iraq (based on UNHCR Eligibility Guidelines).</p> <p>The SAC held that although recent developments had shown some improvements in the security situation there were no grounds to overrule the decision of the Administrative Court.</p>	(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07 (UK) <i>HM and Others</i> (Article 15(c)) <i>Iraq v. Secretary of State for the Home Department</i> , CG [2010] UKUT 331 (IAC) (Sweden) MIG 2009:27 (Germany) Federal Administrative Court, 14 July 2009, 10 C 9.08

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO81	Level of violence and individual risk	Metropolitan Court, 28 December 2010, A.M. v. Office of Immigration and Nationality 15.K.34.141/2009/12	Hungary	Hungarian	Metropolitan Court	28.12.10	Afghanistan	The Metropolitan Court emphasised that country of origin information can verify an exceptional situation in which the existence of persecution can be considered to be proven. There is no need to prove the personal circumstances of the applicant, not even the likelihood that he would personally face persecution. In such cases, there is a real risk of suffering serious harm, and the requirements to establish subsidiary protection have been met.
EASO82	Real risk	OA, Re Judicial Review [2010] ScotCS CSOH_169	United Kingdom	English	Court of Session	21.12.10	Somalia	The claimant sought judicial review of the Secretary of State's refusal to treat further submissions as a fresh claim for asylum. He relied on new case law, namely the country guidance case of <i>AM (Armed Conflict: Risk Categories)</i> [2008] UKAIT 91, which was not available at the original hearing, as providing evidence that it was not safe for him to return to Somalia. The claimant submitted that, <i>inter alia</i> , the Secretary of State had failed to take into account that he had no family in Somalia, would be out of his home area, did not come from an influential clan, lacked experience of living in Somalia, and did not speak Somali, which would create a differential impact on him given that central and southern Somalia were in armed conflict.
EASO83	Consideration of Article 15(c) QD	R (on the application of Nasire) v Secretary of State for the Home Department [2010] EWHC 3359 (Admin)	United Kingdom	English	Administrative Court	21.12.10	Afghanistan	The claimant applied for judicial review of the Secretary of State's rejection of his further representations made in relation to his asylum claim. He claimed to be a former member of the Taliban. He had entered the UK illegally and had unsuccessfully appealed against a refusal to grant asylum. The Secretary of State rejected further representations made on the basis of an escalation of the conflict in Afghanistan as having no realistic prospect of success. One of the main issues was the legal effect of representations invoking Article 15(c) QD.
EASO84	Existence of indiscriminate violence	CNDA 20 décembre 2010 M. HAIDARI n° 10016190 C+	France	French	CNDA (National Asylum Court)	20.12.10	Afghanistan	The Court found that, at the date of its ruling, the province of Baghlan was plagued by indiscriminate violence but did not specify the level of this violence.
EASO85	Consideration of Article 15(c) QD	Metropolitan Court, 17 December 2010, H.M.A. v. Office of Immigration and Nationality 6.K.30.022/2010/15	Hungary	Hungarian	Metropolitan Court	17.12.10	Iraq	The Court accepted the argument that by granting a lower protection status (tolerated status), even if the applicant qualifies for subsidiary protection, the asylum authority violates Article 15(b) and (c) QD (Art 61(b) and (c) of the Asylum Act).
EASO86	Conflict	CNDA, 17 December 2010, Mr. T., n° 10006384	France	French	CNDA (National Asylum Court)	17.12.10	Sudan	The Court found that the region of El Fasher, in Darfur (Sudan), was plagued by a generalised armed conflict.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The country of origin information confirmed that in Ghazni province, Afghanistan, indiscriminate violence reached the threshold to be considered an armed conflict. Attacks in Ghazni were mostly committed by explosive devices and suicide bombers. These methods of fighting qualify as acts of indiscriminate violence per se. The credibility of the applicant was not a precondition to be granted subsidiary protection.</p>	<p>(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 Case No 24.K.33.913/2008 of the Metropolitan Court Case No 17.K.33.301/2008/15 of the Metropolitan Court</p>
<p>A petition for judicial review of a decision of the Secretary of State refusing to treat further submissions from a Somali national as a fresh claim for asylum should be refused where it could not be concluded that he would be at risk on his return to Somalia.</p>	<p>FO (Nigeria) v Secretary of State for the Home Department [2010] CSH 16 IM (Libya) v Secretary of State for the Home Department [2010] CSOH 103 R (on the application of YH (Iraq)) v Secretary of State for the Home Department [2010] EWCA Civ 116 WM (Democratic Republic of Congo) v Secretary of State for the Home Department [2006] EWCA Civ 1495</p>
<p>The rejection of further representations by a failed asylum seeker did not constitute an immigration decision under sections 82 and 92 of the Nationality, Immigration and Asylum Act 2002 such as to provide an in-country right of appeal. The representations did not amount to a fresh claim within r.53 of the Immigration Rules and the decisions were not inadequately reasoned or irrational.</p>	<p>FA (Iraq) v Secretary of State for the Home Department [2010] EWCA Civ 696 Omar v Secretary of State for the Home Department [2010] EWHC 2792 (Admin) R (on the application of YH (Iraq)) v Secretary of State for the Home Department [2010] EWCA Civ 116 R (on the application of ZA (Nigeria)) v Secretary of State for the Home Department [2010] EWCA Civ 926 R (on the application of ZA (Nigeria)) v Secretary of State for the Home Department [2010] EWHC 718 (Admin) S (A Child), Re [2010] EWCA Civ 1550 Secretary of State for the Home Department v Pankina [2010] EWCA Civ 719 GS (Afghanistan) v Secretary of State for the Home Department [2009] UKAIT 44 Odelola v Secretary of State for the Home Department [2009] UKHL 25 QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 R (on the application of PE (Cameroon)) v Secretary of State for the Home Department [2009] UKSC 7 R (on the application of TK) v Secretary of State for the Home Department [2009] EWCA Civ 1550 ZT (Kosovo) v Secretary of State for the Home Department [2009] UKHL 6 R (on the application of Lutete) v Secretary of State for the Home Department [2007] EWHC 2331 (Admin)</p>
<p>The Court noted that because of his young age the appellant would be exposed to violence and forced enlistment in one of the conflicting armed forces. The appellant was therefore exposed to the threats encompassed in Article L.712-1 c) CESEDA. Subsidiary protection was granted.</p>	
<p>The Metropolitan Court found that the Office of Immigration and Nationality failed to specify on which basis the tolerated status was granted. The Court established that given the fact that the same conditions apply for granting subsidiary protection as for the protection under the principle of non-refoulement, the higher protection status should have been granted to the applicant unless exclusion arose.</p>	<p>(Hungary) Metropolitan Court - 17. K. 30. 307/2009/8 Metropolitan Court - 24. K. 33.913/2008 Metropolitan Court - 17. K. 33.301/2008/15</p>
<p>The Court considered that the applicant established that he would face one of the serious threats mentioned in Article L.712-1 c) CESEDA [which transposes Article 15(c) of the Qualification Directive]. It stated in particular that the town of Tawila was again the scene of fighting in the beginning of November 2010; that this region was plagued by a generalised armed conflict; that due to his young age Mr. T. faced a serious, direct and individual threat in case of return to Tawila. He therefore had a well-founded claim for subsidiary protection. Note: Under French legislation, the threat should not only be 'serious and individual' (as in the Qualification Directive) but also 'direct'. Also, French legislation refers to 'generalized' violence rather than 'indiscriminate' violence.</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO87	Conflict	Council of State, 15 December 2010, Ofpra vs. Miss A., n° 328420	France	French	Council of State	15.12.10	Democratic Republic of Congo (DRC)	Before granting subsidiary protection under Article L.712-1 c) CESEDA [which corresponds to Article 15(c) QD] to an applicant originating from the Congo, the Court had to inquire whether the situation of general insecurity which prevails in this country results from a situation of internal or international armed conflict.
EASO88	Serious risk and level of violence	AO (Iraq) v Secretary of State for the Home Department [2010] EWCA Civ 1637	United Kingdom	English	Court of Appeal	30.11.10	Iraq	The claimant challenged a refusal of permission to apply for judicial review out of time with respect to his contention that he was unlawfully detained by the Secretary of State pending deportation. The Secretary of State had adopted a policy sometime in 1998 that he would not deport nationals who had originated from countries which were active war zones. The claimant contended that Iraq was at the time of his initial detention an active war zone, and that had the policy been properly applied, he could never have been lawfully detained. The Secretary of State's conjecture when repealing the policy, was that the policy had become otiose because its purpose was achieved by a combination of the Convention rights and Article 15(c) QD.
EASO89	Indiscriminate violence	AM (Evidence – route of return) Somalia [2011] UKUT 54 (IAC)	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	18.11.10	Somalia	The general evidence before the Upper Tribunal failed to establish that generalised or indiscriminate violence was at such a high level along the route from Mogadishu to Afgoye that the appellant would face a real risk to his life or person entitling him to a grant of humanitarian protection.
EASO90	Level of violence vs individualisation of risk	Omar v Secretary of State for the Home Department [2010] EWHC 2792 (Admin)	United Kingdom	English	Administrative Court	5.11.10	Iraq	The claimant applied for judicial review of the Secretary of State's decision refusing to treat his submissions as a fresh claim. He was an ethnic Kurd from Fallujah. He was convicted of criminal offences and was served with a notice of intention to make a deportation order. His appeal was dismissed. Approximately four months later the European Court of Justice (ECJ) gave its decision in <i>Elgafaji v Staatssecretaris van Justitie (C-465/07)</i> in which it considered subsidiary or humanitarian protection under the Qualification Directive for non-refugees who would face a real risk of suffering serious harm if returned to their country of origin and 'serious harm' under Article 15(c) concerning indiscriminate violence in conflict situations. The claimant's further submissions seeking humanitarian protection under Article 15(c) and <i>Elgafaji</i> were rejected. In finding that those submissions did not amount to a fresh claim, the Secretary of State said that in the absence of a heightened risk specific to an individual, an ordinary Iraqi civilian would generally not be able to show that he qualified for such protection.
EASO91	Armed conflict	CNDA 2 novembre 2010 M. SOUVIYATHAS n° 08008523 R	France	French	CNDA (National Asylum Court)	2.11.10	Sri Lanka	The Court found that there was no more armed conflict in Sri Lanka since LTTE's final defeat in June 2009. Hence Article L.712-1 c) CESEDA provisions were no more applicable in the context of Sri Lanka.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Council of State recalled the provision of the French legislation relating to subsidiary protection, in particular in a situation of general insecurity (Article L.712-1 c) CESEDA). It recalled that in granting subsidiary protection to the applicant under this provision, the CNDA considered that the applicant faced in her country of origin, one of the serious threats provided for under this article.</p> <p>The Council of State found that by refraining from inquiring whether the situation of general insecurity which prevailed at that time in the Congo resulted from a situation of internal or international armed conflict, the CNDA made a legal error and did not make a sufficiently reasoned decision.</p>	
<p>To say that the policy was not in force following the implementation of Article 15(c) of the Qualification Directive was inconsistent with the decision in <i>Secretary of State for the Home Department v HH (Iraq)</i> [2009] EWCA Civ 727, where it was held that a failure to have regard to the policy could render the initial decision unlawful. The Court rejected firstly, the Claimant's contention that the policy would apply even where a lower level of risk was apparent than required to attract the humanitarian protection conferred by Article 15(c) and secondly, his submission that the purpose behind the policy was the need to safeguard escorts who were taking persons back to the war zones. The Claimant also submitted that, as Article 15(c) did not apply to persons who had committed serious offences, the policy might fill a gap. The Court of Appeal could not properly determine that submission without evidence as to how the policy was understood by those implementing it at the material time. The judge was right to refuse to permit the application for judicial review to go ahead, and accordingly the appeal was dismissed.</p>	<p>QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 Secretary of State for the Home Department v HH (Iraq) [2009] EWCA Civ 727 R (on the application of G) v Immigration Appeal Tribunal [2004] EWCA Civ 1731 R (on the application of I) v Secretary of State for the Home Department [2002] EWCA Civ 888 R v Chief Constable of Merseyside Ex p. Calveley [1986] QB 424; [1986] 2 WLR 144; [1986] 1 All ER 257 R v Secretary of State for the Home Department Ex p. Swati [1986] 1 WLR 477; [1986] 1 All ER 717; [1986] Imm AR 88 R v Governor of Durham Prison Ex p. Singh [1984] 1 WLR 704; [1984] 1 All ER 983; [1983] Imm AR 198</p>
<p>It was accepted that the situation in Somalia was volatile but the issue was whether the appellant in his particular circumstances was at real risk of serious harm when returning from Mogadishu to Afgoye so that he was entitled to humanitarian or Article 3 protection. In the light of the Tribunal's findings of fact and the appellant's own evidence that he had been able to make this journey on two occasions without harm, when considered against the background of the travel actually taking place in the Afgoye corridor, the Tribunal was not satisfied that it had been shown that the generalised or indiscriminate violence had reached such a high level that, solely on account of his presence in Somalia, travelling from Mogadishu to Afgoye, would face a real risk threatening his life or person. There was no particular feature in the appellant's profile or background which put him at a risk above that faced by other residents or returnees.</p>	<p>HH (Somalia) v Secretary of State for the Home Department [2010] EWCA Civ 426 HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC) MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 AM & AM (Armed conflict: Risk Categories) Somalia CG [2008] UKAIT 00091</p>
<p>A Claimant from Iraq who was not a refugee, and was not protected by the ECHR might have considerable difficulties in demonstrating that he was entitled to protection under Article 15(c) of the Qualification Directive, <i>Elgafaji</i>, <i>QD (Iraq) v Secretary of State for the Home Department</i> [2009] EWCA Civ 620 and <i>HM</i> [2010] UKUT 331 (IAC) considered. However, those cases did not indicate that the question was to be decided without proper and individual consideration of the case. To achieve any measure of ordinary or secure life the Claimant might, on returning to Iraq, need to live in relatively confined areas, where he might find others of similar backgrounds. The fact that he could do so, and thereby reduce the risk of any targeted attack, deprived him of the possibility of protection under the Refugee Convention or the ECHR. It might therefore be necessary to see what was the risk of harm from indiscriminate violence, not in Iraq, or Fallujah, as a whole, but in the area where he would be living. It was not sufficient to treat Article 15(c) as raising questions only in relation to Iraq as a whole or to civilians in Iraq, without distinction.</p>	<p>FA (Iraq) v Secretary of State for the Home Department [2010] EWCA Civ 696 R (on the application of ZA (Nigeria)) v Secretary of State for the Home Department [2010] EWCA Civ 926 Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 1 WLR 2100 QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620</p>
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds. The Court noted that, at the date of its ruling, the situation described in ECHR NA c. UK 17 July 2008 had notably evolved and that the ECJ decision in <i>El Gafaji</i> aims only at providing principles in matters of conflict-related risk assessment.</p>	<p>(ECtHR) NA v United Kingdom (Application No 25904/07) (CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO92	Indiscriminate violence	High Administrative Court North Rhine-Westphalia, 29 Oct 2010, 9 A 3642/06.A	Germany	German	High Administrative Court North Rhine-Westphalia	29.10.10	Iraq	The Court found that even if it is assumed that an internal armed conflict is taking place, a serious individual risk can only be established if the degree of indiscriminate violence which is characteristic of the conflict has reached such a high level that any civilian is at risk of a serious individual threat simply by his or her presence in the region. The suicide attacks and bombings typical of Iraq and also of the hometown of the applicants could be classified as acts of indiscriminate violence. However, a density of danger as it is necessary for the assumption of a serious and individual risk could not be established. Nor did the applicants possessed individual characteristics which resulted in an increased risk for them when compared to other members of the civilian population.
EASO93	Real risk, minors	HK and others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	21.10.10	Afghanistan	The Court found that children were not disproportionately affected by the problems and conflict being experienced in Afghanistan. Roadside blasts, air-strikes, crossfire, suicide attacks and other war-related incidents did not impact more upon children than upon adult civilians. While forcible recruitment by the Taliban could not be discounted as a risk, particularly in areas of high militant activity or militant control, evidence was required to show that it is a real risk for the particular child concerned and not a mere possibility.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The 'facilitated standard of proof' of Article 4(4) of the Qualification Directive cannot be applied in the present case. Even if it is assumed that an incident during which the applicants were threatened at gunpoint in December 2000, took place as reported by the applicants, there is no internal connection between this threat of past persecution and a possible future threat of serious harm. The overall situation had seriously changed following the downfall of Saddam Hussein's regime. In any case, there was no connection between the reported past persecution and the possible threat in a situation of internal armed conflict according to Section 60(7) Sentence 2 Residence Act (Article 15(c) Qualification Directive). As the facilitated standard of proof did not apply, the risk of serious harm had to be measured against the common standard of proof. Within the common standard of proof the applicants did not face a considerable probability of harm within the meaning of Section 60(7) of the Sentence 2 Residence Act (Article 15(c) of the Qualification Directive). In Iraq a multitude of civilians were affected by risks which emanate from the strained security situation. Accordingly, this risk was a general one which affected the whole of the population in Iraq, with the exception of the Kurdish Autonomous Region. However, for subsidiary protection (under Article 15(c) of the Qualification Directive) to be granted, the requirement of a serious and individual threat had to be met. This was only the case if general risks cumulate in such a manner that all inhabitants of a region are seriously and personally affected, or if someone is particularly affected because of individual circumstances increasing the risk. Such individual, risk-enhancing circumstances can also result from someone's membership to a group. Nevertheless, the density of danger ('Gefahrendichte') had to be of a kind that any returning Iraqi citizen seriously had to fear becoming a victim of a targeted or random terrorist attack or of combat activities.</p> <p>Against this background the suicide attacks and bombings typical of Iraq and also of the hometown of the applicants could be classified as acts of indiscriminate violence. However, a density of danger as it is necessary for the assumption of a serious and individual risk could not be established. Nor did the applicants possess individual circumstances which resulted in an increased risk for them when compared to other members of the civilian population.</p> <p>Indeed, it had to be concluded from the Foreign Office's country report of 11 April 2010 and from other sources that the security situation in Iraq is still disastrous. The situation in Tamim province with its capital, Kirkuk, is particularly precarious. Nevertheless, it could not be assumed that the density of danger in Kirkuk is of a kind which leads to serious and individual risk in practice for any civilian simply because of his or her presence in the region. This could be shown by comparing the scale of attacks with the overall number of people affected by these attacks. According to the data compiled by the British NGO Iraq Body Count, 99 attacks took place in Tamim province in 2009, in which 288 civilians were killed. Assuming that the population of Tamim province stands at 900 000, this means that 31.9 people were killed per 100 000 inhabitants. This meant that the statistical probability of being killed in an attack in Tamim is 1 in 3 100. Tamim therefore is the most dangerous province in Iraq. In addition, it had to be taken into account that a considerable number of civilians were seriously injured in attacks. It could be assumed that for every person killed in an attack, about five others were injured. All in all, it could be concluded that the statistical probability of suffering harm to life and limb in the course of combat operations in Tamim province was at 1 in 520 in the year 2009.</p> <p>So even if one presumes that an internal armed conflict is taking place in Tamim province, it could not be assumed that the indiscriminate violence which is characteristic of this conflict had reached such a high level that any person was at risk of a serious and individual threat simply by his or her presence in the region. Furthermore, being of Kurdish ethnicity, the applicants would not belong to an ethnic minority in Tamim province upon return, nor did they belong to another group with risk-enhancing characteristics.</p>	<p>(Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07 Federal Administrative Court, 21 April 2009, 10 C 11.08 High Administrative Court Nordrhein-Westfalen, 21 March 2007, 20 A 5164/04.A</p>
<p>In considering the matter of Article 15(c) of the Qualification Directive, the Tribunal had regard to paragraphs 39 and 43 of the European Court's determination in <i>Elgafaji</i> and their guidance that the more an applicant was able to show that he was specifically affected by reason of factors particular to his own circumstances the lower the level of indiscriminate violence needed for him to be eligible for subsidiary protection. Although there was shown to have been an increase in the number of civilian casualties, the Tribunal was not satisfied that the evidence was sufficient to show that the guidance given in <i>GS</i> (Article 15(c) Indiscriminate violence) <i>Afghanistan CG</i> [2009] <i>UKAIT 44</i> was no longer valid, namely that the violence in Afghanistan had not then reached such a high level that the adult civilian population generally were at risk.</p>	<p>HH (Somalia) and others [2010] EWCA Civ 426 ZK (Afghanistan) v SSHD [2010] EWCA Civ 749 AH [2009] EWCA Civ 620 Elgafaji (Case C-465/07) [2009] 1 WLR 2100 GS (Article 15(c): indiscriminate violence) <i>Afghanistan CG</i> [2009] UKAIT 00044 GS (existence of internal armed conflict) <i>Afghanistan CG</i> [2009] UKAIT 00010 QD (Iraq) [2009] EWCA Civ 620 LQ (age: immutable characteristic) <i>Afghanistan</i> [2008] UKAIT 00005</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO94	Level of violence	High Administrative Court of Bavaria, 21 October 2010, 13a B 08.30304	Germany	German	High Administrative Court of Bavaria	21.10.10	Iraq	The Court found that the applicant was not entitled to protection from deportation within the meaning of Section 60(7)(2) of the Residence Act/Article 15(c) QD as the levels of indiscriminate violence in his home area were not characterised by a sufficient 'density of danger'.
EASO95	Internal protection	HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	10.10.10	Iraq	If there were certain areas where the violence in Iraq reached levels sufficient to engage Article 15(c) QD, the Tribunal considered it is likely that internal relocation would achieve safety and would not be unduly harsh in all the circumstances.
EASO96	Level of risk (to be assessed against the applicant's area of origin)	AJDCoS, 9 September 2010, 201005094/1/V2	Netherlands	Dutch	Administrative Jurisdiction Division of the Council of State	9.9.10	Somalia	The Council of State found that where the situation described in Article 15(c) QD does not occur in all parts of the country of origin, it must be assessed in respect of the distinct area of the country from which the applicant originates.
EASO97	Existence of indiscriminate violence	CNDA 1er septembre 2010 M. HABIBI n° 09016933 C+	France	French	CNDA (National Asylum Court)	1.9.10	Afghanistan	The Court found that, at the date of its ruling, the province of Ghazni was plagued by indiscriminate violence but did not specify the level of this violence.
EASO98	Indiscriminate violence	CNDA, 27 July 2010, Mr. A., No 08013573	France	French	CNDA (National Asylum Court)	27.7.10	Afghanistan	The situation in the province of Kabul could not be seen as a situation of indiscriminate generalised violence, within the meaning of Article L.712-1 c) CESEDA [which transposed Article 15(c) QD].
EASO99	Individual risk	46530	Belgium	Dutch	Council of Alien Law Litigation (Raad voor Vreemdelingenbetwistingen) - adopted by a special seat of three judges	20.7.10	Afghanistan	Takes into account the mental deficiencies the young applicant suffers of to consider that he risks to be the victim of indiscriminate violence in northern Afghanistan then considered as quieter by UNHCR.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Internal crises that lie between the provisions of Article 1.1 and Article 1.2 of the Additional Protocol II to the Geneva Conventions can still have the character of armed conflicts under Article 15(c). However, such a conflict has to be characterised by a certain degree of intensity and durability. Typical examples are civil war-like conflicts and guerrilla warfare.</p> <p>Based on the case law of the Federal Administrative Court (decision of 24 June 2008, asyl.net M13877), it has to be established whether a conflict has the necessary characteristics of the Convention of 1949 in order to meet the requirements of the prohibition of deportation status.</p> <p>In case of an internal armed conflict under Article 1(1) Additional Protocol II, these conditions are fulfilled but not in case of situations as described in Article 1(2) of Protocol II. Concerning situations between these two definitions, the degree of intensity and durability must be examined individually. In this context, according to the Federal Administrative Court, the courts also have to take into consideration further interpretations of the concept of 'internal conflict', especially the jurisdiction of the international criminal courts. An internal conflict may also exist if it only affects a part of a state's territory. This has to be concluded from the fact that the concept of an internal protection alternative may also be applied to subsidiary protection.</p> <p>Normally, internal armed conflicts are not characterised by a sufficient 'density of danger' to allow for the assumption that all inhabitants of the affected region are seriously and individually at risk, unless it can be established that there are individual risk-enhancing circumstances. Risks which are simply a consequence of the conflict, such as the worsening of the supply situation, must not be taken into consideration when examining the density of danger. In the present case, the necessary requirements are not met since the density of danger in the applicant's home region, Kirkuk or Tamin respectively, does not justify the statement that virtually all civilians are at a significant and individual risk simply because of their presence in that area. This can be concluded from the proportion of victims of the conflict as compared to the number of inhabitants. There are no well-founded reasons to assume that the security situation will deteriorate significantly or that there is a high unrecorded number of persons injured in attacks. There are also no circumstances that might aggravate the claimant's individual risk, since as a Sunnite Kurd he belongs to the majority population of that area and he does not belong to a profession with a particular risk.</p> <p>Although returnees are affected by criminal acts to a disproportionate degree, this does not constitute a reason for protection from deportation status under Article 15(c) of the Qualification Directive, since criminal acts which are not committed in the context of an armed conflict do not fall into the scope of this provision.</p>	<p>(Germany) Federal Administrative Court, 8 December 2006, 1 B 53.06 Federal Administrative Court, 24 June 2008, 10 C 43.07 Federal Administrative Court, 14 July 2009, 10 C 9.08 High Administrative Court Baden-Württemberg, 8 August 2007, A 2 S 229/07 High Administrative Court Schleswig-Holstein, 3 November 2009, 1 LB 22/08</p>
<p>If the figures relating to indices such as the number of attacks or deaths affecting the civilian population in a region or city rose to unacceptably high levels, then, depending on the population involved, Article 15(c) might well have been engaged, at least in respect of the issue of risk in that area, although it was emphasised that any assessment of real risk to the appellant should have been one that was both quantitative and qualitative and took into account a wide range of variables, not just numbers of deaths or attacks. If there were certain areas where the violence in Iraq reached levels sufficient to engage Article 15(c) the Tribunal considered it likely that internal relocation would achieve safety and would not be unduly harsh in all the circumstances. Evidence relating to UK returns of failed asylum seekers to Iraq in June 2010 did not demonstrate that the return process would involve serious harm. Note: This case was overturned in its entirety by <i>HM (Iraq) v Secretary of State for the Home Department</i> [2011] EWCA Civ 1536 but the guidance as to the law relating to Article 15(c) of the Qualification Directive given by the Tribunal in this case at [62]-[78] was reaffirmed in <i>HM and others</i> (Article 15(c)) <i>Iraq CG</i> [2012] UKUT 00409.</p>	<p>Many cases cited, significant cases include: <i>HH & Others (Somalia)</i> [2010] EWCA Civ 426 <i>Elgafaji v Staatssecretaris van Justitie (C-465/07)</i> [2009] 1 WLR 2100 <i>GS (Article 15(c) Indiscriminate violence) Afghanistan CG</i> [2009] UKAIT 44 <i>QD (Iraq) v Secretary of State for the Home Department</i> [2009] EWCA Civ 620 <i>KH (Article 15(c) Qualification Directive) Iraq CG</i> [2008] UKAIT 00023 <i>AH (Sudan)</i> [2007] UKHL 49 <i>Office Français de Protection des Réfugiés et Apatrides v Baskarathas</i>, No 32095, 3 July 2009 <i>Januzi</i> [2006] UKHL 5</p>
<p>The Council of State considered that where the situation described in Article 15(c) of the Qualification Directive does not exist in all parts of the country of origin, it must be assessed in respect of the distinct area of the country from which the applicant originates. The relevant question is whether in that distinct area an Article 15(c) situation is in existence.</p> <p>Given that the applicant originated from Mogadishu, and that the country of origin reports compiled by the Ministry of Foreign Affairs of March 2009, October 2009 and March 2010 separately discuss the general security situation in Mogadishu, the District Court erred by following the view of the Minister of Justice that the general security situation in this case must be assessed in the context of central and southern Somalia.</p> <p>Whether an Article 15(c) situation exists must be examined by assessing the security situation in the area in the country of origin from which the applicant originates (home area). In this case that is Mogadishu and not the whole of central and southern Somalia.</p>	<p>(ECtHR) <i>F.H. v Sweden</i> (Application No 32621/06) <i>NA v United Kingdom</i> (Application No 25904/07) (CJEU) <i>Elgafaji v Staatssecretaris van Justitie C-465/07</i></p>
<p>The Court noted that the appellant was a 23 years old orphan who may be exposed to violence and forced enlistment in one of the conflicting armed forces. The appellant is therefore exposed to the threats encompassed in Article L.712-1 c) CESEDA. Subsidiary protection was granted.</p>	
<p>The Court recalled that the situation of insecurity in Afghanistan has to be assessed according to the geographic origin of the applicant and considered that while insecurity increased in 2009 in the province of Kabul, due to the increasing number of attacks against foreign delegations and Afghan and international security forces, the assessment of the case does not lead to the conclusion that the situation in this province can be seen as a situation of indiscriminate generalised violence, within the meaning of Article L.712-1 c) CESEDA [which transposes Article 15(c) of the Qualification Directive] and as defined in a decision from the Council of State [CE, 3 juillet 2009, Ofpra c/ M.A., n° 320295].</p>	<p>(France) CE, 3 juillet 2009, Ofpra c/ M.A., n° 320295</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO100	Internal protection	Federal Administrative Court, 14 July 2010, 10 B 7.10	Germany	German	Federal Administrative Court	14.7.10	Afghanistan	Examining the conditions of subsidiary protection (Section 60(7) Sentence 2 Residence Act/Article 15(c) QD), the High Administrative Court proceeded from the assumption that the applicant could not be expected to stay in another part of his country of origin (Section 60(7) Residence Act, Article 8 QD).
EASO101	Individual risk	Supreme Court, 30 June 2011, 1519/2010	Spain	Spanish	Supreme Court	30.6.10	Colombia	Subsidiary protection was granted.
EASO102	Level of violence and individual risk	44623	Belgium	Dutch	Council of Alien Law Litigation (Raad voor Vreemdelingenbetwistingen) - adopted by a special seat of three judges	08/06/2010	Afghanistan	The Council considered that the applicant could not simply refer to the general situation prevailing in his/her home country to benefit from Article 15(c) QD. He/she must also 'show any link between that situation of general violence and his/her own individual situation, what does not mean that he/she must establish an individual risk of serious harm' ('moet enig verband met zijn persoon aannemelijk maken, ook al is daartoe geen bewijs van een individuele bedreiging vereist').
EASO103	Individual risk	10/0642/1, Helsinki Administrative Court, 28 May 2010	Finland	Finnish	Helsinki Administrative Court	28.5.10	Somalia	The Helsinki Administrative Court found that a female minor from a town near Mogadishu was in need of subsidiary protection. The Court held that to return home the applicant would have to travel via Mogadishu which would place her at serious and personal risk due to the nature of the armed conflict.
EASO104	Level of violence and individual risk	Federal Administrative Court, 27 April 2010, 10 C 4.09	Germany	German	Federal Administrative Court	27.4.10	Afghanistan	This case concerns the criteria for determining a serious individual threat and the necessary level of indiscriminate violence in an internal armed conflict. In order for Article 15(c) QD to apply, it is necessary to determine the level of indiscriminate violence in the territory of an internal armed conflict. When determining the necessary level of indiscriminate violence, not only acts which contravene international law, but any acts of violence which put life and limb of civilians at risk, have to be taken into account. In the context of Article 4.4 QD, an internal nexus must exist between the serious harm (or threats thereof) suffered in the past, and the risk of future harm.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Examining the conditions of subsidiary protection (Section 60(7) Sentence 2 Residence Act/Article 15(c) of the Qualification Directive), the High Administrative Court proceeded from the assumption that the applicant could not be expected to stay in another part of his country of origin (Section 60(7) Residence Act, Article 8 of the Qualification Directive). The High Administrative Court found that in case of deportation even young, single men in the Kabul region could face so-called extreme risks if it was not ensured that they could safeguard their means of existence under humane conditions. This could be the case if the returnees did not have a sufficient school or vocational education and did not own property and real assets and, especially, if they could not rely on a functioning network of family and friends. The High Administrative Court considered that this also applied to the forty year old applicant who originated from a rural area south of Kabul.</p> <p>When examining a significant individual risk in the context of an internal armed conflict (Section 60(7) sentence 2 Residence Act/Article 15(c) of the Qualification Directive), the High Administrative Court should have complied with the requirements set out in the decision of the Federal Administrative Court of 27 April 2010 - BVerwG 10 C 4.09 - paragraph 33. Accordingly, it is necessary to at least approximately establish the total number both of civilians in the area who are affected by the conflict and of the acts of indiscriminate violence from parties involved in the conflict which impact on the health and life of civilians in that area. Furthermore, an overall assessment is necessary taking into account the number of victims and the severity of harm (deaths and injuries).</p>	(Germany) Federal Administrative Court, 27 April 2010, 10 C 4.09
<p>The Court examined the secondary request for subsidiary protection on the grounds of serious and individual threat by reason of an internal armed conflict and found that the physical and mental integrity of the applicant would be threatened if she returned to Colombia. Its declaration and granting of subsidiary protection, were based fully on the information provided in a psychosocial report by the Refugee Reception Centre (CAR) of Valencia. This report recommended that the applicant should not be returned as she required a secure and stable environment. According to the report, the applicant suffered individually as a result of the on-going situation of indiscriminate violence in Colombia.</p>	
<p>The application of the Afghan national, whose Afghan origin was established, was rejected because he was not credible when pretending that he came from the region struck by indiscriminate violence. Note: See also, adopting the same reasoning: CALL (3 judges), 28796 of 16 June 2009; CALL (3 judges), case 51970 of 29 November 2010; CALL (single judge), case 37255 of 20 January 2010.</p>	(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07; Council of State, 29 November 2007, 117.396; Council of State, 26 May 2009, 193.523; Council of State, 29 March 2010, 202.487
<p>The Administrative Court held that based on media coverage, Somalia's Transitional Federal Government was only able to control a small area in the capital, Mogadishu. The general security and humanitarian situation was precarious. The Court took into consideration the current nature of the armed conflict. There was reason to believe that an individual could be at risk of serious harm just by being in the city. The applicant was from a town which is around 50 km from Mogadishu. To return home, the applicant would have to travel via Mogadishu, which would place her at serious and personal risk due to the nature of the armed conflict.</p>	
<p>The High Administrative Court had correctly found that an internal armed conflict takes place in the applicant's home province. It has based its definition of the term 'internal armed conflict' on the meaning of this term in international humanitarian law, particularly the Geneva Conventions of 12 August 1949 including the Additional Protocols (especially Article 1 of the Second Additional Protocol). The Federal Administrative Court supported this approach of the High Administrative Court, even in light of the recent decision by the European Court of Justice (17 February 2009, <i>Elgafaji</i>, C-465/07) which has not dealt in detail with this legal question, and although the UK Court of Appeal (24 June 2009, QD and AH v. <i>Secretary of State for the Home Department</i>) seems to have a different opinion. It is not necessary to strictly adhere to the requirements of Article 1 of the Second Additional Protocol. These requirements rather should be drawn upon for guidance, together with the interpretation of this term in international criminal law. However, the conflict must in any case have a certain intensity and consistency. It may suffice that the parties to the conflict carry out sustained and coordinated combat operations with such an intensity and consistency that the civilian population is affected in a significant manner. Considering this, the High Administrative Court had sufficiently established that there is an internal armed conflict taking place in Paktia province.</p> <p>It is necessary to determine the level of indiscriminate violence in the territory in question. For this purpose it is necessary to determine approximately the number of civilians living in the territory in question and the number of acts of indiscriminate violence in the territory. Furthermore, an evaluation has to be made taking into account the number of victims and the severity of the damage suffered (deaths and injuries). Therefore it is possible to apply the criteria which have been developed to determine group persecution.</p> <p>The Federal Administrative Court noted that in the context of Article 4.4 of the Qualification Directive an internal nexus must exist between the serious harm or threats of serious harm suffered in the past, and the risk of a future harm. This is the case both in the context of refugee protection and in the context of subsidiary protection.</p>	(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07 (UK) GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 00044 (UK) QD and AH (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 (Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07 (Germany) Federal Administrative Court, 14 July 2009, 10 C 9.08 (Germany) Federal Administrative Court, 27 April 2010, 10 C 5.09

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO105	Serious risk and return	HH, AM, J and MA (Somalia) v Secretary of State for the Home Department [2010] EWCA Civ 426	United Kingdom	English	Court of Appeal	23.4.10	Somalia	The proceedings concerned joined appeals which raised common issues related to the enforced return of individuals to a war-torn country, Somalia, where their safety was or might be in serious doubt. None of the Claimants claiming humanitarian and human rights protection had any independent entitlement to be in the UK and one Claimant had committed a serious crime. The Court of Appeal gave consideration to the meaning and scope of Article 15(c) QD and made obiter observations on the Qualification Directive and Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.
EASO106	Conflict and individual risk	Administrative Court Karlsruhe, 16 April 2010, A 10 K 523/08	Germany	German	Administrative Court Karlsruhe	16.4.10	Iraq	The Court found that the applicant was entitled to subsidiary protection since there was an armed conflict in the Nineveh region and because the threats by terrorists experienced in the past constituted individual 'risk-enhancing' circumstances.
EASO107	Conflict and consideration of Article 15(c) QD	Ibrahim and Omer v Secretary of State for the Home Department [2010] EWHC 764 (Admin)	United Kingdom	English	Administrative Court	13.4.10	Iraq	The Claimants, Iraqi national prisoners, applied for judicial review of their detention pending deportation. They unsuccessfully appealed to the Asylum and Immigration Tribunal (AIT). A policy that the Secretary of State would not take enforcement action against nationals originating from countries that were active war zones was not relied on by either Claimant in the AIT. The Claimants submitted, inter alia, that at the time the enforcement action was taken against them Iraq was an active war within the meaning under the policy. Article 15(c) QD and associated case law was considered in the context of active war zones.
EASO108	Level of violence and individual risk	High Administrative Court Baden-Wuerttemberg, 25 March 2010, A 2 S 364/09	Germany	German	High Administrative Court Baden-Wuerttemberg	25.3.10	Iraq	Even if one presumes that an internal armed conflict is taking place in the applicant's home province (Tamim), it cannot be assumed that the indiscriminate violence has reached such a high level that practically any civilian is at risk of a serious and individual threat simply by his or her presence in the region.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Court found that where it could be shown either directly or by implication what route and method of return was envisaged, the Asylum and Immigration Tribunal was required by law to consider and determine any challenge to the safety of that route or method, on appeal against an immigration decision.</p>	<p>Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 1 WLR 2100 QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 GM (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 833 Gedow v Secretary of State for the Home Department [2006] EWCA Civ 1342 GH (Iraq) v Secretary of State for the Home Department [2005] EWCA Civ 1182 Adan (Hassan Hussein) v Secretary of State for the Home Department [1997] 1 WLR 1107; [1997] 2 All ER 723 Vilvarajah v United Kingdom (13163/87) (1992) 14 EHRR 248</p>
<p>According to the standards as defined by the Federal Administrative Court, an armed conflict within the meaning of Article 15(c) of the Qualification Directive does not necessarily have to extend to the whole territory of a state. Neither does it necessarily have to reach the threshold which international humanitarian law has set for an armed conflict (Article 1 No 1 of the Second Additional Protocol to the Geneva Conventions), however, a situation of civil unrest, during which riots or sporadic acts of violence take place, is not sufficient. Conflicts which are in between those two situations, have to be marked by a certain degree of durability and intensity.</p> <p>In the present case, the applicant could only take up residence in Nineveh province upon return to Iraq. This is where her family lived. As mother of an infant she could not be expected to take up residence in another region where she did not have this family background. Therefore the situation in Nineveh province had to be taken into account in the course of the examination of whether the applicant was to be granted subsidiary protection.</p> <p>The Court proceeded from the assumption that an armed conflict within the meaning of the Qualification Directive existed in Niniveh province in 2007 and that the situation has not significantly improved since then. A high number of attacks took place in the province and the number of those incidents indicated that members of the terrorist organisation had a certain strength in terms of their numbers.</p> <p>Against this background, and because the applicant and her family were subjected to threats and attacks in the past, it had also to be assumed that individual, 'risk-enhancing' circumstances existed.</p>	<p>(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (Germany) Federal Administrative Court, 24 June 2008, 10 C 42/07 Federal Administrative Court, 14 July 2009, 10 C 9.08</p>
<p>Permission to apply for judicial review under the active war zone ground was refused. The policy was concerned with countries that could be considered in their entirety to be active war zones, with the underlying concern that there was nowhere in the country to which a person could safely be returned. However, Iraq could not properly be considered as a war zone at the time enforcement action was taken against the claimants, <i>HH (Iraq) v Secretary of State for the Home Department</i> [2008] UKAIT 51 doubted. There were undoubtedly areas of conflict and a pattern of localised violence within the country, but none of the evidence suggested that Iraq as a whole was an active war zone.</p>	<p>HH (Iraq) v Secretary of State for the Home Department [2008] UKAIT 51 F (Mongolia) v Secretary of State for the Home Department [2007] EWCA Civ 769 R (on the application of G) v Immigration Appeal Tribunal [2004] EWCA Civ 1731 R (on the application of I) v Secretary of State for the Home Department [2002] EWCA Civ 888 R v Governor of Durham Prison Ex p. Singh [1984] 1 WLR 704</p>
<p>When defining the term 'international or internal armed conflict' under Article 15(c) of the Qualification Directive one has to take into account international law. This implies that combat operations must have an intensity which is characteristic of a civil war situation but have to exceed situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature. Internal crises which fall in between these two definitions must not be excluded out of hand from fulfilling the standards of Article 15(c) of the Qualification Directive. However, the conflict had to be marked by a certain degree of intensity and duration (cf. Federal Administrative Court of 24 June 2008, 10 C 43.07).</p> <p>By this measure, the situation considered presumably did not justify the assumption that an international or internal armed conflict existed in Iraq. However, this question can be left open here for even if one assumes that an international or internal armed conflict was taking place, subsidiary protection can only be granted if there is a serious and individual threat in the context of the conflict. According to the Federal Administrative Court (decision of 14 July 2009, 10 C 9.08) it is possible that a serious and individual threat is also posed in an extraordinary situation, which is characterised by such a high level of risk that any civilian is at risk of a serious and individual threat simply by his or her presence in the region. However, such a high level of risk cannot be established for the applicant's home region, Tamim province.</p> <p>On the basis of various sources (e.g. the Foreign Office's country report of 12 August 2009) it was not concluded that the security situation in Iraq was disastrous. However, in order to establish the degree of danger, one has to put the number of victims of bomb attacks in relation to the whole population of Iraq. The information department of the Federal Office for Migration and Refugees quotes from a report by the British NGO Iraq Body Count, according to which the number of civilian victims in 2009 had been at the lowest level since 2003. In Tamim province 99 bomb attacks were recorded in which 288 people were killed. This meant that 31.9 in 100 000 people were killed, assuming that the number of inhabitants in this province is at 900 000, or 25.5 in 100 000 if the number of inhabitants is estimated at 1 130 000.</p> <p>So even if it was presumed that an internal armed conflict was taking place in Tamim province, it cannot be assumed that the indiscriminate violence which is characteristic of that conflict had reached such a high level that any person was at risk of a serious and individual threat simply by his or her presence in the region.</p>	<p>(Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07 Federal Administrative Court, 14 July 2009, 10 C 9.08</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO109	Indiscriminate violence	40093	Belgium	French	Council of Alien Law Litigation (Conseil du contentieux des étrangers) - adopted by a special seat of three judges	11.3.10	Russia (Chechnya)	No indiscriminate violence in Chechnya
EASO110	Conflict	AJDCoS, 26 January 2010, 200905017/1/V2	Netherlands	Dutch	Administrative Jurisdiction Division of the Council of State	26.1.10	Somalia	When assessing whether a situation under Article 15(c) QD exists, consideration is given to the nature and intensity of the violence as a result of the conflict as well as its consequences for the civilian population of Mogadishu.
EASO111	Conflict	High Administrative Court, 25 January 2010, 8 A 303/09.A	Germany	German	High Administrative Court	25.1.10	Afghanistan	The Court found that the situation in Logar province in Afghanistan could be characterised as an internal armed conflict. Therefore, the applicant as a member of the civilian population was at a significant risk in terms of Article 15(c) QD.
EASO112	Consideration of Article 15(c) QD	High Court, 14 January 2010, Obuseh v Minister for Justice, Equality and Law Reform [2010] IEHC 93	Ireland	English	High Court	14.1.10	Nigeria	This case concerned the appropriate manner in which an application for subsidiary protection is to be decided where there may be at least an implicit claim of a 'serious and individual threat' to the applicant by reason of indiscriminate violence. The Court found that Article 15(c) QD does not impose a free-standing obligation on the Minister to investigate a possible armed conflict situation, it is for the applicant to make this claim and to make submissions and offer evidence establishing that he is from a place where there is a situation of international or internal armed conflict, and that he is at risk of serious harm by reason of indiscriminate violence.
EASO113	Scope of Article 15(c) QD, provisions/ applicability subject to the existence of an armed conflict	CE 30 décembre 2009 OFPRA c/ Peker n° 322375	France	French	Council of State	30.12.09	Haiti	Article L.712-1 c) CESEDA applies to threats resulting from a situation of internal or international armed conflict. Thus CNDA made an error of law when granting subsidiary protection on the sole basis of threats from armed groups without examining if those threats could be related to a situation of armed conflict.
EASO114	Subsequent application, persecution, serious harm	200706464/1/V2	Netherlands	Dutch	Administrative Jurisdiction Division of the Council of State	8.12.09	Afghanistan	The Court assessed the relation between Article 3 ECHR and Article 15(c) QD.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Council found that there was no indiscriminate violence in Chechnya because, first, armed attacks happened less often and were less intense and, second, such armed attacks were at that time targeted.</p>	
<p>The submitted documents suggested that at the time of the decision of 15 June 2009 an armed conflict existed in Mogadishu between government troops backed by Ethiopian troops on the one hand and a complex set of other rebel groups on the other hand who were also fighting among themselves. The violence in Mogadishu flared in May 2009 due to this conflict. This led to many civilian casualties and a large flow of refugees (about 40 000 people in May 2009, reaching about 190 000 people in June 2009). While the Secretary of State, acknowledged that the circumstances outlined above had been considered in the assessment, the Secretary of State, to justify her position that at the relevant time no exceptional situation existed in Mogadishu, sufficed with the mere assertion that the number of civilian casualties is no reason for adopting such a view.</p> <p>Given the nature and intensity of violence as a result of the conflict and its consequences for the civilian population of Mogadishu, as may be inferred from the aforementioned documents, the Secretary of State with that single statement insufficiently reasoned that the applicant had failed to show that the level of indiscriminate violence in Mogadishu at the time of the adoption of the decision of 15 June 2009 was so high that substantial grounds existed for believing that a citizen by his sheer presence there, faced a real risk of serious harm.</p>	(ECtHR) NA v United Kingdom (Application No 25904/07) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
<p>The applicant was entitled to subsidiary protection in terms of Section 60 (7) (2) Residence Act / Article 15(c) of the Qualification Directive. The prerequisite for which requires that members of the civilian population face a significant and individual threat to life and physical integrity in a situation of an armed conflict.</p> <p>An internal armed conflict is characterised by durable and concerted military operations under responsible command, but not cases of internal disturbances and tensions. Whether civil war-like or other conflicts, which fall between these two categories, may still be classified as armed conflicts depending on their degree of intensity and durability. However, a nationwide situation of conflict is not a necessary requirement for granting protection. This can be deduced from the fact that in case of internal armed conflicts an internal flight alternative outside the area of conflict can be taken into consideration.</p> <p>The situation in the applicant's home region, Logar, is particularly precarious, as it borders on the so-called 'Pashtun belt'/Pakistan and belongs to the heartland of the Pashtuns, where the Taliban and Al Qaeda have strong support. The Taliban increasingly launch attacks and wage a severe war on governmental and NATO-troops. Furthermore, Logar borders on Kabul province, where the Taliban also have military bases, but prefer guerrilla tactics (the applicant's home village is situated at the main road to Kabul). The civilian population is also terrorised by the Taliban.</p> <p>Considering this high degree of indiscriminate violence, civilians in the province Logar are facing a significant individual risk of life and physical integrity. The situation for the applicant is further exacerbated, since he belongs to the ethnic minority of Tajiks and to the religious minority of Shiites; furthermore, he was a member of the youth organisation of the Communist party (PDPA), and this fact has become known. Finally his family possesses real estate in Logar, which might expose him to covetousness of other people. He has no relatives who might be willing and able to protect him.</p> <p>Kabul might be the only suitable place of internal protection. However, based on new evidence and jurisdiction, even young single men cannot make a living there, unless they have vocational education, property and, above all, social support by their family and friends. This does not apply to the applicant.</p>	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07 High Administrative Court Baden-Württemberg, 14 May 2009, A 11 S 610/08 High Administrative Court Hessen, 11 December 2008, 8 A 611/08.A High Administrative Court Hessen, 26 November 2009, 8 A 1862/07.A High Administrative Court Rheinland Pfalz, 06 May 2008, 6 A 10749/07
<p>The Court noted that it was difficult to envisage any circumstances where an asylum applicant who is found not credible as to the existence of a well-founded fear of persecution will be granted subsidiary protection on exactly the same facts and submissions.</p> <p>An applicant seeking to rely on Article 15(c) of the Qualification Directive (which would not be covered by the Refugee application) must do so explicitly and must show that he faces a serious and individual threat by reason of indiscriminate violence in situations of international or internal armed conflict, that state protection would not be available to him and that he could not reasonably be expected to stay in another part of the country of origin where there is no real risk of suffering serious harm. It follows that if a person who claims to face such danger cannot establish that he is from a place where there is a situation of international or internal armed conflict, or that such a situation actually exists, and further cannot show why he could not reasonably be expected to relocate, then he will not be eligible for such protection.</p> <p>The applicant in this case furnished no particulars, documentation, information or evidence in relation to a threat from armed conflict.</p> <p>The Court found that the Minister does not have a free-standing obligation to investigate whether a person is eligible for protection within the meaning of Article 15(c) of the Qualification Directive when that person has not identified the risk to his life or person. While the Minister is mandated by Article 4 of the Qualification Directive to consider up to date information on the conditions on the ground in the applicant's country of origin, this is far from imposing a free-standing obligation to go beyond that information and to investigate whether the applicant faces any unclaimed and unidentified risk.</p>	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (UK) QD and AH (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 (Ireland) G.T. v Refugee Appeals Tribunal [2007] IEHC 287 N & Anor v Minister for Justice Equality and Law Reform [2007] IEHC 277 Neosas v Minister for Justice [2008] IEHC 177, unreported, High Court, Charleton J.
<p>Council of State held that 'indiscriminate violence' and 'existence of an armed conflict' are cumulative conditions required for application of Article L.712-1 c) CESEDA.</p>	
<p>Article 29(1), introductory paragraph and (b) of the Foreigners Act (2000), which provides protection in the Netherlands against a potential breach of Article 3 ECHR, provides for the same protection as Article 15(c) of the Qualification Directive. The latter article therefore does not amend the law.</p>	Nederland - ABRvS, 25 mei 2009, 200702174/2/V2 (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 Netherlands - ABRvS, 25 June 2009, 200900815/1V2

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO115	Civilian	ZQ (serving soldier) Iraq CG [2009] UKAIT 00048	United Kingdom	English	Asylum and Immigration Tribunal	2.12.09	Iraq	Article 15(c) QD depended upon a distinction between civilian and non-civilian status (it referred to the need to show a threat to a 'civilian's life or person').
EASO116	Level of violence and individual risk	Asylum and Immigration Tribunal, GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKIAT 00044	United Kingdom	English	Asylum and Immigration Tribunal	19.10.09	Afghanistan	In this case the Tribunal sought to apply the guidance in <i>Elgafaji</i> on Article 15(c) QD and give country guidance on Afghanistan.
EASO117	Humanitarian considerations, internal protection, gender based persecution, medical reports/ medico-legal reports, membership of a particular social group, nationality, persecution grounds/reasons, race	I.A.Z. v. Office of Immigration and Nationality	Hungary	Hungarian	Metropolitan Court	15.10.09	Somalia	The Court annulled the decision of the asylum authority on the basis that there was insufficient evidence that an internal protection alternative existed.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Although this case was concerned with return to a country, Iraq, which (at least for International Humanitarian Law purposes) remained in a state of internal armed conflict, it was not concerned with the issue of whether an appellant qualified for subsidiary/humanitarian protection under Article 15(c) of the Qualification Directive (para 339(iv) of Statement of Immigration Rules HC395 as amended), since the material scope of that provision was confined to civilians. (This case was about a soldier.)</p>	<p>QD (Iraq) [2009] EWCA Civ 620 (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 1 WLR 2100 Krotov [2004] EWCA Civ 69 Prosecutor v Blaskic (Judgement) Appeals Chamber, Case No IT-95-14-A, 29 July 2004 Fadli [2000] EWCA Civ 297 Horvath [2000] UKHL 37 Sepet and Bulbul [2003] UKHL 15</p>
<p>The Tribunal assessed evidence which examined the number of civilian fatalities directly caused by both sides to the conflict, the ease of access on the road between Kabul and Jalalabad, the option of internal relocation and enhanced risk categories. This decision was replaced as current country guidance on the applicability of Article 15(c) of the Qualification Directive to the on-going armed conflict in Afghanistan by <i>AK</i> (Article 15(c)) <i>Afghanistan CG</i> [2012] <i>UKUT</i> 163 .</p>	<p>(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (UK) PM and Others (Kabul-Hizbi-i-Islami Afghanistan CG [2007] UKIAT 00089 HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022 HJ (Homosexuality: reasonably tolerating living discreetly) Iran [2008] UKIAT 00044 KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKIAT 00023 J v Secretary of the State for the Home Department [2006] EWCA Civ 1238 RQ (Afghan National army-Hizbi-i-Islami-risk) Afghanistan CG [2008] UKIAT 00013 GS (Existence of armed conflict) Afghanistan CG [2009] UKIAT 00010 AH (Sudan) v Home Secretary [2008] 1 AC 678 Batayav v Secretary of State for the Home Department 2003] EWCA Civ 1489 Januzi v SSHD [2006] UKHL 5 AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091 QD and AH (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620</p>
<p>The Court held that, although the applicant was able to stay in Somalia from 2006 until 2008, the decision of the asylum authority could not be regarded as lawful given that: 'the authority could not identify a specific territory where the internal protection alternative would be possible.' The asylum authority therefore breached its obligation by failing to collect all of the relevant facts and evidence before making its decision. The Court stated that the asylum authority has to indicate whether the internal protection alternative is available and if so, in which specific territory of Somalia. The court did not address the question whether the applicant's hiding in the forest without any sort of protection constituted internal protection.</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO118	Conflict	Migration Court of Appeal, 6 October 2009, UM8628-08	Sweden	Swedish	Migration Court of Appeal	6.10.09	Somalia	This case concerned the criteria that needed to be fulfilled in order to establish the existence of an internal armed conflict. It was held that in Somalia's capital, Mogadishu, at the time of this decision, a state of internal armed conflict was found to exist without an internal protection alternative. The applicant was therefore considered in need of protection.
EASO119	Consideration of Article 15(c) QD	Metropolitan Court, 23 September 2009, M.A.A. v. Office of Immigration and Nationality 21.K.31484/2009/6	Hungary	Hungarian	Metropolitan Court	23.9.09	Somalia	The Office of Immigration and Nationality (OIN) found the applicant not credible and therefore did not assess the risk of serious harm. Instead the OIN granted protection against refoulement. The Metropolitan Court ruled that the OIN was obliged to assess conditions for subsidiary protection and serious harm even if the applicant was not found credible.
EASO120	Consideration of Article 15(c) QD	Secretary of State for the Home Department v HH (Iraq) [2009] EWCA Civ 727	United Kingdom	English	Court of Appeal	14.7.09	Iraq	HH was liable to deportation because, during a period of exceptional leave to remain in the UK, he committed three sexual offences. A deportation order was made without regard to a forgotten policy which provided that 'Enforcement action should not be taken against Nationals who originate from countries which are currently active war zones'. HH appealed, relying upon that policy. Shortly before the start of the hearing, the Secretary of State withdrew the policy. The Tribunal considered that the policy had been in force at the date of the decision to make a deportation order and that its belated withdrawal could not retrospectively make the initial decision lawful. The Secretary of State appealed. HH had two further elements of his appeal, that deportation would violate his rights under Article 8 of the ECHR and Article 15(c) QD. The Asylum and Immigration Tribunal did not consider it necessary to decide that aspect of the appeal because of their decision that the making of the decision to deport HH was unlawful.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>• The Migration Court of Appeal noted that the <i>Elgafaji</i> decision stated that it is not an absolute requirement that threats must be specifically directed against the applicant based on personal circumstances. In situations of indiscriminate violence a person can, by his mere presence, run a risk of being exposed to serious threats. Regarding internal armed conflict the Court noted that there is no clear definition of the concept in international humanitarian law. Neither the 1949 Geneva Conventions' common Article 3, nor the Additional Protocol (1977), contains a definition of the concept. However, the Protocol does state which non-international conflicts it applies to. These are conflicts that take place on the territory of a party to the convention between its own forces and rebellious armed groups or other organised groups who are under responsible leadership and who have control over part of its territory and can organise cohesive and coordinated military operations as well as implement the protocol. The protocol thus presumes that government forces participate in the conflict and also that the rebels have some territorial control. The International Red Cross drew conclusions in its paper "How is the term 'armed conflict' defined in International Humanitarian Law?" March 2008, that it is an extended armed conflict between armed government forces and one or more armed groups or between such armed groups which occurs on the territory of a state. There must be a minimum level of intensity and the parties concerned must exhibit a minimum level of organisation. Further guidance can be sought in the International Criminal Court (ICC) Yugoslav Tribunal case concerning ICTFY, <i>Prosecutor v Dusko Tadic</i>. From article 8:2 of the ICC it is clear that non-international conflicts are in focus and not situations that have arisen because of internal disturbances or tensions such as riots, individual or sporadic acts of violence or other such acts.</p> <p>The Migration Court of Appeal concluded that an internal armed conflict cannot be precluded in a state solely on the grounds that the requirement in the protocol from 1977 for territorial control is not met. Nor can it be required that government forces are involved in the conflict since this would mean that persons from a failed state would not enjoy the same possibilities as others to seek international protection.</p> <p>The Court concluded that an internal armed conflict within the meaning of the Swedish Aliens Act exists if certain conditions (which they listed) are fulfilled. The Court then addressed the question: Can an internal armed conflict be declared in only a part of a country?</p> <p>• The Tribunal concluded that the presence of an armed conflict depended mainly on the assessment of the actual circumstances at hand. The Tribunal also made a distinction between the area where the conflict took place and the question of within which area international humanitarian law was applicable (the wider area surrounding Mogadishu and the then TFG base in Baidoa). The UK decision was considered relevant as it is a legal authority in another country which is bound by the same international legal obligations as Sweden and for whom the same Community provisions apply. The UK decision held that it is possible and pertinent in legal terms to limit a geographical area for an internal armed conflict to the town of Mogadishu.</p> <p>• For the Migration Court of Appeal the population of Mogadishu, and not least its significant strategic role based on the most recent country of origin information, and the sharp decline in respect for human rights further support this conclusion.</p> <p>• Regarding internal protection the Court noted that it is the responsibility of the first instance Migration Board to prove that there is an alternative. This has not been established by the Board and it is the opinion of the Court that no such alternative exists.</p>	<p>(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07 (ICTY) <i>Prosecutor v Tadic</i> (IT-94-1-AR72) ICTY (UK) <i>HH & others (Mogadishu: armed conflict: risk)</i> Somalia CG [2008] UKAIT 00022 (Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07</p>
<p>The Court applied the Jurisprudence of the Court of Justice of the European Union (C-465/07. <i>Elgafaji</i>), which examined the notion of generalised violence and indiscriminate violence, and found that Mogadishu was affected by an internal armed conflict where the level of indiscriminate violence was high enough to qualify as serious harm. The Court stated that the OIN did not assess the risk of serious harm and the principal of non-refoulement properly, and did not collect and consider all relevant information and evidence. Therefore, the risk of serious harm needed to be analysed in a new procedure.</p>	<p>(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07</p>
<p>Where a Home Office policy had been overlooked when a decision to deport an Iraqi national had been made, the Secretary of State's subsequent withdrawal of that policy could not retrospectively make the initial decision lawful. However, it was clear that there remained issues under Article 8 of the ECHR and Article 15(c) of the Qualification Directive which were likely to have to be determined. The Secretary of State's decision was quashed, but if, as might be likely, the decision to deport was made again, it would be open to HH to raise arguments under Article 8 of the ECHR and Article 15(c) of the Qualification Directive on his appeal against that decision.</p>	<p>QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620 Secretary of State for the Home Department v Abdi (Dhudi Saleban) [1996] Imm AR 148</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO121	Level of violence and individual risk	Federal Administrative Court, 14 July 2009, 10 C 9.08	Germany	German	Federal Administrative Court	14.7.09	Iraq	A serious and individual threat to life and limb may result from a general risk in the context of an armed conflict if the risk is enhanced because of the applicant's individual circumstances or from an extraordinary situation which is characterised by such a high degree of risk that practically any civilian would be exposed to a serious and individual threat simply by his or her presence in the affected region.
EASO122	Armed conflict	CNDA 9 juillet 2009 Pirabu n° 608697/07011854	France	French	CNDA (National Asylum Court)	9.7.09	Sri Lanka	The Court found that there was no more armed conflict in Sri Lanka since LTTE's final defeat in June 2009. Hence Article L.712-1 c) CESEDA provisions were no more applicable in the context of Sri Lanka.
EASO123	Level of violence and individual risk	CE, 3 July 2009, Ofpra vs. Mr. A., n° 320295	France	French	Council of State	3.7.09	Sri Lanka	The requirement of an individualisation of the threat to the life or person of an applicant for subsidiary protection is inversely proportional to the degree of indiscriminate violence which characterises the armed conflict.
EASO124	Assessment of risk under Article 15(c) QD provisions, balancing scale, personal elements not required beyond a certain threshold of indiscriminate violence, indiscriminate violence not necessarily limited to the conflict zone <i>sticto sensu</i>	CE 3 juillet 2009 OFPRA c/ Baskarathas n° 320295	France	French	Council of State	3.7.09	Sri Lanka	It is not required by Article L.712-1 c) CESEDA that indiscriminate violence and armed conflict should coincide in every way in the same geographic zone. When indiscriminate violence reaches such a level that a person sent back to the area of conflict is at risk because of his mere presence in this territory, an appellant does not have to prove that he is specifically targeted to meet the requirements of Article L.712-1 c) CESEDA.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>In spite of minor deviations in wording, the provision of Section 60 (7) sentence 2 of the Residence Act is equivalent to Article 15(c) of the Qualification Directive. The High Administrative Court found that general risks could not constitute an individual threat within the meaning of Article 15(c) of the Qualification Directive, unless individual risk-enhancing circumstances exist. However, this court has already found in its decision of 24 June 2008 (10 C 43.07) that a general risk to which most civilians are exposed may cumulate in an individual person and therefore pose a serious and individual threat within the definition of Article 15(c) of the Qualification Directive. At the time this court argued that the exact requirements would have to be clarified by the European Court of Justice. In the meantime, the European Court of Justice has clarified this question in <i>Elgafaji</i> C-465/07. The requirement in <i>Elgafaji</i> is essentially equivalent to this court's requirement of an 'individual accumulation' of a risk.</p> <p>The High Administrative Court would have to examine whether a serious and individual threat to life and limb exists for the applicant in Iraq or in a relevant part of Iraq in the context of an armed conflict. It is not necessary that the internal armed conflict extends to the whole country. However, if the internal armed conflict affects only parts of the country, as a rule the possibility of a serious and individual threat may only be assumed if the conflict takes place in the applicant's home area, to which he would typically return.</p> <p>If it is established in the new proceedings that an armed conflict in the applicant's home area indeed poses an individual threat due to an exceptionally high level of general risks, it must be examined whether internal protection within the meaning of Article 8 of the Qualification Directive is available in other parts of Iraq.</p>	<p>(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07 (Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07</p>
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds.</p>	
<p>According to Article L.712-1 c) CESEDA [which transposed Article 15(c) of the Qualification Directive], the Council of State considered that generalised violence giving rise to the threat at the basis of the request for subsidiary protection is inherent to the situation of armed conflict and characterises it. The Council of State considered that according to the interpretation of this provision, as well as, the provisions of the Qualification Directive, the violence and the situation of armed conflict coexist in all regards on the same geographical zone.</p> <p>The Council of State stated that the existence of a serious, direct and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that he/she proves that he/she is specifically targeted because of elements which are specific to his/her personal situation as soon as the degree of indiscriminate violence characterising the armed conflict reaches such a high level that there are serious and established grounds for believing that a civilian, if returned to the country or region concerned, would, by his/her sole presence on the territory, face a real risk of suffering these threats.</p>	
<p>This is the first major post - <i>El Gafaji</i> case. The first finding answers to OFPRA's position that application of L.712-1c) had to be strictly restricted to the area where fighting/combat are actually taking place. The rationale is that the war may generate indiscriminate violence beyond the limits of the conflict zone.</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO125	Level of violence and individual risk	QD (Iraq) v Secretary of State for the Home Department; AH (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620	United Kingdom	English	Court of Appeal	24.6.09	Iraq	It fell to be determined whether the approach of the Asylum and Immigration Tribunal to the meaning and effect of Article 15(c) QD was legally flawed. The Claimant in the first appeal had entered the UK and claimed asylum on the basis that, as a member of the Ba'ath Party under the Saddam regime, he was in fear of reprisals upon return. His claim was refused. The Immigration Judge refused his appeal having concluded that, in the light of the law set out in <i>KH</i> (Article 15(c) Qualification Directive: Iraq), Re [2008] UKAIT 23, the level of violence in his home area did not pose a sufficiently immediate threat to his safety to attract the protection of Article 15(c). In the second appeal, the Tribunal had found, likewise applying <i>KH</i> , that it was not satisfied that the level of violence prevalent in the home area of the Claimant would place him at sufficient individual risk if he were to be returned.
EASO126	Conflict	CNDA, 9 June 2009, Mr. H., n° 639474/08019905	France	French	CNDA (National Asylum Court)	9.6.09	Somalia	The Court found that the situation which prevailed at the moment of the assessment in Mogadishu must be seen as a situation of generalised violence resulting from a situation of internal armed conflict. Its intensity was sufficient to consider that at the moment of the evaluation the applicant faced a serious, direct and individual threat to his life or person, without being able to avail himself of any protection.
EASO127	High level of indiscriminate violence	CNDA 9 juin 2009 M.HAFHI n° 639474	France	French	CNDA (National Asylum Court)	9.6.09	Somalia	The Court found that, at the date of its ruling, blind violence in Mogadishu reached such a high level that the appellant would be exposed to a serious threat against his life.
EASO128	Level of violence and individual risk	AJDCoS, 25 May 2009, 200702174/2/V2	Netherlands	Dutch	Administrative Jurisdiction Division of the Council of State	25.5.09	Iraq	Article 15(c) QD only offers protection in exceptional circumstances where there is a high level of indiscriminate violence.
EASO129	Existence of conditions required by Article 15(c) QD not precluding potential applicability of Geneva Convention provisions	CE 15 mai 2009, Mlle Kona n° 292564	France	French	Council of State	15.5.09	Irak	It is a contradictory reasoning and an error of law to deny an Assyro-Chaldean woman refugee status and to grant her subsidiary protection because of threats rooted in her being member of a wealthy Christian family.
EASO130	Absence of indiscriminate violence	CNDA 24 avril 2009 Galaev n° 625816	France	French	CNDA (National Asylum Court)	24.4.09	Russian Federation	The Court found that, at the date of its ruling, there was no indiscriminate violence in Chechnya. Therefore subsidiary protection on the '15(c)' ground could not be granted to the appellant.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Appeals allowed and cases remitted to the Tribunal for reconsideration. The effects of the Tribunal's erroneous premise in <i>KH</i> were that the concepts of 'indiscriminate violence' and 'life or person' had been construed too narrowly, and 'individual' had been construed too broadly, so that the threshold of risk had been set too high, <i>KH</i> was overruled. On the proper construction of Article 15(c) of the Qualification Directive, the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection was not subject to the condition that that applicant adduce evidence that he was specifically targeted by reason of factors particular to his personal circumstances; the existence of such a threat could exceptionally be considered to be established where the degree of indiscriminate violence, as assessed by the competent national authorities, reached such a high level that substantial grounds were shown for believing that a civilian, returned to the relevant country or region, would, solely on account of his presence in that territory, face a real risk of being subject to that threat.</p>	<p>Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 1 WLR 2100 <i>KH</i> (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 23 <i>R v Asfaw</i> (Fregenet) [2008] UKHL 31 <i>Saadi v United Kingdom</i> (13229/03) (2008) 47 EHRR 17 <i>Sheekh v Netherlands</i> (1948/04) (2007) 45 EHRR 50 <i>Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland</i> (45036/98) (2006) 42 EHRR 1 <i>K v Secretary of State for the Home Department</i> [2006] UKHL 46 <i>Muslim v Turkey</i> (53566/99) (2006) 42 EHRR 16; <i>Batayav v Secretary of State for the Home Department (No 2)</i> [2005] EWCA Civ 366 <i>R (on the application of Razgar) v Secretary of State for the Home Department (No 2)</i> [2004] UKHL 27 <i>R (on the application of Ullah) v Special Adjudicator</i> [2004] UKHL 26 <i>Criminal Proceedings against Lyckeskog</i> (C99/00) [2003] 1 WLR 9 <i>Pretty v United Kingdom</i> (2346/02) [2002] 2 FLR 45 <i>Aspichi Dehwari v Netherlands</i> (37014/97) (2000) 29 EHRR CD74 <i>Kurt v Turkey</i> (24276/94) (1999) 27 EHRR 373 <i>Osman v United Kingdom</i> (23452/94) [1999] 1 FLR 193 <i>HLR v France</i> (24573/94) (1998) 26 EHRR 29 <i>Chahal v United Kingdom</i> (22414/93) (1997) 23 EHRR 413 <i>D v United Kingdom</i> (30240/96) (1997) 24 EHRR 423 <i>Chiron Corp v Organon Teknika Ltd (No 3)</i> [1996] RPC 535 <i>Vilvarajah v United Kingdom</i> (13163/87) (1992) 14 EHRR 248 <i>Soering v United Kingdom</i> (A/161) (1989) 11 EHRR 439</p>
<p>The Court examined the situation which prevailed in Somalia at that time and its deterioration due to the violent fighting between the Federal Transitional Government and several clans and Islamic militia and considered that, in some geographical areas, in particular in and around Mogadishu, the fighting was at the time characterised by a climate of generalised violence which included the perpetration of acts of violence, slaughters, murders and mutilations targeted at civilians in these areas. The Court therefore considered that this situation must be seen as a situation of generalised violence resulting from a situation of internal armed conflict. Finally, the Court considered that the situation of generalised violence, due to its intensity in the applicant's region of origin, was sufficient to find that he currently faced, a serious, direct and individual threat to his life or person, without being able to avail himself of any protection.</p>	
<p>Subsidiary protection was granted regardless of any personal reason.</p>	
<p>The Council of State concluded that it follows from the <i>Elgafaji</i> judgment (C 465/07) that Article 15(c), read in conjunction with Article 2(e) of the Qualification Directive, is designed to provide protection in the exceptional situation where the degree of indiscriminate violence characterising the armed conflict reaches such a high level that substantial grounds are shown for believing that a civilian, if returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat referred to. The Court of Justice in <i>Elgafaji</i> held that the interpretation of Article 15(c) of the Qualification Directive should be carried out independently. Nonetheless, it can be inferred from the decision in <i>Elgafaji</i> and the jurisprudence of the ECtHR regarding Article 3 of ECHR, that Article 15(c) of the Qualification Directive refers to a situation where Article 29 (1)(b) of the Aliens Act is also applicable.</p>	<p>(ECtHR) <i>NA v United Kingdom</i> (Application No 25904/07) (CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07</p>
<p>Even when there is an armed conflict going on in a given country, subsidiary protection can only be granted if the prospective risk is not linked to a conventional reason.</p>	
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds.</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO131	Level of violence and individual risk	Federal Administrative Court, 21 April 2009, 10 C 11.08	Germany	German	Federal Administrative Court	21.4.09	Iraq	The application of assessing group persecution is comparable to the European Court of Justice's consideration of subsidiary protection under Article 15(c) QD (Elgafaji, 17 February 2009, C 465/07), linking the degree of danger for the population or parts of the population to the individual danger of an individual person.
EASO132	Existence of indiscriminate violence, assessment of past circumstances	CNDA 3 avril 2009 M. GEBRIEL n° 630773	France	French	CNDA (National Asylum Court)	3.4.09	Sudan	The Court found that, at the date of its ruling, the area of North Darfour was plagued by indiscriminate violence but did not specify the level of this violence.
EASO133	Existence of indiscriminate violence, internal flight alternative (IFA)	CNDA 1er avril 2009 Mlle Thiruchelvam n° 617794	France	French	CNDA (National Asylum Court)	1.4.09	Sri Lanka	The Court found that, at the date of its ruling, the eastern and northern parts of Sri Lanka were plagued by indiscriminate violence but did not specify the level of this violence. CNDA nevertheless rejected appellant's claim on the ground of internal flight alternative in Colombo where she has been living since 2000.
EASO134	Actor of persecution or serious harm, inhuman or degrading treatment or punishment, internal armed conflict, subsidiary protection, membership of a particular social group	24. K. 33.913/2008/9	Hungary	Hungarian	Metropolitan Court of Budapest	16.3.09	Iraq	The Court granted the applicant subsidiary protection status on the grounds that he would be at risk of serious harm on return to his home country (indiscriminate violence).
EASO135	Individual risk	Supreme Administrative Court, 13 March 2009, H.A.Š. v Ministry of Interior n.5 Azs 28/2008-68	Czech Republic	Czech	The Supreme Administrative Court	13.3.09	Iraq	The case concerned an application for international protection by an Iraqi national. The application was dismissed on the grounds of a failure to establish that his life or person was threatened by reason of indiscriminate violence. The applicant failed to demonstrate individual risk.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The assumption of group persecution, meaning persecution of every single member of the group, requires a certain 'density of persecution', justifying a legal presumption of persecution of every group member. These principles, initially developed in the context of direct and indirect State persecution, are also applicable in the context of private persecution by non-State actors under Article 60(1) sentence (4)(c) of the Residence Act (in compliance with Article 6(c) of the Qualification Directive), which now governs explicitly private persecution by non-State actors. Under the Qualification Directive, the principles developed in German asylum law in the context of group persecution are still applicable. The concept of group persecution is by its very nature a facilitated standard of proof and in this respect compatible with basic principles of the 1951 Refugee Convention and the Qualification Directive. Article 9.1 of the Qualification Directive defines the relevant acts of persecution, whereas Article 10 of the Qualification Directive defines the 'characteristics relevant to asylum' as 'reasons for persecution'. The Court found that in order to establish the existence of group persecution it is necessary to at least approximately determine the number of acts of persecution and to link them to the whole group of persons affected by that persecution. Acts of persecution not related to the characteristics relevant to asylum (reasons for persecution) are not to be included.</p>	<p>(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07 (Germany) Federal Administrative Court, 18 July 2006, 1 C 15.05 Federal Administrative Court, 1 February 2007, 1 C 24.06</p>
<p>Subsidiary protection was granted to the appellant on consideration of his reasons of fleeing from his native region, directly rooted in murderous attacks by the Janjawid militia.</p>	
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds. One of the few examples of IFA cases registered in French jurisprudence.</p>	
<p>The Court rejected the applicant's request for refugee status as the persecution he was subject to was in no way related to the reasons outlined in the Geneva Convention, in particular, membership of a particular social group. The applicant's kidnapping was the consequence of the general situation in the country. The Court examined Article 15(b) and (c) of the Qualification Directive. In this context the Court relied significantly on the judgment reached by the European Court of Justice on 17 February 2009 in Case C-465/07. Article 15(b) of the Qualification Directive assumes facts relating to the personal situation of the applicant, which did not apply in the applicant's case. The subsidiary protection status contained in Section 61(c) of the Asylum Act and in Article 15(c) of the Qualification Directive is more general, and connected rather to the situation in the country than personally to the applicant. The Court lists the conditions for subsidiary protection status in accordance with paragraph (c). In the applicant's case, the violations of law affecting him are consequences of the general risk of harm and indiscriminate internal armed conflict, while according to the country information reports, the violence not only affects the applicant's place of residence but also most of the country. In contrast to non-refoulement, the granting of subsidiary protection status is not based on the extreme nature of the prevailing situation, but on the fulfilment of statutory conditions for granting the status. The conditions differ for the two legal concepts. If the country information indicates without any doubt that the conditions for subsidiary protection apply, the applicant must be granted subsidiary protection.</p>	<p>(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07</p>
<p>The Supreme Administrative Court (SAC) interpreted the meaning of the phrase 'a risk of serious harm and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict'. The Court set out a three-stage test that must be satisfied in order to establish this type of 'serious harm'. All three elements of the test must be met for subsidiary protection to be granted in a situation of indiscriminate violence. According to the final decision of SAC, the applicant fulfilled two conditions. It was accepted that Iraq was in a situation of international or internal armed conflict and that the applicant was a civilian. However, according to the Court, the applicant's life or person was not threatened by reason of indiscriminate violence. The situation in Iraq could not be classified as a 'total conflict' where a civilian may solely on account of his presence on the territory of that country or region, face a real risk of being subjected to that threat. The applicant was not a member of a group that was at risk and therefore did not establish a sufficient level of individualisation.</p>	<p>(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07 (ICTY) <i>Prosecutor v Tadic</i> (IT-94-1-AR72) ICTY <i>Prosecutor v Kunarac and Others</i> (IT-96-23 and IT-96-23-1) ICTY</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
National Jurisprudence (pre-Elgafaji)								
EASO136	Indiscriminate violence and serious threat	AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091	United Kingdom	English	Asylum and Immigration Tribunal	27.1.09	Somalia	The historic validity of the country guidance given in HH and Others (Mogadishu: armed conflict: risk) [2008] UKAIT 22 was confirmed but it was superseded to extent that there was an internal armed conflict within the meaning of Article 15(c) QD throughout central and southern Somalia, not just in and around Mogadishu. The conflict in Mogadishu amounted to indiscriminate violence of such severity as to place the majority of the population at risk of a consistent pattern of indiscriminate violence. Those not from Mogadishu were not generally able to show a real risk of serious harm simply on the basis that they were a civilian or even a civilian internally displaced person, albeit much depended on the background evidence relating to their home area at the date of decision or hearing. Whether those from Mogadishu (or any other part of central and southern Somalia) were able to relocate internally depended on the evidence as to the general circumstances in the relevant area and the personal circumstances of the applicant.
EASO137	Conflict and internal protection	High Administrative Court Hessen, 11 December 2008, 8 A 611/08.A	Germany	German	High Administrative Court Hessen	11.12.08	Afghanistan	The situation in Paktia province in Afghanistan meets the requirements of an internal armed conflict in terms of Section 60(7)(2) Residence Act/Article 15(c) QD. An internal armed conflict does not necessarily have to affect the whole of the country of origin. The concept of internal protection does not apply if the applicant cannot reasonably be expected to reside in another part of the country because of an illness, even if that illness is not life-threatening (epilepsy in the case at hand).

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>A person might have succeeded in a claim to protection based on poor socio-economic or dire humanitarian living conditions under the Refugee Convention or Article 15 of the Qualification Directive or Article 3, although to succeed on this basis alone the circumstances would have to be extremely unusual. In the context of Article 15(c) the serious and individual threat involved did not have to be a direct effect of the indiscriminate violence; it was sufficient if the latter was an operative cause. Assessment of the extent to which internally displaced persons faced greater or lesser hardships, at least outside Mogadishu, varied significantly depending on a number of factors. Note: This case was considered in <i>HH (Somalia) & Ors v Secretary of State for the Home Department</i> [2010] EWCA Civ 426. The appeal of one of the Claimants was allowed on the ground that where the point of return and any route to the safe haven were known or ascertainable, these formed part of the material immigration decision and so were appealable.</p>	<p>Many cases cited, significant cases include: <i>Elgafaji v Staatssecretaris van Justitie (C-465/07)</i> [2009] 1 WLR 2100 <i>HH and others (Mogadishu: armed conflict: risk) Somalia CG</i> [2008] UKAIT 00022 <i>KH (Article 15(c) Qualification Directive) Iraq CG</i> [2008] UKAIT 00023 <i>HS (returned asylum seekers) Zimbabwe CG</i> [2007] UKAIT 00094 <i>NA v UK Application No 25904/07</i> <i>AG (Somalia)</i> [2006] EWCA Civ 1342 <i>M and Others (Lone women: Ashraf) Somalia CG</i> [2005] UKIAT 00076 <i>R (On the appellant of Adam v Secretary of State for the Home Department)</i> [2005] UKHL 66 <i>Yassin Abdullah Kadi, Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities, joined cases C-402/05 C-402/05 P and C-415/05</i> <i>R (Sivakumar) v Secretary of State for the Home Department</i> [2003] 1 WLR 840 <i>Ullah</i> [2004] UKHL 26 <i>Prestige Properties v Scottish Provident Institution</i> [2002] EWHC 330 <i>Adan v Secretary of State for the Home Department</i> [1999] 1 AC 293; [1998] 2 WLR 703 <i>Shah and Islam</i> [1999] 2 AC 629 <i>Vilvarajah and Others v United Kingdom</i> [1991] 14 EHRR 248</p>
<p>The term 'internal armed conflict' has to be interpreted in line with the case law of the Federal Administrative Court in the light of the Geneva Conventions of 1949 including their Additional Protocols. If a conflict is not typical of a civil war situation or of guerrilla warfare, especially as concerns the degree of organisation of the parties to the conflict, they must be marked by a certain degree of durability and intensity in order to establish protection from deportation under Article 15(c) of the Qualification Directive. However, the conflict does not necessarily have to affect the whole territory of the state. This is clearly evident from the fact that subsidiary protection is not granted if an internal protection alternative exists.</p> <p>The requirements for subsidiary protection are met for the applicant as an internal armed conflict takes place in his home province Paktia which takes the form of a civil war-like conflict and of guerrilla warfare with the Afghan government forces, ISAF and NATO units on one side and the Taliban on the other. This conflict results in risks for a high number of civilians, which would be concentrated in the applicant's person in a manner that he would face a serious and individual threat upon return which could take the form of punishment and/or forced recruitment. As a result of what happened to the applicant before he left Afghanistan, and in any case because he is a male Pashtun who could be recruited for armed service, there is a sufficient degree of individualisation of a risk of punishment and/or forced recruitment which might even make the granting of refugee status applicable. Therefore, it is not necessary to clarify in this decision other open questions in this context, which might have to be clarified by a European Court in any case. This includes the exact requirements of individualisation of risk which generally affect the civilian population. This would include a more concrete definition of the term 'indiscriminate violence', which is part of Article 15(c) of the Qualification Directive but has not been included in Section 60 (7) (2) of the Residence Act. It also has not been clarified whether it is necessary in the context of Article 15(c) of the Qualification Directive to identify a certain 'density of danger' (as in the concept of group persecution) or whether it is sufficient to establish a close connection in time and space to an armed conflict.</p> <p>The applicant cannot avail of internal protection in other parts of Afghanistan. This is because the issue of whether he can be reasonably expected to stay in another part of his country of origin does not only involve risks related to persecution. It must also be taken into account whether he could safeguard at least a minimum standard of means of existence (minimum subsistence level). As a result of the poor security and humanitarian situation this is not the case in Afghanistan in general, and Kabul in particular. In contrast to its former judgment (decision of 7 February 2008, 8 UE 1913/06) the Court is now convinced that Kabul does not provide an internal protection alternative even to young single male returnees, unless they are well educated, have assets or may rely on their families. In this context it has to be considered as questionable that the concept of internal protection is not applied only in cases of extreme risk such as starvation or severe malnutrition. Furthermore, the applicant is able to work in a limited way only due to his epilepsy and he would not be able to secure the necessary medication.</p>	<p>(Germany) Administrative Court Stuttgart, 21.05.2007, 4 K 2563/07 Federal Administrative Court, 7 February 2008, 10 C 33.07 Federal Administrative Court, 29 May 2008, 10 C 11.07 Federal Administrative Court, 24 June 2008, 10 C 43.07 High Administrative Court Hessen, 10 February 2005, 8 UE 280/02.A High Administrative Court Hessen, 26 June 2007, 8 UZ 452/06.A High Administrative Court Hessen, 7 February 2008, 8 UE 1913/06</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO138	Individual risk	Administrative Court München, 10 December 2008, M 8 K 07.51028	Germany	German	Administrative Court München	10.12.08	Iraq	The risk of the applicant becoming a victim of an honour killing (or respectively a weaker, non-life threatening disciplinary measure by her clan) because of her moral conduct, disapproved by her clan, constitutes an increased individual risk. However, this risk is not the result of arbitrary violence, but constitutes a typical general risk.
EASO139	Internal protection	District Court Almelo, 28 November 2008, AWB 08/39512	Netherlands	Dutch	District Court Almelo	28.11.08	Colombia	The District Court held the stated lack of credibility in the first instance decision did not exclude the possible granting of asylum status on the grounds of Article 15(c) QD, since it has been established that the applicants are Colombian nationals. Regarding the respondent's claim that the applicants cannot be granted an asylum permit on the grounds of Article 15(c) QD, because there is a possibility of internal protection in Colombia, the District Court held that it follows from Article 8 para 1 QD that at a minimum the applicant must not run a real risk of serious harm in the relocation alternative.
EASO140	Conflict	Council for Alien Law Litigation, 23 October 2008, Nr. 17.522	Belgium	French	Council for Alien Law Litigation	23.10.08	Burundi	This case concerned the definition of an 'internal armed conflict.' Relying on international humanitarian law and in particular on the <i>Tadic</i> decision of the International Criminal Tribunal for the former Yugoslavia (ICTY), the Council defined an 'internal armed conflict' as continuous conflict between government authorities and organised armed groups, or between such groups within a State. The Council also found that a ceasefire did not necessarily mean that such a conflict had ended.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The Court cannot establish a nationwide specific individual threat to the applicant (only a general risk) despite her status as a possible returnee. A different assessment does not even follow from the new case law of the Federal Administrative Court, according to which the provision of Section 60(7)(3) of the Residence Act, (referring to protection from deportation by the suspension of deportation in case of general risks) has to be applied in line with the Qualification Directive, which means that the provision in German law does not include those cases in which, on the basis of an individual assessment, the conditions of granting subsidiary protection under Article 15(c) of the Qualification Directive are fulfilled (Federal Administrative Court, 24 June 2008, 10C 43.07). The distinguishing characteristics of 'substantial individual danger to life and limb' are equivalent to those of a 'serious and individual threat to life or person' within the meaning of Article 15(c) of the Qualification Directive. It must be examined whether the threat arising for a large number of civilians resulting from an armed conflict, and thus a general threat, is so aggregated in the person of the applicant as to represent a substantial individual danger within the meaning of Section 60(7)(2) of the Residence Act. Such individual circumstances that aggravate the danger may be caused by one's membership of a group. In this context in Iraq, lower courts' decisions have mentioned membership in one of the political parties, for example, or membership in the occupational group of journalists, professors, physicians and artists. The applicant is not at risk due to her membership to a particular group, which, at the same time, excludes the existence of risk aggravating circumstances for the same reason.</p> <p>Another condition for assuming an individually aggravated threat, taken from the statements of reasons for the Residence Act 1, is that the applicant must be threatened with danger as a consequence of 'indiscriminate violence'. General dangers of life, which are simply a consequence of armed conflicts, for example due to the deterioration of the supply situation, cannot be considered for the assessment of the density of risks.</p> <p>As far as the applicant claims she will be a victim of an honour killing (or respectively a weaker, non-life threatening disciplinary measure by her clan) because of her moral conduct, disapproved by her clan, she is in fact subject to an increased individual risk. However, this risk is not a result of arbitrary violence, but is a target-oriented, predictable danger, aimed directly at the applicant, which is an expression of a criminal attitude among some individuals of her culture of origin, that even in Germany is noticeable. Like in any society characterised by anarchic circumstances, this risk may intentionally affect everybody who does not submit to 'fist law'. This risk emerges and prospers in the absence of a functional constitutional order based on peace, providing for corresponding punishment and is, therefore, a typical general risk.</p>	<p>(Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07</p>
<p>The district court can conclude from the decisions that, in the framework of the research performed with regards to the applicants' asylum stories, the respondent consulted the general country of origin report of the Dutch Minister of Foreign Affairs about Colombia (of September 2008) and has heard the applicants. However, taking into account the complex situation in Colombia – according to the aforementioned country of origin report, there is a dynamic conflict there – the district court deems this research to be insufficient in the present case.' In addition, the country of origin report of 2008 describes the situation as it was in 2006 and, therefore, does not describe the current situation. The District Court referred to the respondent's policy regarding internal protection (paragraph C4/2.2 Aliens Circular 2000) and stated:</p> <p>'(...) it can only be reasonably expected from the applicant that he stays in another part of the country of origin, if there is an area where the applicant is not in danger and the safety there is lasting. It must be considered unlikely that there is a part of Colombia where safety is lasting, since the country report of Colombia states that there is a dynamic conflict and taking account of the safety situation per region as described in paragraph 2.3.2.'</p>	
<p>The debate before the Council for Alien Law Litigation (CALL) mainly concerned the definition of 'internal armed conflict' and the factors that need to be considered in order to determine when such a conflict ceases. In order to define the concept of 'internal armed conflict', the CALL relied on international humanitarian law (as neither the Belgian Alien Law nor the travaux préparatoires of that law provide a definition), and in particular on the <i>Tadic</i> decision of the ICTY.</p> <p>Further relying on <i>Tadic</i>, the CALL ruled that 'international humanitarian law continues to apply until a peaceful settlement is achieved, whether or not actual combat takes place there.' For the CALL a ceasefire does not suffice, but it is required that the fighting parties give 'tangible and unambiguous signals of disarmament, bringing about a durable pacification of the territory'. Based on that definition the CALL decided that it was premature to conclude that the May 2008 ceasefire had ended the conflict in Burundi. The situation in Burundi was still to be considered as an internal armed conflict.</p> <p>The CALL further examined the other conditions that must be fulfilled: indiscriminate violence, serious threat to a civilian's life or person, and a causal link between the two. With regard to 'indiscriminate violence', the CALL referred to its earlier case law, in which it had defined the concept as: 'indiscriminate violence that subjects civilians to a real risk to their lives or person even if it is not established that they should fear persecution on the basis of their race, religion, nationality, their belonging to a particular social group, or their political opinions in the sense of Art 1(A)(2) of the 1951 Refugee Convention.'</p> <p>For the CALL it therefore needed to be established that there was, in a situation of armed conflict, 'endemic violence or systematic and generalised human rights violations'. In the case at hand the CALL found that those conditions were met.</p>	<p>(ICTY) Prosecutor v Tadic (IT-94-1-AR72) ICTY</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO141	Conflict	High Administrative Court, 19 September 2008, 1 LB 17/08	Germany	German	High Administrative Court of Schleswig-Holstein	19.9.08	Iraq	The situation in Iraq was not characterised by an armed conflict within the meaning of Section 60(7)(2) Residence Act/Article 15(c) QD. In any case, there was no sufficient individual risk for returnees.
EASO142	Refugee vs Subsidiary protection	District Court Zwolle, 15 August 2008, AWB 09/26758	Netherlands	Dutch	District Court Zwolle	15.8.08	Afghanistan	This case confirmed that the Qualification Directive makes a clear distinction between refugees and those in need of subsidiary protection. Further, that Article 28 of the Asylum Procedures Directive, which considers unfounded applications, is not applicable to those who fall within the scope of Article 15(c) QD.
EASO143	Serious risk and conflict	High Administrative Court Rheinland-Pfalz, 12 August 2008, 6 A 10750/07.OVG	Germany	German	High Administrative Court Rheinland-Pfalz	12.8.08	Afghanistan	The security and humanitarian situation in Kabul did not meet the standards for a 'situation of extreme risk' (extreme Gefahrenlage) for a returnee who grew up in Kabul. Article 15(c) QD requires that a particular risk resulting from an armed conflict is substantiated.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Within the definition of Article 1 of the Second Additional Protocol to the Geneva 1949 Conventions an internal armed conflict only takes place if an opposing party to a civil war has control over a part of the state's territory. The Federal Administrative Court additionally included 'civil war-like conflicts and guerrilla warfare' in the definition of an armed conflict in the meaning of Article 15(c) of the Qualification Directive, if they are marked by a certain degree of 'intensity and durability'.</p> <p>It was held that in Iraq, the high degree of organisation, which the Second Additional Protocol requires, was not met since a high number of very disparate actors are involved in the conflict, pursuing different goals and mostly acting in a part of the state's territory only. Even if one assumes that the situation in Iraq could be characterised as a civil war or a civil war-like situation, it still is a necessary requirement for the granting of protection from deportation that the applicant is affected individually. However, there is no evidence for the assumption that the applicant is specifically threatened by one of the parties to the conflict in Iraq. For example, there is no indication that she has adopted a 'western' lifestyle. This is not likely in the light of the comparably short duration of her stay in Germany. Neither are there any indications that the claimant will be specifically threatened by criminal acts. Such a threat would not be significantly different from 'general risks' which normally must not be taken into account within an examination of Section 60(7)(2) Residence Act/Article 15(c) of the Qualification Directive. The situation in Iraq at the moment does not present a risk for every returnee, especially since the conflict seems to become less intensive.</p> <p>The applicant is not at risk of 'arbitrary'/indiscriminate violence, even if an interpretation of this term is based on the English version of the Directive as 'indiscriminate', 'disproportionate', 'violating humanitarian law', or on the French version as 'random'. And even if she would face a risk at her place of origin, she, being a Kurdish woman, would be able to evade this risk by moving to the Kurdish Autonomous Region.</p>	<p>(Germany) Federal Administrative Court, 15 May 2007, 1 B 217.06 Federal Administrative Court, 7 February 2008, 10 C 23.07 Federal Administrative Court, 27 March 2008, 10 B 130.07 Federal Administrative Court, 31 March 2008, 10 C 15.07 (Germany) > Federal Administrative Court, 8 April 2008, 10 B 150.07 Federal Administrative Court, 17 April 2008, 10 B 124.07 Federal Administrative Court, 24 June 2008, 10 C 43.07 High Administrative Court Baden-Württemberg, 8 August 2007, A 2 S 229/07 High Administrative Court Bayern, 23 November 2007, 19 C 07.2527 High Administrative Court Hessen, 9 November 2006, 3 UE 3238/03.A High Administrative Court Hessen, 26 June 2007, 8 UZ 452/06.A High Administrative Court Saarland, 12 March 2007, 3 Q 114/06 High Administrative Court Schleswig-Holstein, 20 February 2007, 1 LA 5/07 High Administrative Court Schleswig-Holstein, 28 May 2008, 1 LB 9/08</p>
<p>The District Court held that the invocation of Article 15(c) of the Qualification Directive in this stage of the proceedings is contrary to the principle of due process. The Court therefore did not take the invocation of Article 15(c) of the Qualification Directive into account.</p> <p>The Qualification Directive makes a clear distinction between refugees and those in need of subsidiary protection. Article 15(c) of the Qualification Directive is particularly written for those in need of subsidiary protection. The District Court does not agree with the applicant's argument that the Asylum Procedures Directive requires an assessment of whether Article 15(c) of the Qualification Directive is applicable. The Court held that the application of the applicant was rightfully rejected with reference to Article 4:6 of the General Administrative Law Act.</p>	<p>(ECtHR) NA v United Kingdom (Application No 25904/07) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07</p>
<p>The High Administrative Court agreed with the authorities' submissions. Despite the desperate security and supply situation and that the applicant had no relatives in Kabul anymore and does not seem to be in contact with other people in Afghanistan, he would not face an extreme risk because of destitution. As a result of his school education, his vocational training as a cook, completed in Germany, and his local knowledge he would be able to make a living through employed or self-employed work. It assumed that he had savings from his time of employment in Germany and thus would be able to overcome the initial difficulties. Moreover, they found that the security situation in Afghanistan did not result in a situation of extreme risks for every single returnee to Kabul, particularly since the district, where the applicant had lived before, is not considered to be insecure (based on a UNHCR-report of 25 February 2008, 'Security situation in Afghanistan').</p> <p>The applicant is not eligible for subsidiary protection based on Article 15(c) of the Qualification Directive. Eligibility for subsidiary protection requires, among other things, that valid reasons are put forward for the assumption that, in case of return, there is a real risk to be subject to serious harm, for example a serious individual threat to one's life or physical integrity as a result of indiscriminate violence in situations of international or internal armed conflicts. Such an armed conflict does not necessarily have to take place nationwide. As a principle, a general risk is not sufficient for granting subsidiary protection under Article 15(c) of the Qualification Directive, which requires an individual risk, resulting from indiscriminate violence in situations of armed conflicts. Risks resulting from armed violence, which is used indiscriminately and is not being aimed at an individual person, however, typically have to be classified as general risks.</p> <p>General risks can only constitute a serious and individual threat if valid reasons in terms of Art 2 (e) of the Qualification Directive are being put forward for the assumption that in case of return, there is a real risk of being affected by this indiscriminate violence. Such reasons, however, have not been submitted. Putting aside the fact that the indiscriminate violence in situations of an armed conflict, as shown above, are not the focus of threat to the civilian population in Kabul, the applicant himself did not submit anything indicating a serious individual risk of becoming a victim of arbitrary (indiscriminate) violence within the armed conflict in his home country. The fact that he was hostile to the Taliban before he left Afghanistan does not allow for the conclusion that in case of his return his life or his physical integrity would be seriously and individually at risk as a result of indiscriminate use of force in the context of an armed conflict.</p>	<p>(Germany) Federal Administrative Court, 15 May 2007, 1 B 217.06 Federal Administrative Court, 24 June 2008, 10 C 42.07 High Administrative Court Baden-Württemberg, 8 August 2007, A 2 S 229/07 High Administrative Court Schleswig-Holstein, 22 December 2006, 1 LA 125/06</p>

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO144	Conflict	Federal Administrative Court, 24 June 2008, 10 C 43.07	Germany	German	Federal Administrative Court	24.6.08	Iraq	The Court found that when defining the term 'international or internal armed conflict' as set out in Article 15(c) QD one has to take into account international law, in particular the four Geneva Conventions on International Humanitarian Law of 12 August 1949 and the Additional Protocols of 8 June 1977. An internal armed conflict within the meaning of Article 15(c) QD does not necessarily have to extend to the whole territory of a state. An examination of the requirements for subsidiary protection under Article 15(c) QD is not precluded if the authorities have issued a general 'suspension of deportation'.
EASO145	Conflict	KH v. Secretary of State for the Home Department	United Kingdom	English	Asylum and Immigration Tribunal	25.3.08	Iraq	The Court found that the situation in Iraq as a whole was not such that merely being a civilian established that a person faced a 'serious and individual threat' to his or her 'life or person'.
EASO146	Conflict	HH and Others (Mogadishu: armed conflict: risk) [2008] UKAIT 22	United Kingdom	English	Asylum and Immigration Tribunal	28.1.08	Somalia	Applying the definitions drawn from the <i>Tadic</i> jurisdictional judgment, for the purposes of paragraph 339C of the Immigration Rules and the Qualification Directive, on the evidence, an internal armed conflict existed in Mogadishu. The zone of conflict was confined to the city and international humanitarian law applied to the area controlled by the combatants, which comprised the city, its immediate environs and the TFG/Ethiopian supply base of Baidoa. A person was not at real risk of serious harm as defined in paragraph 339C by reason only of his or her presence in that zone or area. A member of a minority clan or group who had no identifiable home area where majority clan support could be found was in general at real risk of serious harm of being targeted by criminal elements, both in any area of former residence and in the event (which was reasonably likely) of being displaced. That risk was directly attributable to the person's ethnicity and was a sufficient differential feature to engage Article 15(c) QD.
EASO147	Internal protection	District Court Assen, 17 January 2008, AWB 07/35612	Netherlands	Dutch	District Court Assen	17.1.08	Sri Lanka	The applicant based his claim on both Article 3 of the ECHR and Article 15(c) QD. The Minister for Immigration and Asylum must, when making an assessment of whether the applicant is eligible for asylum where there is no internal protection alternative, take into consideration the general circumstances in that part of the country and the applicant's personal circumstances at the time of the decision.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Excerpt: Article 15(c) of the Qualification Directive had been implemented in German law as a "prohibition of deportation" under Section 60(7) Sentence 2 of the Residence Act. In spite of slightly divergent wording, the German provision conformed to the standards of Article 15(c) of the Qualification Directive. Concerning the situation in Iraq, the High Administrative Court had found that these standards were not fulfilled as there was no countrywide armed conflict taking place in Iraq. In doing so, the High Administrative Court had set the standards for the definition of an armed conflict too high.</p> <p>When defining the term 'international or internal armed conflict' one has to take into account international law, i.e. first and foremost the four Geneva Conventions on International Humanitarian Law of 12 August 1949. Furthermore, for the term "internal armed conflict" there is a more specific definition in Article 1 of the Second Additional Protocol of 8 June 1977. According to Article 1.1 of the Second Additional Protocol an internal armed conflict within the meaning of international law takes place if "dissident armed forces or other organised groups [...], under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol." In contrast, Article 1.2 of the Second Additional Protocol excludes "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature" from the definition of an armed conflict.</p> <p>Internal crises which fall in between these two definitions must not be excluded out of hand from fulfilling the standards of Article 15(c) of the Qualification Directive. However, the conflict has to be marked by a certain degree of intensity and duration. Typical examples are civil wars and rebel warfare. It is not necessary here to come to a definite conclusion whether the parties to the conflict have to be as organised as the Geneva Conventions of 1949 stipulate. In any case, a definition based on the criteria of international law has its limits if it contradicts the purpose of providing protection under Article 15(c) of the Qualification Directive. On the other hand, this does not imply that a "low intensity war" satisfies the criteria for an internal armed conflict within the meaning of Article 15(c) of the Qualification Directive.</p> <p>The High Administrative Court was not justified in assuming that the existence of a countrywide conflict is a precondition for the granting of protection under Article 15(c) of the Qualification Directive. In contrast, an internal armed conflict may also take place, if its requirements only exist in a part of a state's territory. Accordingly, the law assumed that an internal protection alternative may be relevant for the determination of a prohibition of deportation under Section 60 (7) Sentence 2 of the Residence Act. This makes clear that an internal armed conflict does not need to take place in the whole territory of a country. Furthermore, Article 1 of the Second Additional Protocol also states that armed groups have to carry out their activities in "part of [the] territory".</p> <p>In addition, the High Administrative Court had argued that subsidiary protection in accordance with the Qualification Directive could not be granted since the Bavarian Ministry of Interior had generally suspended deportations of Iraqi citizens from 2003 onwards. According to the High Administrative Court the Ministry of Interior's directives offer "comparable protection against the general risks connected with an armed conflict" and therefore an examination of the preconditions of subsidiary protection was excluded under Section 60 (7) Sentence 3 of the Residence Act.</p> <p>(...)</p>	<p>(ICTY) Prosecutor v Haradinaj et al. (No IT-04-84-T) Prosecutor v Tadic (IT-94-1-AR72) ICTY (UK) KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKIAT 00023 (Germany) High Administrative Court Schleswig-Holstein, 21 November 2007, 2 LB 38/07</p>
<p>In Court's view the fact that the appellant made no mention of any past difficulties faced by his family (apart from those at the hands of insurgents, which were found not credible) was a very relevant consideration in assessing the appellant's situation on the assumption he will go back to his family in Kirkuk. The Court rejected the view that for civilians in Kirkuk such insecurity was in general sufficient to establish the requisite risk under Article 15(c).</p>	
<p>In deciding whether an international or internal armed conflict existed for the purposes of the Qualification Directive, the Tribunal paid particular regard to the definitions in the judgments of international tribunals concerned with international humanitarian law (such as the <i>Tadic</i> jurisdictional judgment). Those definitions were necessarily imprecise and the identification of a relevant armed conflict was predominantly a question of fact. It was in general very difficult for a person to succeed in a claim to humanitarian protection solely by reference to paragraph 339C(iv) of the Immigration Rules and Article 15(c) of the Directive, i.e. without showing a real risk of ECHR Article 2 or Article 3 harm.</p>	<p>Many cases cited, significant include: Salah Sheekh v Netherlands [2007] ECHR 36 AG (Somalia) and Others v Secretary of State for the Home Department [2006] EWCA Civ 1342 AA (Involuntary returns to Zimbabwe) Zimbabwe [2005] UKAIT 00144 NM and Others (Lone women-Ashraf) Somalia CG [2005] UKIAT 00076 FK (Shekal Ghandershe) Somalia CG [2004] UKIAT 00127 Adan v Secretary of State for the Home Department [1997] 1 WLR 1107 HLR v France [1997] 26 EHRR 29 Vilvarajah and Others v United Kingdom [1991] 14 EHRR 248</p>
<p>The District Court considered that Tamils are a risk group that requires extra attention. Regarding the respondent's claim that there is possible internal protection in Colombo, the District Court stated: "The district court deems the referral, in this context, to the letter of the Secretary of State of the 12th July 2007, in which it is stated that there is internal protection regarding the generally unsafe situation in the north and east, insufficient. In this context the district court refers to Chapter C4/2.2.2 of the Aliens Circular 2000 states that in assessing whether a part of the country of origin can be seen as an internal protection alternative, account must be taken of the general circumstances in that part of the country and the applicant's personal circumstances at the time of the decision. The district court cannot infer from the appealed decision that the respondent has taken the aforementioned policy into consideration. Although the applicant stayed in Colombo for 10 days in October/ November 2006 and the authorities knew about this, the district court, in this context, deems the fact that the applicant did not report to the authorities before his departure in August 2007 and only stayed with the travel agent due to the worsened situation in his country of origin at that time, of importance."</p>	

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO148	Civilian	4460	Belgium	Dutch	Council of Alien Law Litigation (Raad voor Vreemdelingenbetwistingen) - adopted by a single judge	4.12.07	Iraq	The benefit of the doubt granted to the applicant who cannot prove that he/she is a civilian is submitted to the condition that the applicant collaborated with asylum authorities.
EASO149	Conflict	3391	Belgium	French	Council of Alien Law Litigation (Conseil du contentieux des étrangers) - adopted by a special seat of three judges	31.10.07	Ivory Coast	Defines the term 'armed conflict' by reference to international humanitarian law. There is no armed conflict in Ivory Coast because, first, there are no 'continuous and concerted military actions' opposing governmental and rebel forces and, second, there is no indiscriminate violence.
EASO150	Civilian	Council for Alien Litigation, 17 August 2007, Nr. 1.244	Belgium	Dutch	Council of Alien Law Litigation (Raad voor Vreemdelingenbetwistingen)	17.8.07	Iraq	The Council of Alien Law Litigation ruled that for the recognition of subsidiary protection status (serious threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict), where doubt exists as to whether a person is a civilian or not, that person shall be considered to be a civilian.
EASO151	Conflict	AJDCoS, 20 July 2007, 200608939/1	Netherlands	Dutch	Administrative Jurisdiction Division of the Council of State	20.7.07	Kosovo	The question as to whether or not an armed conflict existed has to be answered according to humanitarian law (common Article 3 of the Geneva Convention and the second additional protocol).
EASO152	Internal protection	High Administrative Court Baden-Württemberg, 25 October 2006, A 3 S 46/06	Germany	German	High Administrative Court Baden-Württemberg	25/10/2006	Russia (Chechnya)	The Court, in favour of the applicants, assumed that the applicants had been subject to such persecution in the form of regional group persecution before they left Chechnya. However, the Court concluded that they were not eligible for refugee protection, since they could live safely in other parts of Russia.

The present collection of jurisprudence has been compiled by EASO with the assistance of the EDAL Database team, the UK Upper Tribunal and the views of EASO.

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>Note: See also, more recently and adopting the same conclusion: Council of Alien Law Litigation (single judge), case 47380 of 24 August 2010.</p>	
<p>Note: See also, considering that the 'armed conflict' must be defined by reference to IHL: Council of Alien Law Litigation (three judges), case 1968 of 26 September 2007</p>	
<p>Referring to the applicable provision (Article 48/4, §2, c, Belgian Alien Law), the Council of Alien Law Litigation (CALL) noted that the concept of 'civilian' was not defined in Belgian Alien Law, nor in the preparatory works of Parliament. By analogy with Article 50 of the first additional Protocol of 8 June 1977 to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, the CALL found that it should therefore be accepted that in case of doubt as to whether a person is a civilian, that person shall be considered to be a civilian. In its decision the CALL also analysed the concept of 'internal armed conflict' and found that the definition as provided in Article 1 of the Second Protocol to the Geneva Conventions should be relied on (there is no clear definition of this concept in the Belgian Alien Law or in the preparatory works of Parliament). The CALL then determined that the situation in central Iraq could be considered an internal armed conflict.</p>	
<p>The applicants were Roma from Kosovo. They argued that they were entitled to subsidiary protection under Article 15(c) of the Qualification Directive. They argued that the position of Roma in Kosovo was particularly difficult and met the serious harm threshold. In dispute was whether or not an internal armed conflict existed. The Council of State held that the concept of 'internal armed conflict' is not defined in the Qualification Directive and so they applied international humanitarian law and found that such a conflict exists when: an organised armed group with a command responsibility is able to conduct military operations on the territory of a state (or a part thereof) against the armed forces of the state authorities. These military operations must be protracted and connected. It was further held that less serious forms of violence, such as internal disturbances and riots or acts cannot lead to the conclusion that such a conflict existed.</p>	
<p>The Court assumed that the applicants had been subject to such persecution in the form of regional group persecution before they left Chechnya but concluded that they are not eligible for refugee protection, since they could live safely in other parts of Russia.</p> <p>According to the Federal Administrative Court, persons who are able to work, can make their living at a place of refuge, at least after overcoming initial problems, if they can achieve what they need for survival by their own income, even if the work is less attractive and falls short of their education, or by support from other people.</p> <p>Based on these principles, the applicants can be reasonably expected to take up residence in another part of the Russian Federation, where they are protected against persecution and can secure a decent minimum standard of living.</p> <p>The applicant will successfully obtain accommodation in the male dominated Chechen diaspora and find for himself employment, which will enable him to secure a decent standard of living for himself and his family. It is immaterial in the present case, if he will get his own registration, which is rather improbable without a valid internal passport, and if it would be reasonable for him to return to Chechnya first, in order to obtain a new internal passport.</p>	<p>(CJEU) Ratti, 5 April 1979, Case 148/78 (Germany) Federal Administrative Court, 17 May 2005, 1 B 100/05 Federal Administrative Court, 31 August 2006, 1 B 96/06 High Administrative Court Sachsen-Anhalt, 31 March 2006, 2 L 40/06</p>

er Tribunal, Louvain University and the CNDA. The summaries are provided for reference and do not necessarily reflect the official

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