European Asylum Support Office

Artículo 15, letra c), de la Directiva de reconocimiento (2011/95/UE)

Análisis judicial

Enero de 2015

SUPPORT IS OUR MISSION

EASO curriculum for members of courts and tribunals

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El contenido de la presente comunicación ha corrido a cargo de un grupo de trabajo integrado por los magistrados Mihai Andrei Balan (Rumanía), John Barnes (Reino Unido, ya jubilado), Bernard Dawson (Reino Unido), Michael Hoppe (Alemania), Florence Malvasio (coordinadora del grupo de trabajo, Francia), Marie-Cécile Moulin-Zys (Francia), Julian Phillips (Reino Unido), Hugo Storey (coordinador del grupo de trabajo, Reino Unido), Karin Winter (Austria), los consejeros jurídicos de tribunales Carole Aubin (Francia), Vera Pazderova (República Checa), así como Roland Bank, asesor jurídico (Alto Comisionado de las Naciones Unidas para los Refugiados, ACNUR).

Fueron invitados a este fin por la Oficina Europea de Apoyo al Asilo (EASO), conforme a la metodología recogida en el apéndice B. El método seguido para la selección de los miembros del grupo de trabajo fue debatido en una serie de reuniones celebradas a lo largo de 2013 por la EASO y los dos órganos con los que lleva a cabo un canje formal de notas, la Asociación Internacional de Magistrados de Derecho de Asilo (International Association of Refugee Law Judges, IARLJ) y la Asociación de Magistrados Europeos de Derecho Administrativo (Association of European Administrative Judges, AEAJ), así como las asociaciones judiciales nacionales de cada uno de los Estados miembros vinculadas a través de la red de órganos jurisdiccionales de la EASO.

El grupo de trabajo se reunió en tres ocasiones, durante los meses de abril, junio y septiembre de 2014, en Malta. Se recibieron comentarios sobre un proyecto de debate de varios miembros de la Red de Jueces de la EASO, a saber, los magistrados Johan Berg (Noruega), Uwe Berlit (Alemania), Jakub Camrda (Chequia), Jacek Chlebny (Polonia), Harald Dörig (Alemania), Hesther Gorter (Países Bajos), Andrew Grubb (Reino Unido), Fedora Lovricevic-Stojanovi (Croacia), John McCarthy (Reino Unido), Walter Muls (Bélgica), John Nicholson (Reino Unido), Juha Rautiainen (Finlandia), Marlies Stapels-Wolfrath (Países Bajos) y Boštjan Zalar (Eslovenia). También se recibieron comentarios de miembros del Foro Consultivo de la EASO, en concreto del Consejo Europeo sobre Refugiados y Asilados y el Foro Réfugiés-Cosi. El Grupo Mundial sobre Migración (Instituto de Posgrado de Estudios Internacionales y de Desarrollo de Ginebra), el Centro Nacional de Competencias de Investigación — On the Move (Universidad de Friburgo) & Refugee Survey Quarterly (Oxford University Press) también expresaron sus puntos de vista en relación con el texto. Todas estas observaciones fueron tenidas en cuenta durante el encuentro celebrado los días 18 y 19 de septiembre de 2014. El grupo de trabajo expresa su agradecimiento a todas las personas que presentaron observaciones, que han resultado sumamente útiles para completar el capítulo.

Este capítulo se actualizará periódicamente de acuerdo con la metodología que figura en el apéndice B.

En el sitio web de la EASO: http://easo.europa.eu/ (disponible únicamente en inglés) es posible encontrar una recopilación de la principal jurisprudencia en esta materia adoptada por los tribunales europeos y nacionales relacionada con las temáticas definidas en el análisis judicial. El grupo de trabajo desea expresar su agradecimiento a la Base de Datos Europea de Derecho de Asilo (European Database of Asylum Law, EDAL), al Boletín Europeo sobre cuestiones relacionadas con el asilo (Newsletter on European Asylum Issues, NEAIS) de la Universidad Radboud de Nimega, así como a los miembros de la red de órganos jurisdiccionales de la EASO por su valiosa ayuda a la hora de compilar dicha jurisprudencia.

Índice

LISTA DE ABREVIATURAS

ACNUR	Alto Comisionado de las Naciones Unidas para los Refugiados
AEAJ	Asociación de Magistrados Europeos de Derecho Administrativo
CEDH	Convenio Europeo para la Protección de los Derechos Humanos y las Libertades Fundamentales
CICR	Comité Internacional de la Cruz Roja
CNDA	Tribunal Nacional de Derecho de Asilo
DIDH	Derecho Internacional de Derechos Humanos
DIH	Derecho Internacional Humanitario
DR	Directiva de reconocimiento
EASO	Oficina Europea de Apoyo al Asilo
TEDH	Tribunal Europeo de Derechos Humanos
TFA	Tribunal Administrativo Federal
TFUE	Tratado de Funcionamiento de la Unión Europea
TJUE	Tribunal de Justicia de la Unión Europea
TPIY	Tribunal Penal Internacional para la ex Yugoslavia
UE	Unión Europea
UKAIT	Tribunal de Asilo e Inmigración del Reino Unido
UKUT	Tribunal Superior del Reino Unido

PREFACIO

La finalidad del presente análisis judicial consiste en dotar a los órganos jurisdiccionales competentes en materia de protección internacional de una herramienta útil que permita entender cuestiones relacionadas con la protección: en el presente capítulo, en concreto, el artículo 15, letra c), de la Directiva de reconocimiento (DR) ([1]). No ha resultado fácil para los jueces aplicar esta disposición capaz, por su naturaleza intrínseca, de afectar al resultado de muchos casos de protección internacional. Los estudios demuestran que, en diferentes Estados miembros, las interpretaciones no han sido concordantes ([2]). El comentario tiene por objeto guiar al lector hacia la comprensión de la DR a través de la jurisprudencia del Tribunal de Justicia de la Unión Europea (TJUE), así como la del Tribunal Europeo de Derechos Humanos (TEDH) y las resoluciones en la materia adoptadas por los órganos jurisdiccionales de los Estados miembros. Las citas de la jurisprudencia nacional no aspiran a ser exhaustivas, sino a ilustrar en qué términos ha sido transpuesta e interpretada la DR. El capítulo refleja las ideas del grupo de trabajo sobre el actual estado de la legislación. Cabe señalar que el artículo 15, letra c) probablemente será objeto de ulteriores sentencias del TJUE y se recuerda al lector la importancia de mantenerse al día de dichas resoluciones.

Se da por supuesto que el lector está familiarizado con la estructura de la legislación de la Unión Europea (UE) en materia de Derecho de asilo, reflejada en el acervo de la UE en la materia; el presente capítulo pretende asistir no solo a quienes disponen de poca o nula experiencia en lo tocante a su aplicación a las resoluciones judiciales, sino también a los magistrados más especializados.

Este análisis no aborda sino un aspecto del artículo 15, que cubre tres categorías de personas necesitadas de protección subsidiaria y no tienen derecho a protección en virtud de la Convención sobre el estatuto de los refugiados. Oportunamente se redactarán otros capítulos y se abordarán otras categorías que, en síntesis, facilitan protección contra los riesgos, comparables a los que infringen las disposiciones de los artículos 2 y 3 del Convenio Europeo para la Protección de los Derechos humanos y las Libertades Fundamentales (CEDH).

Este capítulo está dividido en dos partes. En la primera parte se analizan los elementos constitutivos del artículo 15, letra c). La segunda parte analiza en qué términos debe aplicarse esta disposición en la práctica. En el apéndice A figura una «estructura decisoria arborescente» en la que se establecen las preguntas que deben instruir los órganos jurisdiccionales a la hora de aplicar el artículo 15, letra c).

El TJUE ha insistido en que el artículo 15, letra c), debe abordarse desde la perspectiva de la DR en su conjunto. Por otra parte, este análisis no aborda todos los elementos jurídicos, caso por ejemplo de la exclusión, indispensables para llevar a efecto una evaluación de la protección subsidiaria. Estos elementos se analizarán igualmente en otros capítulos en el futuro. La DR establece las normas mínimas que deben adoptar los Estados miembros y permite que en dichas normas se amplíen las categorías y la naturaleza de la protección ofrecida.

Las partes de la DR pertinentes a efectos del presente análisis, con inclusión de los considerandos, son las siguientes:

([1]) Directiva 2011/95/UE del Parlamento Europeo y del Consejo, de 13 de diciembre de 2011, por la que se establecen normas relativas a los requisitos para el reconocimiento de nacionales de terceros países o apátridas como beneficiarios de protección internacional, a un estatuto uniforme para los refugiados o para las personas con derecho a protección subsidiaria y al contenido de la protección concedida (refundición) (DO L 337 de 20.12.2011, p. 9) (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:ES:PDF).
Como se explica en los considerandos 50 y 51, la DR refundida no es vinculante para Dinamarca, Irlanda y el Reino Unido, debido a que no participaron en su adopción. Para Irlanda y el Reino Unido sigue siendo vinculante la Directiva 2004/83/CE del Consejo, de 29 de abril de 2004, por la que se establecen normas mínimas relativas a los requisitos para el reconocimiento y el estatuto de nacionales de terceros países o apátridas como refugiados o personas que necesitan otro tipo de protección internacional y al contenido de la protección concedida ([D]O L 304 de 30.9.2004, p. 12) (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:ES:HTML). Los Estados miembros para los que la RD tiene efectos vinculantes debían adoptar la legislación nacional necesaria para cumplir lo dispuesto en ella a más tardar el 21 de diciembre de 2013. La DR refundida introduce varios cambios sustanciales en la Directiva 2004/83/CE, pero mantiene el texto del artículo 15, letra c) y su correspondiente considerando, aunque este último tiene actualmente un número diferente (ahora el 35 en lugar del 26).
([2]) 2) Véase, por ejemplo, Safe at Last? Law and Practice in Selected Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence, ACNUR, julio de 2011, http://www.unhcr.org/4e2d7f029.pdf. El considerando 8 de la DR refundida señala que «persistían considerables disparidades entre distintos Estados miembros en cuanto a la concesión de la protección y las formas de esta».

Considerandos

- Considerando 6 — Las conclusiones de Tampere establecen [...] que las normas relativas al estatuto de refugiado deben completarse con medidas relativas a las formas subsidiarias de protección, que ofrezcan un estatuto apropiado a cualquier persona necesitada de dicha protección.
- Considerando 12 — El principal objetivo de la presente Directiva es, por una parte, asegurar que los Estados miembros apliquen criterios comunes para la identificación de las personas verdaderamente necesitadas de protección internacional y, por otra parte, asegurar que dichas personas dispongan de un nivel mínimo de prestaciones en todos los Estados miembros.
- Considerando 33 — Deben fijarse igualmente normas sobre la definición y el contenido del estatuto de protección subsidiaria. La protección subsidiaria debe ser complementaria y adicional a la protección de los refugiados consagrada en la Convención de Ginebra.
- Considerando 34 — Es necesario introducir criterios comunes para que los solicitantes de protección internacional puedan optar a la protección subsidiaria. Los criterios deben derivar de las obligaciones internacionales impuestas por los instrumentos y las prácticas existentes en los Estados miembros sobre derechos humanos.
- Considerando 35 — Los riesgos a los que se ve expuesta en general la población de un país o un sector de la población no suelen plantear de por sí una amenaza particular que pueda calificarse de daño grave.

Artículo 2, letra f)

«Persona con derecho a protección subsidiaria»: un nacional de un tercer país o un apátrida que no reúne los requisitos necesarios para ser considerado como refugiado, pero respecto al cual existan motivos fundados para considerar que, si regresase a su país de origen o, en el caso de un apátrida, al país de su anterior residencia habitual, se enfrentaría a un riesgo real de sufrir alguno de los daños graves definidos en el artículo 15, y al que no se aplica el artículo 17, apartados 1 y 2, y que no puede o, a causa de dicho riesgo, no quiere acogerse a la protección de tal país.

Artículo 15

Constituirán daños graves: a) la condena a la pena de muerte o su ejecución, o b) la tortura o las penas o tratos inhumanos o degradantes de un solicitante en su país de origen, o c) las amenazas graves e individuales contra la vida o la integridad física de un civil motivadas por una violencia indiscriminada en situaciones de conflicto armado internacional o interno.

Las otras partes de la DR mencionadas en este análisis figuran en las secciones correspondientes.

El artículo 78 del Tratado del Funcionamiento de la Unión Europea (TFUE) establece que «la Unión desarrollará una política común en materia de asilo, protección subsidiaria y protección temporal destinada a ofrecer un estatuto apropiado a todo nacional de un tercer país que necesite protección internacional. Esta política deberá ajustarse a la Convención de Ginebra de 28 de julio de 1951 y al Protocolo de 31 de enero de 1967 sobre el Estatuto de los Refugiados, así como a los demás tratados pertinentes».

En su propuesta de directiva de 2001, la Comisión Europea expresó el objetivo general de la DR:

La Carta de los Derechos Fundamentales de la Unión Europea reiteró el derecho de asilo en su artículo 18. Como emanación del mismo, la presente Propuesta refleja que la piedra angular del sistema debe ser la aplicación plena e inclusiva de la Convención de Ginebra, complementada por medidas que ofrezcan protección subsidiaria a aquellas personas no cubiertas por la Convención pero que, no obstante, tengan necesidad de la protección internacional ([3]).

La Comisión Europea presentó su propuesta de refundición de la DR relativa a los requisitos para el reconocimiento de nacionales de terceros países o apátridas como beneficiarios de protección internacional en octubre de 2009 ([4]).

([3]) Propuesta de Directiva del Consejo por la que se establecen normas mínimas sobre los requisitos y el estatuto al que pueden optar ciudadanos de países terceros y personas apátridas para ser refugiados o beneficiarios de otros tipos de protección internacional, de 12 de septiembre de 2001, COM(2001) 510 final (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0510:FIN:ES:PDF).
([4]) Véase el Comunicado de prensa IP/09/1552 (http://europa.eu/rapid/press-release_IP-09-1552_es.htm?locale=es).

Proponía, entre otras cosas, aclarar conceptos importantes, como los de «actores de la protección», «protección internacional» y «pertenencia a un determinado grupo social» a fin de permitir a las autoridades nacionales aplicar los criterios con mayor rigor e identificar más rápidamente a las personas que necesitan protección.

La Comisión no propuso enmiendas al artículo 15, letra c) por entender que el TJUE había dado orientaciones interpretativas en el asunto Elgafaji ([5]) y también había señalado que, aunque tenía un ámbito de aplicación más amplio que el del artículo 3 del CEDH, sus disposiciones eran compatibles en general con este último ([6]).

Los artículos mencionados en este capítulo se refieren a las disposiciones de la DR a menos que se indique lo contrario.

([5]) TJUE (Gran Sala), sentencia de 17 de febrero de 2009, en el asunto C-465/07, Meki Elgafaji y Noor Elgafaji contra Staatssecretaris van Justitie.
([6]) Propuesta de Directiva del Parlamento Europeo y del Consejo por la que se establecen normas mínimas relativas a los requisitos para el reconocimiento y el estatuto de nacionales de terceros países o apátridas como beneficiarios de protección internacional y al contenido de la protección concedida, de 21 de octubre de 2009, COM(2009) 551 final, Exposición de motivos, p. 6 (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009PC0551&from=ES).

ENFOQUE INTERPRETATIVO

Habida cuenta de que el TJUE aún no se ha pronunciado sobre una serie de elementos clave del artículo 15, letra c), es imperativo que los jueces nacionales encargados de su interpretación tengan en cuenta y apliquen un enfoque comunitario en la interpretación de la legislación de la Unión. Como dictamina el TJUE en la sentencia dictada en el asunto Diakité ([7]), apartado 27, el significado y el alcance de los elementos clave «debe efectuarse conforme al sentido habitual de estos en el lenguaje corriente, teniendo también en cuenta el contexto en el que se utilizan y los objetivos perseguidos por la normativa de la que forman parte» (Asunto C-549/07 Wallentin-Hermann ECLI:EU:C:2008:771, apartado 17, y asunto C-119/12 Probst ECLI:EU:C:2012:748, apartado 20).

Se ha descrito el enfoque del TJUE como sistémico o «metateleológico», dado que no se centra únicamente en el objeto y finalidad de las disposiciones pertinentes, sino también en la del régimen de la UE en su conjunto, y se basa en las normas que en materia de derechos humanos se recogen en la Carta de los Derechos Fundamentales de la Unión Europea (en adelante, «la Carta») y los valores fundacionales de la organización ([8]).

Enfoque integral

De la adopción de este enfoque se desprende que al intentar interpretar los elementos clave del artículo 15, letra c), se entiende que están interrelacionados y no deben interpretarse aisladamente. Dicho enfoque garantiza la armonía con el enfoque adoptado para abordar los elementos clave de la definición de refugiado. Debemos recordar que el Derecho de la UE tiene prioridad sobre los derechos nacionales.

Contexto del artículo 15, letra c) a la hora de adoptar decisiones en las solicitudes de protección internacional

En su sentencia de 8 de mayo de 2014 en el asunto C-604/12, HN contra Minister for Justice, Equality and Law Reform, Ireland, Attorney General, el TJUE confirmó que:

> «29 El tenor literal del artículo 2, letra e), de la Directiva 2004/83 define a la persona que puede acogerse a la protección subsidiaria como nacional de un tercer país o apátrida que no reúne los requisitos para ser refugiado.
>
> 30 El empleo del término «subsidiaria», así como el tenor de dicho artículo indican que el estatuto de protección subsidiaria está dirigido a los nacionales de terceros países que no reúnen los requisitos para beneficiarse del estatuto de refugiado.
>
> 31 Además, de los considerandos 5, 6 y 24 de la Directiva 2004/83 se desprende que los criterios mínimos para la concesión de la protección subsidiaria deben servir para complementar la protección de los refugiados consagrada en la Convención de Ginebra, mediante la identificación de las personas realmente necesitadas de protección internacional y ofreciéndoles un estatuto apropiado (sentencia Diakité, C 285/12, EU:C:2014:39, apartado 33).
>
> 32 De estas consideraciones se desprende que la protección subsidiaria prevista por la Directiva 2004/83 constituye un complemento de la protección de los refugiados consagrada por la Convención de Ginebra».

De esto se deduce que, al adoptar decisiones en casos de protección, los órganos jurisdiccionales deben examinar en primer lugar si una persona tiene derecho a protección en calidad de refugiado. Si la respuesta es negativa,

([7]) TJUE, sentencia de 30 de enero de 2014, en el asunto C-285/12, Aboubacar Diakité contra Commissaire général aux réfugiés et aux apatrides.
([8]) Véase, p.ej, Violeta Moreno Lax «Of Autonomy, Autarky, Purposiveness and Fragmentation: The Relationship between EU Asylum Law and International Humanitarian Law» en D. Cantor and J.-F. Durieux (eds.), Refuge from Inhumanity? War Refugees and International Humanitarian Law (Martinus Nijhoff, 2014), p. 298.

debe considerarse si dicha persona tiene derecho a protección subsidiaria en virtud del artículo 15, letras a), b) ([9]) o c). La atención prestada al artículo 15, letra c) no debe llevar a los órganos jurisdiccionales a omitir el marco general de protección.

Cuando una persona no tiene derecho a protección internacional, por ejemplo, por motivos de exclusión, también puede ser necesario tener en cuenta lo dispuesto en el artículo 3 del CEDH y, cuando así convenga, en el artículo 4 y el artículo 19, apartado 2, de la Carta (véase el considerando 16 de la DR).

El papel del TJUE y del TEDH

El TJUE es responsable de la interpretación y aplicación uniforme del Derecho de la Unión Europea. En virtud del artículo 267 del TFUE, tiene jurisdicción para responder a las preguntas relativas a la legislación de la UE planteadas por los tribunales nacionales (procedimiento prejudicial de referencia), para lo cual dicta sentencias interpretativas.

En virtud del procedimiento contemplado en el artículo 267, el TJUE no decide sobre el fondo del asunto. Una vez dada su interpretación, el asunto regresa al tribunal nacional para que dicte una resolución basada en la interpretación proporcionada. Las resoluciones del TJUE son vinculantes para los Estados miembros ([10]).

El TEDH examina las solicitudes de personas físicas y las cuestiones enviadas por los Estados cuando presuntamente uno de los 47 Estados miembros del Convenio ha violado un derecho garantizado por el CEDH. A diferencia del TJUE, resuelve el caso que se le ha presentado y, en caso necesario, incluye constataciones de los hechos. Sus sentencias son vinculantes para las partes en la solicitud presentada. Por otra parte, las sentencias del Tribunal sientan precedente cuando existen hechos o cuestiones similares ante órganos jurisdiccionales.

([9]) El alcance del artículo 15, letra b) es más limitado que el del artículo 3 del CEDH; véanse las Conclusiones del Abogado General en el asunto C-542/13, M'Bodj v Conseil des Ministres, de 17 de julio de 2014.

([10]) Una orientación útil para remitir cuestiones prejudiciales al TJUE se encuentra en las Recomendaciones a los órganos jurisdiccionales nacionales, relativas al planteamiento de cuestiones prejudiciales (2012/C 338/01), publicada en el DO C 338 de 6.11.2012 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:ES:PDF). Véase igualmente la Guía sobre cuestiones preliminares publicada por la IARLJ en su sitio web en mayo de 2014 (www.iarlj.org).

PRIMERA PARTE: LOS ELEMENTOS

1.1. Riesgo real de daño grave

El artículo 2, letra f) menciona un «riesgo real de sufrir alguno de los daños graves definidos en el artículo 15».

La protección subsidiaria se aplica a los nacionales de terceros países no aptos que cumplen los requisitos para obtener asilo, pero en cuyo caso existen motivos fundados para creer que se enfrentarían a un «riesgo real de sufrir daños graves» en caso de regresar a su país de origen [véase el artículo 2, letra f), anteriormente artículo 2, letra e)]. En cuanto a la necesidad de demostrar motivos fundados, los Estados miembros pueden considerar obligación del solicitante presentar lo antes posible todos los elementos necesarios para fundamentar su solicitud de protección internacional. Por otra parte, es deber del Estado miembro evaluar, en cooperación con el solicitante, los elementos pertinentes de la solicitud (artículo 4, apartado 1). El Abogado General Sharpston señaló en sus conclusiones, en los asuntos acumulados A, B y C ([11]) que:

> «[e]l procedimiento de cooperación conforme al artículo 4, apartado 1, de la Directiva de reconocimiento no es un juicio. Se trata más bien de una oportunidad para que el solicitante presente su versión y sus pruebas y las autoridades competentes recaben información, vean y oigan al solicitante, aprecien su comportamiento y planteen la verosimilitud y coherencia de dicha versión. La palabra "cooperación" implica que ambas partes cooperen en el logro de un objetivo común. Ciertamente, conforme a dicha disposición, los Estados miembros pueden exigirle al solicitante que presente los elementos necesarios para fundamentar su solicitud. De ello no se desprende, sin embargo, que resulte conforme con el artículo 4 de la Directiva de reconocimiento aplicar exigencia probatoria que tenga por efecto hacer prácticamente imposible o excesivamente difícil (por ejemplo, un elevado nivel de exigencia probatoria, más allá de la duda razonable, o un nivel de proceso penal o cuasi-penal) que el solicitante presente los elementos necesarios para fundamentar su solicitud con arreglo a la Directiva de reconocimiento. […] No obstante, cuando se aporta información que proporciona razones sólidas para cuestionar la veracidad de las alegaciones de un solicitante de asilo, el interesado debe proporcionar una explicación satisfactoria de las presuntas discrepancias.».

El elemento «riesgo real» determina el nivel de exigencia probatoria necesario para tener derecho a protección subsidiaria ([12]). En otros términos, denota el grado de probabilidad de que la situación de violencia indiscriminada pueda dar lugar a daños graves.

Hasta ahora, el TJUE no ha dado una interpretación precisa del concepto de «riesgo real». Sin embargo, en relación con el artículo 15, letra c), el Tribunal ha confirmado que, por regla general, un riesgo meramente relacionado con la situación general de un país no es suficiente ([13]). No obstante, pueden existir situaciones excepcionales en las que el grado de violencia indiscriminado sea tan elevado que una persona se enfrente a un riesgo real por el mero hecho de estar presente ([14]). Asimismo, cabe suponer que el nivel de «riesgo real» no excluye los riesgos que sean meramente posibles o sean tan remotos que resultan inverosímiles ([15]). El grado de riesgo que exige esta disposición se describe más detalladamente en la sección 1.3 «Violencia indiscriminada» y en la sección 1.6 «Amenazas graves e individuales».

([11]) Conclusiones del Abogado General, en los asuntos acumulados C-148/13, C-149/13 y C-150/13, A, B y C, de 17 de julio de 2014, apartados 73 y 74.
([12]) Véase el artículo 2, letra d) de la DR, que exige «fundados temores» a ser perseguido para tener derecho al estatuto de refugiado.
([13]) Elgafaji, op. cit., nota al pie 5, apartado 37.
([14]) Ibíd., apartados 35 y 43. En el apartado 36, el TJUE señala igualmente que el artículo 15, letra c), tiene su propio «ámbito de aplicación», lo que debe significar que tiene un alcance adicional a los graves daños mencionados en las letras a) y b). Sin embargo, en relación con el asunto Elgafaji, el TEDH indicó en su sentencia de 28 de junio de 2011, Sufi and Elmi v the United Kingdom, solicitudes nos 8319/07 y 11449/07, apartado 226, que «no está convencido de que el artículo 3 del Convenio, tal como se interpreta en el asunto contra Reino Unido [solicitud no 25904/07, de 17 de julio de 2008] no ofrezca una protección comparable a la que concede la [DR]». Señala en particular que «el umbral establecido por ambas disposiciones puede alcanzarse en circunstancias excepcionales como consecuencia de una situación de violencia general de tal intensidad que cualquier persona que sea devuelta a la región de que se trate correría riesgo simplemente por su presencia». Así pues, resulta dudoso que el artículo 15, letra c) vaya mucho más allá que el artículo 3 en la interpretación del TEDH en el asunto Sufi y Elmi.
([15]) TEDH, sentencia de 7 de julio de 1989, Soering v the United Kingdom, solicitud no 14308/88, apartado 88.

El elemento de «daño grave» caracteriza la naturaleza e intensidad de la interferencia en los derechos de una persona; para que dicha interferencia sea grave debe ser suficientemente grave. El artículo 15 define tres tipos específicos de daños que dan derecho a la protección subsidiaria. Además, la protección subsidiaria no puede concederse por cualquier tipo de daño, discriminación o violación de derechos que pueda sufrir una persona, sino únicamente por uno de los tres tipos de daño grave que cumplan los criterios contemplados en el artículo 15, letras a), b) y c).

Habida cuenta de la finalidad del presente documento, el texto que se presenta a continuación se centra principalmente en el daño grave definido en el artículo 15, letra c), según el cual por daño grave se entienden las «amenazas graves e individuales contra la vida o la integridad física de un civil motivadas por violencia indiscriminada en situaciones de conflicto armado internacional o interno».

En el asunto Elgafaji, el TJUE, aún sin excluir la posibilidad de yuxtaposición, confirmó que el daño definido en el artículo 15, letra c), abarca un riesgo más general de daño que el artículo 15, letras a), y b) ([16]). De acuerdo con esta sentencia, lo que se requiere es una «amenaza... contra la vida e integridad física de un civil» y no actos concretos de violencia. Además, si el nivel de violencia indiscriminada es lo suficientemente elevado, dicha amenaza puede ser inherente a una situación general de «conflicto armado internacional o interno». Por último, la violencia que da lugar a esta amenaza se califica de «indiscriminada», término que implica la posibilidad de que se extienda a las personas independientemente de sus circunstancias individuales ([17]). Cada uno de los elementos de esta definición se expone exhaustivamente en las partes posteriores del presente documento.

Además, los tipos de daños a que hacen referencia las categorías del artículo 15 pueden coincidir hasta cierto punto, desde una perspectiva objetiva, no solo entre sí, sino también con los actos de persecución que se definen en el artículo 9 ([18]). En tal caso, es necesario tener en cuenta la prioridad de conceder el estatuto de refugiado siempre que se cumplan el resto de condiciones contempladas en el artículo 2, letra d). El TJUE ha dictaminado que el artículo 15, letra c), se corresponde en esencia con el artículo 3 del CEDH ([19]).

1.2. Conflicto armado

La frase que se utiliza en el artículo 15, letra c) es «conflicto armado internacional o interno».

1.2.1. Conflicto armado interno

El TJUE clarificó el significado de este término en el asunto Diakité. En el apartado 35, el Tribunal confirmó que:

> «[…] el artículo 15, letra c), de la Directiva [2004/83] debe interpretarse en el sentido de que ha de admitirse la existencia de un conflicto armado interno a los efectos de la aplicación de esta disposición cuando las tropas regulares de un Estado se enfrenten a uno o varios grupos armados o cuando dos o más grupos armados se enfrenten entre sí, sin que sea necesario que este conflicto pueda calificarse de conflicto armado sin carácter internacional en el sentido del Derecho Internacional Humanitario y sin que la intensidad de los enfrentamientos armados, el nivel de organización de las fuerzas armadas implicadas o la duración del conflicto deban ser objeto de una apreciación diferente de la del grado de violencia existente en el territorio afectado».

Esta interpretación logra dos objetivos:

([16]) Elgafaji, op. cit., nota al pie 5, apartado 33.
([17]) Ibíd., apartado 34.
([18]) Véase el artículo 9, apartado 2, de la DR, que incluye una lista no exhaustiva de tipos de daños que pueden constituir persecución. Véase el asunto C-472/13 pendiente ante el TJUE, Andre Lawrence Shepherd contra República Federal de Alemania.
([19]) Elgafaji, op. cit., apartado 28. Véase igualmente el asunto C-562/13 pendiente ante el TJUE, Centre public d'action sociale d'Ottignies-Louvain-La-Neuve contra Moussa Abdida, conclusiones del Abogado General, presentadas el 4 de septiembre de 2014.

Una definición breve — brinda una definición breve de conflicto armado interno (que se considera existente cuando «las tropas regulares de un Estado se enfrentan a uno o varios grupos armados o cuando dos o más grupos armados se enfrentan entre sí» ([20]).

Rechazo de los planteamientos basados en el Derecho Internacional Humanitario — rechaza expresamente dos planteamientos alternativos de la definición y los describe como: un planteamiento basado en el DIH y un planteamiento conforme al cual solo se considera la existencia de un conflicto armado interno si este tiene una determinada intensidad, en él participan fuerzas armadas con un determinado nivel de organización o tiene una duración determinada. Puesto que este último planteamiento se basa en el DIH, es razonable asumir que el TJUE rechaza los planteamientos «basados en el DIH» ([21]).

1.2.1.1. Diferencia entre definir conflicto armado y determinar el nivel de violencia

En el asunto Diakité, para el TJUE revestía especial importancia que los órganos jurisdiccionales mantuviesen por separado:

- la evaluación de la existencia de un conflicto armado, y
- la evaluación del nivel de violencia.

La existencia de un conflicto armado es una condición necesaria, pero insuficiente, para invocar el artículo 15, letra c). En relación con el riesgo general para los civiles ([22]), el artículo 15, letra c), solo se invocará si dicho examen revela que el conflicto armado se caracteriza por una violencia indiscriminada de un nivel tan intenso que los civiles corren riesgo real de sufrir daños graves. De este modo, en el apartado 30 de la sentencia en el asunto Diakité, el TJUE observa:

> «Además, es preciso recordar que la existencia de un conflicto armado interno solo podrá dar lugar a la concesión de la protección subsidiaria en la medida en que se considere excepcionalmente que los enfrentamientos entre las tropas regulares de un Estado y uno o varios grupos armados o entre dos o más grupos armados entre sí generen amenazas graves e individuales contra la vida o la integridad física del solicitante de la protección subsidiaria, en el sentido del artículo 15, letra c), de la Directiva [2004/83], porque el grado de violencia indiscriminada que los caracteriza ha llegado a tal extremo que existen motivos fundados para creer que un civil expulsado al país de que se trate o, en su caso, a la región de que se trate, se enfrentaría, por el mero hecho de su presencia en el territorio de éstos, a un riesgo real de sufrir dichas amenazas (véase, en este sentido, la sentencia en el asunto Elgafaji, apartado 43).».

1.2.1.2. Fundamento de la definición

El TJUE indica que su definición de conflicto armado se basa en el «sentido habitual de [este] en el lenguaje corriente, teniendo también en cuenta el contexto en el que se utiliza y los objetivos perseguidos por la normativa de la que forman parte» (Sentencia en el asunto Diakité, apartado 27). Ya hemos señalado que, de este modo, el Tribunal deja claro que para interpretar el artículo 15, letra c) es preciso adoptar un planteamiento comunitario.

Obviamente, el TJUE desea subrayar que los órganos jurisdiccionales no deben denegar la protección conferida por el artículo 15, letra c) fundándose en que los enfrentamientos armados que tengan lugar no alcanzan el umbral necesario en virtud del DIH o normativas extrínsecas comparables.

En el apartado 17 de la sentencia dictada en el asunto Diakité, el TJUE señala que la primera pregunta que debe responder se divide en dos partes: i) si el artículo 15, letra c), de la Directiva debe interpretarse en el sentido de que la existencia de un conflicto armado interno debe apreciarse sobre la base de los criterios establecidos por el Derecho internacional humanitario, y ii) y, «de no ser así, qué criterios han de emplearse para apreciar la existencia de tal conflicto […]».

([20]) Diakité, op. cit., nota al pie 7, apartado 28.
([21]) Ibíd., apartado 21.
([22]) Véase igualmente la sección 1.6.1 sobre riesgos concretos y la sección 1.6.2 sobre el concepto de «escala móvil».

1.2.1.3. Aplicación de la definición del TJUE

A la primera pregunta, la respuesta del TJUE es claramente no, pero, para la segunda, no ofrece más que una definición muy breve basada en el lenguaje cotidiano. Como consecuencia, deja a los órganos jurisdiccionales la responsabilidad de desarrollar u operar esta definición en la práctica. La definición del TJUE es claramente más amplia que la definición basada en el DIH y podría incluir, por ejemplo, los enfrentamientos armados que emanan de la guerra contra el narcotráfico en algunos países latinoamericanos ([23]). Por consiguiente, y dependiendo de la situación del país, los órganos jurisdiccionales aún tendrán que decidir bajo determinadas circunstancias si existe un enfrentamiento armado en los términos descritos por el Tribunal. Por ejemplo, los disturbios e insurrecciones en los que no se usa total o parcialmente armamento no entrarían en la definición. El uso de las armas por sí solo puede no ser suficiente, a menos que se usen dentro o por parte de grupos armados. La existencia de grupos armados puede ser insuficiente de por sí, por ejemplo, si dichos grupos no usan armas en la práctica. También serían necesarias pruebas de enfrentamiento (por ejemplo, lucha) entre ellos o entre un grupo armado y las fuerzas del Estado.

1.2.1.4. Deben existir dos o más grupos armados

Según la definición del TJUE, parecería quedar excluida una situación en la que solo existiese un único grupo armado enfrentado a la población en general, si bien el Abogado General Mengozzi, en su dictamen en el asunto Diakité [al igual que el English Court of Appeal en el asunto DR (Iraq)] ([24]) abogaba por que se incluyera también dicha situación. Ahora bien, podría tratarse de una situación resultar relativamente rara.

1.2.2. Conflicto armado internacional

En la sentencia en el asunto Diakité, el TJUE no intentó definir el término «conflicto armado internacional», sino que, pari passu, con su razonamiento relativo a dicho término, al parecer habría que darle el mismo significado habitual que tiene en el lenguaje cotidiano y, por consiguiente, no se le debe imponer un umbral basado en el DIH. No obstante, es probable (al igual que en el DIH) que puedan existir situaciones en las que un país se encuentre en un estado de conflicto armado interno e internacional simultáneamente.

1.3. Violencia indiscriminada

La «violencia indiscriminada» se refiere a la fuente del tipo específico de daño grave mencionado en el artículo 15, letra c). Dado que esta disposición tiene por objeto ofrecer protección (subsidiaria) a aquellos civiles que sufren las consecuencias de un conflicto armado, el significado de «violencia indiscriminada» debe interpretarse en sentido amplio.

La necesidad de protección de la población civil concreta de un país o de una de sus regiones no debe estar determinada por una interpretación estrecha de los términos «violencia» e «indiscriminada», sino por una evaluación meticulosa e integral de los hechos, acompañada de un análisis riguroso y exacto del nivel de violencia, en lo que se refiere a la naturaleza de esta y el alcance de dicha violencia.

1.3.1. Definición de violencia indiscriminada del TJUE

En su sentencia en el asunto Elgafaji, el TJUE sostuvo que el término «indiscriminada» implica que la violencia «puede extenderse a personas sin consideración de su situación personal» ([25]).

([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', en D. Cantor y J.-F. Durieux (eds.), op. cit., p. 261.
([24]) Court of Appeal (UK), QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ. 620, apartado 35.
([25]) Elgafaji, op. cit., nota al pie 5, apartado 34.

El TJUE ha puesto el acento en la «situación excepcional» necesaria para que el artículo 15, apartado c) sea aplicable a los civiles en general. En el apartado 35 de la sentencia dictada en el asunto Elgafaji, el Tribunal deja claro que para ello:

> «[…] el grado de violencia indiscriminada que caracteriza el conflicto armado… [llega] a tal extremo que existen motivos fundados para creer que un civil expulsado al país de que se trate o, en su caso, a la región de que se trate, se enfrentaría, por el mero hecho de su presencia en el territorio de estos, a un riesgo real de sufrir las amenazas graves a las que se refiere el artículo 15, letra c), de la Directiva».

1.3.2. Jurisprudencia nacional

Desde la sentencia en el asunto Elgafaji, los órganos jurisdiccionales nacionales, en lugar de intentar definir con mayor precisión este concepto, han intentado definir indicadores de su naturaleza y alcance (véase la sección 2.2 de la segunda parte más abajo). El Tribunal Superior del Reino Unido (UKUT) ha dictaminado que los bombardeos y tiroteos:

> «pueden considerarse correctamente como indiscriminados en el sentido de que, a pesar de que pueden tener blancos específicos o generales, inevitablemente exponen a los civiles que se encuentran en el lugar a lo que en términos polémicos se ha descrito como daños colaterales. Los medios adoptados pueden ser bombas, que pueden afectar a otras personas además del blanco, o tiroteos, que generan un riesgo real menor, pero real, de daño colateral ([26])».

Por lo que se refiere a los blancos de carácter general, el UKUT puso el ejemplo de la explosión de bombas en lugares muy concurridos, como mercados, procesiones o reuniones de carácter religioso ([27]). El Tribunal Federal Administrativo de Alemania (TFA), en su interpretación de la sentencia en el asunto Elgafaji, llegó a la conclusión de que no es necesario determinar si los actos de violencia constituyen una violación del Derecho internacional humanitario, debido a que el concepto de violencia empleado en la DR es muy amplio ([28]). La jurisprudencia nacional ha nutrido un amplio debate sobre hasta qué punto deben tomarse en consideración los efectos indirectos de la violencia indiscriminada.

El Consejo de Estado de Francia se ha referido a los ataques y abusos contra la población civil y a los desplazamientos forzosos como posibles características de la violencia indiscriminada ([29]). Estas características se satisfacían en el caso de un solicitante que había viajado a través de regiones de Afganistán afectadas por dicha violencia ([30]); la evaluación no requirió el análisis de la situación general a nivel nacional, sino de las regiones afectadas ([31]).

En dos sentencias, el Tribunal Administrativo de la República de Eslovenia presentó los siguientes factores que debían tomarse en consideración a la hora de evaluar el nivel de violencia: los civiles muertos y heridos en batallas, incluida la posible dinámica temporal de los números de muertos y heridos, el número de desplazados internos, las condiciones humanitarias básicas existentes en los centros para desplazados, en particular el suministro de alimentos, la higiene y la seguridad, y el grado en que el Estado no ha sido capaz de garantizar las infraestructuras materiales básicas, el orden, la atención médica, el suministro de alimentos y de agua potable. El Tribunal Administrativo señalaba que el valor protegido por el artículo 15, letra c), no es tan solo la «supervivencia» de los solicitantes de asilo, sino también la prohibición del trato inhumano ([32]). El Tribunal Supremo esloveno dictaminó que estos factores tienen «relevancia jurídica» ([33]).

([26]) Upper Tribunal, Immigration and Asylum Chamber (Reino Unido), sentencia de 13 de noviembre de 2012, en el asunto HM and others [Article 15(c)] Iraq CG v. the Secretary of State for the Home Department, [2012] UKUT 00409(IAC), apartado 42.
([27]) Ibíd.
([28]) Bundesverwaltungsgericht (Alemania), sentencia de 27 de abril de 2010, 10 C 4.09, ECLI:DE:BVerwG:2010:270410U10C4.09.0, apartado 34.
([29]) Conseil d'État (Francia), sentencia de 3 de julio de 2009, n° 320295, Office Français de Protection des Réfugiés et Apatrides c M. Baskarathas, n° 320295.
([30]) CNDA (Francia), sentencia de 11 de enero de 2012, M. Samadi n° 11011903 C.
([31]) CNDA (Francia), sentencia de 28 de marzo de 2013, M. Mohamed Adan n° 12017575 C.
([32]) Tribunal Administrativo de Eslovenia, sentencias de 25 de septiembre de 2013, I U 498/2012-17, y de 29 de enero de 2014, I U 1327/2013-10.
([33]) Tribunal Supremo de la República de Eslovenia, sentencia de 10 de abril de 2014, I Up 117/2014.

1.3.3. ACNUR

A efectos similares, el ACNUR entiende que el término «indiscriminada» comprende los «actos de violencia no dirigidos a un objeto o persona concretos, así como los actos de violencia dirigidos a un objeto o persona concretos, pero cuyos efectos pueden causar daños a otros» ([34]).

1.3.4. Formas típicas de violencia indiscriminada en conflictos armados

La naturaleza de la violencia puede ser un factor decisivo a la hora de determinar lo indiscriminado de la violencia. Como ejemplos de dichos actos de violencia indiscriminada cabe citar: los bombardeos masivos selectivos, los bombardeos aéreos, los ataques guerrilleros, los daños colaterales en ataques directos o aleatorios en distritos urbanos, el sitio, la estrategia de tierra quemada, los francotiradores, los escuadrones de la muerte, los ataques en lugares públicos, los saqueos, el uso de dispositivos explosivos improvisados, etc.

1.3.5. El papel de la violencia selectiva

Cuanto más indique la apreciación de la naturaleza de la violencia que la persona interesada ha sido o podría ser víctima de un ataque selectivo, mayor será la atención que deberán prestar los órganos jurisdiccionales al hecho de si esa persona puede tener derecho a la protección en calidad de refugiado y no a la protección subsidiaria. Pero, en cualquier caso, no existe motivo alguno para dejar a la violencia selectiva fuera de la ecuación cuando se analiza el nivel de violencia indiscriminada en la zona o región del país en cuestión. La violencia selectiva incluye tanto los blancos concretos como los generales: ciertos tipos de violencia, pese a ser selectivos, puede causar daños a un importante número de civiles ([35]).

En las secciones 2.2 y 2.3 de la segunda parte se presenta un análisis más exhaustivo de cómo apreciar el nivel de violencia indiscriminada.

1.4. A causa de

La protección subsidiaria contemplada en el artículo 15, letra c), se concede a cualquier persona en cuyo caso existan motivos de peso para creer que de ser devuelta a su país de origen se enfrentaría a un riesgo real de sufrir una amenaza grave e individual contra su vida o su integridad física a causa de la violencia indiscriminada. El nivel de dicha violencia será un elemento crucial para examinar las causas ([36]). Dada la amplia definición de violencia indiscriminada, la obligación de un nexo causal no debe aplicarse estrictamente. Los efectos de la violencia indiscriminada pueden ser tanto directos como indirectos. Los efectos indirectos de los actos de violencia, como el completo colapso de la ley y el orden debido a conflictos, también deben tenerse en cuenta hasta cierto punto.

¿Debe considerarse que los actos delictivos resultantes del colapso de la ley y el orden, y otros efectos de la violencia indiscriminada constituyen violencia indiscriminada en el sentido del artículo 15, letra c)?

En 2008, el TFA alemán dictaminó que la violencia criminal no cometida por una de las partes en conflicto solo debe tenerse en cuenta al evaluar la naturaleza de la amenaza grave y particular para la vida o la integridad física ([37]). De acuerdo con el TFA, «las amenazas de carácter general para la vida que sean únicamente consecuencia de un conflicto armado —por ejemplo, las derivadas del deterioro de las condiciones de abastecimiento— no pueden incluirse en la apreciación de la gravedad del peligro» ([38]) y, por consiguiente, no constituyen una amenaza en el sentido del artículo 15, letra c). El UKUT reconoció en 2010 que la violencia generalizada que provoca daños de la gravedad necesaria podría ser consecuencia de un conflicto armado cuando se hubieran deteriorado las disposiciones que afectan a la ley y el orden. Un deterioro grave de la ley y el orden en virtud del cual la anarquía y la

([34]) ACNUR, Safe at last, nota al pie 2, p. 103.
([35]) HM et. al., op. cit., nota al pie 26, apartado 292.
([36]) Véase H. Lambert, 'Causation in International Protection from Armed Conflict', en D. Cantor y J.-F. Durieux (eds.), op. cit., p. 65.
([37]) Bundesverwaltungsgericht (Alemania), sentencia de 17 de noviembre de 2011, 10 C 13.10, ECLI: DE: BVerwG: 2011: 171 111U1 0C13.10.0, apartado 23.
([38]) Bundesverwaltungsgericht (Alemania), sentencia de 24 de junio de 2008, 10 C 43.07, ECLI: DE: BVerwG: 2008: 240608U10C43.0 7.0, apartado 35.

delincuencia provocasen los daños graves mencionados en el artículo 15, letra c), puede dar lugar a una violencia indiscriminada efectiva, aun cuando no intencionada ([39]). Debe existir un nexo causal suficiente entre la violencia y el conflicto, pero la violencia indiscriminada que afecta a los civiles no tiene necesariamente que haber sido causada directamente por los combatientes que participan en el conflicto ([40]). De manera similar, tanto el Consejo de Estado francés ([41]) como el Consejo de Estado de los Países Bajos ([42]) han dictaminado que deben tenerse en cuenta los efectos indirectos de los conflictos armados.

De manera similar, ACNUR hace hincapié a este respecto en que debe tenerse en cuenta el colapso de la ley y el orden como consecuencia de la violencia indiscriminada o el conflicto armado. En particular, la fuente de la que emana la violencia indiscriminada es irrelevante ([43]).

No es posible prever aún si el nuevo y amplio enfoque de la noción de conflicto armado adoptado por el TJUE en el asunto Diakité llevará a una aceptación más generalizada de que los efectos indirectos de la violencia indiscriminada pueden constituir violencia indiscriminada en el sentido del artículo 15, letra c).

1.5. Civiles

1.5.1. El ámbito personal del artículo 15, c) se limita a los civiles

Lógicamente, ser civil es un requisito imprescindible para beneficiarse de la protección en virtud del artículo 15, letra c) ([44]). Si un solicitante no es civil y, por ende, no entra en el ámbito de aplicación del artículo 15, letra c), será necesario comprobar si se ha considerado o debe considerarse su derecho a recibir el estatuto de refugiado o protección en virtud del artículo 15, letras a) y b), a menos que el solicitante esté comprendido en el ámbito de aplicación de las cláusulas de exclusión (artículos 12 y 17). Los artículos 2 y 3 del CEDH (que no son objeto de cláusulas de exclusión) también pueden resultar relevantes.

1.5.2. El enfoque para la definición probablemente rechaza la definición basada en el DIH

Dada la amplia naturaleza de los motivos avanzados por el TJUE en el asunto Diakité para rechazar el recurso a criterios basados en el DIH a la hora de definir el concepto de conflicto armado, debemos asumir que no aceptaría una definición de civil basada en el DIH ([45]). Por el contrario, el Tribunal intentaría dar a este término el sentido habitual con el que se usa en el lenguaje corriente, tomaría en cuenta el contexto en que se utiliza y los objetivos perseguidos por la normativa de la que forma parte (sentencia en el asunto Diakité, apartado 27). El hecho de que incluso dentro del DIH no exista unanimidad respecto a la definición de este término ([46]) hace aún más inadecuada, por así decir, una definición basada en dicho Derecho.

Las definiciones contendidas en diccionarios, debido a sus amplias variaciones, ofrecen muy poca ayuda y, en cualquier caso, no aportan un significado conforme con el objeto y los propósitos de la DR. Conforme a un significado sencillo y habitual, serían civiles aquellas personas que no son combatientes o no luchan, pero esto es tan breve que apenas añade substancia.

([39]) HM and others, op. cit., nota al pie 26, apartados 79 y 80.
([40]) Ibíd., apartado 45.
([41]) Baskarathas, op. cit., nota al pie 29.
([42]) Raad van State (Países Bajos), sentencia de 7 de julio de 2008, 200802709/1, ECLI:NL:RVS:2008:BD7524.
([43]) ACNUR, Safe at last, nota al pie 2, pp. 60 y 103.
([44]) C. Bauloz, op. cit., nota al pie 23, p. 253 — «La protección subsidiaria contemplada en el artículo 15, letra c) se limita meticulosamente ratione personae a los civiles de terceros países o los civiles apátridas que no tienen derecho a recibir el estatuto de refugiado».
([45]) No existe una definición definitiva basada en el DIH, pero muchos consideran que la que avanza G. Mettraux en International Crimes and the ad hoc Tribunals (OUP, 2005) captura la definición del derecho consuetudinario, pues define a los civiles como «aquellas personas que no son o han dejado de ser miembros de las fuerzas en lucha o de un grupo militar organizado perteneciente a una parte del conflicto». En el DIH existe una presunción a favor de la protección y en el artículo 50, apartado 1, del Protocolo I se establece que «[e]n caso de duda acerca de la condición de una persona, se la considerará como civil». Véase igualmente, E. Wilmshurst y S. Breau, Perspective on the ICRC Study on Customary International Humanitarian Law (CUP, 2007), pp. 10 y 11, 111 y 112, 406.
([46]) A pesar de ser crucial para el principio de distinción del DIH, el estudio del Derecho internacional humanitario consuetudinario del CICR establece en su norma 1: «Las partes en conflicto deberán distinguir en todo momento entre personas civiles y combatientes. Los ataques solo podrán dirigirse contra combatientes. Los civiles no deben ser atacados» [J. Henckaerts y L. Doswald-Beck, Customary International Humanitarian Law (CUP, 2005)].

1.5.3. Diferencia entre personal militar y no militar

Debido a que, en el asunto Diakité, el TJUE contempla claramente que un conflicto armado puede plantearse incluso sin participación del Estado o sin que el Estado sea parte de él («o en las que dos o más grupos armados se enfrentan entre sí»), puede considerarse que el término se usa ante todo para diferenciar al personal no militar del personal militar. El personal militar puede incluir tanto a los miembros de las fuerzas armadas o de la policía de un Estado como a los miembros de grupos rebeldes o insurgentes (denominados en ocasiones «combatientes irregulares»).

1.5.4. ¿Son civiles todos los no combatientes?

Si recurrimos al significado del término «civil» contenido en el Derecho internacional de derechos humanos (DIDH) ([47]) (que reconoce cada vez más la complementariedad entre este y el DIH), habría que conceder a este término el mismo significado atribuido en el artículo 3 que comparten los cuatro Convenios de Ginebra de 1949: «las personas que no participen directamente en las hostilidades, incluidos los miembros de las fuerzas armadas que hayan depuesto las armas y las personas puestas fuera de combate […]». La segunda parte de esta afirmación indica que el hecho de no tomar ya parte en las hostilidades no es suficiente, sino que la persona debe tomar medidas para no participar ([48]).

Existen varias resoluciones nacionales que reflejan este enfoque. En el asunto ZQ (soldado de servicio) ([49]), el Tribunal de Asilo e Inmigración del Reino Unido (UKAIT) señaló que, de conformidad con el DIH, el hecho de que un soldado no se encuentre de servicio, o esté de baja por enfermedad, no le concede necesariamente la condición de civil. El Tribunal hizo alusión a la Sala de Recurso del Tribunal Penal Internacional para la ex Yugoslavia (TPIY), que, en el apartado 114 de la sentencia en el asunto Prosecutor v Blaskic ([50]), observa que: «la situación específica de la víctima en el momento en que se cometen los crímenes [crímenes de guerra o crímenes de lesa humanidad] puede no ser determinante para establecer su condición de civil o no civil. Si es miembro de una organización armada, el hecho de que no esté armado o en combate en el momento de cometerse los crímenes, no le concede la condición de civil». En el asunto HM and others, el UKUT concluyó que la definición de civil debe incluir «a cualquier persona que se implique en un conflicto armado», lo que incluye a los miembros de las fuerzas armadas o la policía ([51]). El Comité Internacional de la Cruz Roja (CICR) interpreta que son civiles en conflictos armados no internacionales «todas las personas que no son miembros de las fuerzas armadas del Estado o de grupos armados organizados que sean parte del conflicto».

1.5.5. ¿Excluye el término «civil» a todos los miembros de las fuerzas armadas y la policía?

Habida cuenta de que el TJUE considera que para conocer el significado de los principales términos es necesario tener en cuenta el contexto en que se utilizan y el objetivo de las normativas de las que forman parte (sentencia en el asunto Diakité, apartado 27), el término «civil» podría tener un significado más amplio y designar a todas las personas que no son combatientes o a todos los que se encuentran fuera de combate. De este modo, por ejemplo, a diferencia de lo que parece sostener el DIH, un miembro de la fuerzas armadas o de la policía que únicamente se enfrente a un riesgo real de sufrir daños graves mientras está fuera de servicio en su región o zona de residencia podría tener derecho a recibir dicha protección. En relación con el razonamiento expuesto en el

([47]) El considerando 24 de la DR señala: «Es necesario introducir criterios comunes para que los solicitantes de protección internacional puedan optar a la protección subsidiaria». Dichos criterios deben proceder de las obligaciones internacionales contempladas en los instrumentos y prácticas en materia de derechos humanos existentes en los Estados miembros». El Abogado General Mengozzi señaló en el asunto Diakité que los trabajos preparatorios dejan claro que «el concepto de protección subsidiaria se deriva de los instrumentos internacionales en materia de derechos humanos».

([48]) En su sentencia de 1 de julio de 1997, en el asunto Kalac v Turkey, solicitud no 20704/92, el TEDH declaró que «al elegir una carrera militar, el Sr. Kalac aceptaba libremente un sistema de disciplina militar que, por su propia naturaleza, implicaba la posibilidad de imponerle algunas de las limitaciones de los derechos y libertades de los miembros de las fuerzas armadas que no pueden imponerse a civiles»; véase igualmente la sentencia del TEDH de 8 de junio de 1976, en el asunto Engel and others v the Netherlands, solicitudes no 5100/71 y otras, apartado 57. Desde una perspectiva más general, el DIDH considera cada vez más que el DIH desempeña un papel complementario en relación con las situaciones de conflicto armado y constituye de hecho lex specialis: véase Orna Ben-Naftali (ed.) International Humanitarian Law and International Human Rights Law, OUP, 2011, pp 3-10.

([49]) Asylum and Immigration Tribunal (UK) (predecesor del UKUT), sentencia de 2 de diciembre de 2009, en el asunto ZQ (Serving Soldier) Iraq v Secretary of State for the Home Department, CG [2009] UKAIT 00048.

([50]) ICTY, Appeals Chamber, sentencia de 29 de julio de 2004, Prosecutor v Blaskic, asunto no IT-95-14-A.

([51]) HM and others, op. cit., nota al pie 26, citada también en la sentencia en el asunto ZQ (serving soldier), op. cit. nota al pie 49.

asunto Diakité, cabría pensar que el Tribunal entendió que era necesario dar al término una definición objetiva, en lugar de considerar que designa una condición jurídica preconcebida ([52]).

1.5.6. ¿Es la simple pertenencia a un grupo armado suficiente para excluir a una persona de la condición de civil?

De acuerdo con el razonamiento del TJUE en el asunto B y D ([53]), sería incorrecto limitarse a deducir la condición de no civil de una persona a partir de su pertenencia a un grupo armado. En el asunto B y D, relativo a la aplicación de las cláusulas de exclusión del estatuto de refugiado que establece la DR, el Tribunal desestimó una asimilación automática basada en las resoluciones del Consejo de Seguridad de las Naciones Unidas o los instrumentos de la UE adoptados en el marco de la Política Exterior y de Seguridad Común. En el apartado 89 de la sentencia dictada en el asunto B y D, el TJUE dictaminó que no existía una relación directa entre la definición de los actos terroristas que recoge este material y la DR «en cuanto a los objetivos perseguidos». Por consiguiente, «no está justificado que cuando la autoridad competente prevea excluir a una persona del estatuto de refugiado [...] se base exclusivamente en su pertenencia a una organización que figure en una lista adoptada al margen del marco que establece la Directiva». La inclusión en una lista o en una definición establecida no puede sustituir una apreciación individual de los hechos específicos. Asimismo, «las cláusulas de exclusión de la Directiva tampoco pueden aplicarse necesaria y automáticamente a la participación en las actividades de un grupo terrorista».

1.5.7. Indicadores de la condición de civil

Suponiendo que no se adopta automáticamente una definición basada en el DIH u otro órgano extrínseco de Derecho público, y al igual que en el asunto B y D, el TJUE exige «una investigación completa de todas las circunstancias específicas de cada caso concreto», los siguientes indicadores (que no necesariamente están en consonancia entre sí) pueden resultar de cierta utilidad:

- un civil es una persona que no es parte en el conflicto y tan solo intenta proseguir su vida pese a la situación de conflicto;
- el hecho de no estar armado puede resultar insuficiente para que a una persona se la considere como civil, ya que también debe ser neutral en el conflicto;
- es improbable que se considere civiles a las personas que participan voluntariamente en grupos armados;
- la definición de civil tendría por finalidad excluir a los participantes en una guerra y, por ende, incluye a las personas que no participan ni participarían activamente en las hostilidades;
- es necesario examinar el papel que desempeña una persona en la organización. También debe tomarse en consideración si una persona actuó (o actuaría) bajo coacción. Por otra parte, también debe tenerse en cuenta que, por ejemplo, la representación política civil de una insurrección rebelde podría ser responsable de decisiones que tengan por resultado la muerte de personas;
- puede resultar difícil considerar civiles a las personas que trabajan para instituciones militares, incluidos los hospitales militares, incluso si están obligadas a cumplir las normas de mando militares;
- una persona que realiza una tarea civil en el ejército, como un doctor, puede considerarse un civil, salvo que su puesto lleve aparejado un rango militar;
- el hecho de no tener un rango militar puede facilitar el que una persona invoque de facto su condición de civil.
- el artículo 43 relativo a las fuerzas armadas del Protocolo Adicional a los Convenios de Ginebra del 12 de agosto de 1949 relativo a la Protección de las Víctimas de los Conflictos Armados Internacionales (Protocolo I), de 8 de junio de 1977, excluye de la definición de fuerzas armadas «al personal sanitario y religioso a que se refiere el artículo 33 del III Convenio)». Se puede considerar que un médico militar no combatiente que trabaja en un hospital realiza una tarea esencialmente humanitaria y no militar que promueve el derecho a la vida protegido por la Carta y el CEDH ([54]);

([52]) C. Bauloz, op. cit., nota al pie 23, argumenta que «habría que preferir una definición objetiva a categorías jurídicas definidas que se centran en condiciones excesivamente rígidas».
([53]) TJUE (Gran Sala), sentencia de 9 de noviembre de 2010, Bundesrepublik Deutschland contra B y D, en los asuntos acumulados C-57/09 y C-101/09.
([54]) Véase, por ejemplo, Comisión de Derechos Humanos, decisión de 10 julio de 1984, Stewart v UK, solicitud nº no 10044/82, apartado 15, «el concepto según el cual la ley debe proteger el derecho de toda persona a la vida» impone al Estado no solo la obligación de abstenerse de quitar la vida «deliberadamente», sino también de adoptar las medidas necesarias para proteger la vida. Este asunto se refería a la aplicación del artículo 2, apartado 2, del CEDH.

- la percepción visual es uno de los criterios para reconocer a los civiles y diferenciarlos de los combatientes. Para determinar su condición es necesario examinar la misión de la persona en tanto que no civil y dilucidar si dicha persona podría ser identificada como tal a su regreso.

1.5.8. Evaluación orientada hacia el futuro

Es necesario tener en cuenta que, al examinar todas las solicitudes de protección internacional, los órganos jurisdiccionales abordan en particular el riesgo hipotético en el momento del retorno, es decir, la situación en la que se encontrará el solicitante si es devuelto a su país de origen. Las preguntas relativas a si una persona era anteriormente un civil o un combatiente no determinarán necesariamente si será un civil o combatiente (o será percibido como tal) a su retorno.

1.5.9. En caso de duda

Si se adopta un enfoque empírico para determinar si una persona es civil (es decir, si sería un civil a su retorno) es necesario conceder importancia al principio que, citando el artículo 50 del Protocolo adicional I, cuyo título es «Definición de personas civiles y de población civil», en el subapartado 1 expone: «en caso de duda acerca de la condición de una persona, se la considerará como civil».

El Consejo para contenciosos de extranjería de Bélgica ([55]) dictaminó, en relación con un solicitante que había cooperado con las autoridades de asilo para intentar sustentar su solicitud, que debía tenerse en cuenta el beneficio de la duda a la hora de considerar que dicha persona era un civil.

1.5.10. Antiguos combatientes y reclutamiento forzoso

En relación con los antiguos combatientes (incluidos los niños soldados) es necesario tener en cuenta que la finalidad de la DR no era introducir cláusulas de exclusión adicionales, sino identificar a las personas que necesitan protección. La aplicación de una cláusula de exclusión normalmente solo se considera en una fase posterior. El Tribunal Nacional de Asilo de Francia señaló, en el caso de un ciudadano afgano, que un antiguo soldado, que había abandonado el ejército de su país, puede considerarse un civil ([56]).

El ACNUR recomienda el siguiente enfoque:

> «En este aspecto, no deberíamos servirnos del término “civil” del artículo 15, letra c) para excluir a antiguos combatientes que puedan demostrar que han renunciado a las actividades militares. El hecho de que una persona haya sido combatiente en el pasado no le excluye necesariamente de la protección internacional si ha renunciado real y permanentemente a dichas actividades. El Comité Ejecutivo del ACNUR ha definido los criterios para determinar si una persona supera esta prueba ([57])».

Esta declaración subraya que un antiguo combatiente, en particular si anteriormente formaba parte de las fuerzas armadas del Estado, puede considerarse combatiente a su retorno.

El Ministerio del Interior del Reino Unido declaró en sus Orientaciones para los procesos de asilo para obtener la protección humanitaria (Asylum Process Guidance on Humanitarian Protection), de 15 de mayo de 2013, que únicamente los auténticos no combatientes, es decir, aquellas personas que no son parte en el conflicto, tienen derecho a protección en virtud del artículo 15, letra c): «Esto podría incluir a los antiguos combatientes que han renunciado real y permanentemente a la actividad armada».

([55]) Conseil du contentieux des étrangers/Raad voor Vreemdelingenbetwistingen (Bélgica), sentencia de 4 de diciembre de 2007, asunto 4460.
([56]) CNDA (Francia), sentencia de 24 de enero de 2013, M. Miakhail no 12018368 C+.
([57]) ACNUR, Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence, enero de 2008, p. 7 (Disponible en: http://www.refworld.org/docid/479df7472.html).

En términos generales, un solicitante que ha sido reclutado de manera forzosa ([58]) para servir como soldado o combatiente no pierde por ese hecho su condición de civil, sino que, al igual que en el caso de los niños soldados, para resolver la cuestión debe adoptarse un enfoque que tenga en cuenta los hechos, similar al adoptado por el TJUE en el asunto B y D: véase el apartado anterior 1.5.6.

1.6. Amenazas graves e individuales

El artículo 15, letra c), exige al solicitante que demuestre un riesgo real de sufrir amenazas graves de daño y no necesariamente de sufrir actos de violencia concretos. La amenaza se considera inherente en una situación general de conflicto y por eso esta disposición contempla, en esencia, un riesgo de daño más general que el mencionado en las letras a) o b) del mismo artículo: véase la sentencia en el asunto Elgafaji, apartados 32 a 34. En el apartado 45, el TJUE señala:

> «En virtud de todo lo señalado, el Tribunal de Justicia (Gran Sala) declara: El artículo 15, letra c), de la Directiva 2004/83/CE del Consejo, conjuntamente con el artículo 2, letra e), de la misma Directiva, debe interpretarse en el sentido de que:
>
> — la existencia de amenazas graves e individuales contra la vida o la integridad física del solicitante de protección subsidiaria no está supeditada al requisito de que éste aporte la prueba de que está afectado específicamente debido a elementos propios de su situación personal;
>
> — la existencia de tales amenazas puede considerarse acreditada, excepcionalmente, cuando el grado de violencia indiscriminada que caracteriza el conflicto armado existente—evaluado por las autoridades nacionales competentes a las que se ha presentado una solicitud de protección subsidiaria o por los órganos jurisdiccionales del Estado miembro ante los que se ha impugnado la decisión de denegación de tal solicitud— llega a tal extremo que existen motivos fundados para creer que un civil expulsado al país de que se trate o, en su caso, a la región de que se trate, se enfrentaría, por el mero hecho de su presencia en el territorio de éstos, a un riesgo real de sufrir dichas amenazas».

1.6.1. Riesgo general y riesgo específico

El análisis que hace el TJUE en el asunto Elgafaji deja claro que la existencia de una amenaza grave e individual para la vida o integridad física de un solicitante no depende de que este último presente pruebas de ser objeto de dichas amenazas debido a factores relacionados con sus circunstancias personales. Se puede considerar que un solicitante corre un riesgo general de dicha amenaza si, excepcionalmente, la violencia indiscriminada que caracteriza al conflicto armado existentes alcanza tal nivel que existen motivos de peso para creer que un civil se enfrentaría a un riesgo real de ser objeto de dicha amenaza tan solo por estar presente en la zona o región de que se trate. En otros términos, la «individualización» necesaria para demostrar que la amenaza es «individual» puede basarse ya sea en factores de «riesgo específico» relacionados con las características o circunstancias particulares de una persona, o bien en factores de «riesgo general» derivados de la situación excepcional de un nivel de violencia sumamente alto.

1.6.2. El concepto de «escala móvil»

Con arreglo al artículo 15, letra c), el hecho de que una persona demuestre un riesgo general o un riesgo específico no debe considerarse una dicotomía. En lugar de ello, el TJUE articuló lo que se conoce como el concepto de «escala móvil», es decir:

([58]) Es necesario distinguir entre las personas reclutadas con arreglo a la ley del país de origen (en el que el servicio militar puede ser obligatorio) y las personas obligadas a unirse a un grupo armado de forma involuntaria: véase igualmente, ACNUR, 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, de 3 de diciembre de 2013, en particular los apartados 35-41.

> «que cuanto más pueda demostrar el solicitante que está afectado específicamente debido a elementos propios de su situación personal, menos elevado será el grado de violencia indiscriminada exigido para que pueda acogerse a la protección subsidiaria» (sentencia en el asunto Elgafaji, apartado 39; sentencia en el asunto Diakité, apartado 31). Lo contrario también se aplica, pues, en condiciones excepcionales, el nivel de violencia puede alcanzar tal intensidad que un civil se enfrente a un riesgo real de ser objeto de daño grave por el solo hecho de estar presente en el territorio del país o región afectado (apartado 43). El Tribunal consideró que esta interpretación no contradecía lo expuesto en el [anterior] apartado 26 de la Directiva, ya que su texto admite la posibilidad de dicha situación excepcional ([59])».

Por medio del concepto de escala móvil, el TJUE logra equilibrar la amenaza individual y la violencia indiscriminada, y deja claro cómo debe aplicarse esta disposición en cada caso.

Podemos observar que el concepto de «riesgo general» del TJUE es similar al reconocimiento en la jurisprudencia del TEDH en relación con el artículo 3 del CEDH, de la posibilidad de que una persona corra un riesgo real tan solo por estar presente en una situación que se caracterice por un nivel de violencia excepcionalmente alto. En los apartados 115 y 116 de la sentencia en el asunto NA v UK ([60]), el TEDH declara:

> «115. De la reseña anterior de su jurisprudencia se desprende que el Tribunal nunca ha excluido la posibilidad de que una situación general de violencia en un país de destino tenga un nivel de intensidad suficiente como para que el traslado a dicho país infrinja necesariamente lo dispuesto en el artículo 3 del Convenio. No obstante, el Tribunal solo adoptaría dicho enfoque en los casos más extremos de violencia generalizada en los que exista un verdadero riesgo de maltrato por el simple hecho de que una persona quede expuesta a dicha violencia a su retorno.
>
> 116. Sin embargo, en condiciones excepcionales, en aquellos casos en que el solicitante argumenta que es miembro de un grupo expuesto sistemáticamente a una práctica de maltrato, el Tribunal ha considerado que la protección que concede el artículo 3 del Convenio interviene cuando el solicitante demuestra que existen motivos de peso para creer en la existencia de dicha práctica y en su pertenencia al grupo en cuestión (véase la sentencia en el asunto Saadi c Italia, op. cit., apartado 132). En tales circunstancias, el Tribunal no insistirá en que el solicitante demuestre la existencia de otras características distintivas especiales si con ello la protección ofrecida por el artículo 3 resulta ilusoria. Esto se determinará a la vista del relato del solicitante y de la información sobre la situación del grupo en cuestión en el país de destino (véase la sentencia en el asunto Salah Sheekh, op. cit., apartado 148)».

En la sentencia en el asunto Sufi and Elmi v. UK, el TEDH aclaró asimismo que la aplicación de este enfoque implicaría también (lo que hemos llamado) un criterio de escala móvil. El TEDH confirmó, en primer lugar, que si demuestra la existencia de un riesgo contrario al artículo 3, «la expulsión del solicitante infringiría necesariamente lo dispuesto en este artículo, independientemente de que el riesgo emane de la situación general de violencia, una característica personal del solicitante o una combinación de ambas cosas» (apartado 218).

Un comentarista ha señalado:

> «En esencia, la prueba de la "escala móvil" del asunto Elgafaji no parece alejarse mucho de esta jurisprudencia reciente del TEDH, al menos en lo que se refiere a la individualización. La prueba se formula en términos similares en relación con los casos de violencia generalizada e indiscriminada extrema. El TJUE también ha dejado claro que esta situación sería "excepcional". Cuando la violencia es de menor intensidad, ambos tribunales exigen un cierto grado de individualización ([61])».

Si el artículo 3 del CEDH implica una «escala móvil», también debe existir una en el artículo 15, letra b) ([62]). El reto consiste en cómo abordar dicha individualización en el contexto del artículo 15, letra c): «El segundo reto de la prueba de la escala móvil se plantea cuando se trata de identificar los factores particulares de las circunstancias personales del solicitantes en aquellos casos en que la violencia es de menor intensidad» ([63]). El Abogado General Maduro observó que «al explicar los factores pertinentes para apreciar si una persona se ve afectada

([59]) E. Tsourdi, 'What Protection for Persons Fleeing Indiscriminate Violence? The Impact of the European Courts on the EU Subsidiary Protection Regime', en D. Cantor y J-F Durieux (eds), op. cit., p. 277.
([60]) TEDH, sentencia de 17 de julio de 2008, NA v Reino Unido, solicitud no 25904/07.
([61]) E. Tsourdi, op. cit., nota al pie 59, p. 281.
([62]) E. Tsourdi, op. cit., p. 288.
([63]) Ibíd.

individualmente, se mencionó como ejemplo su pertenencia a un determinado grupo social» ([64]). La pertenencia a un determinado grupo social refleja lo dispuesto en la Convención sobre el Estatuto de los Refugiados de 1951.

Sin embargo, si las «circunstancias» personales radican en la pertenencia a un determinado grupo social o cualquiera de los otros cuatro motivos contemplados en la Convención sobre el Estatuto de los Refugiados de 1951, el marco adecuado para examinar la solicitud podría ser el de la definición de refugiado ([65]).

En cualquier caso, las circunstancias personales que es necesario demostrar en este caso no pueden limitarse a los motivos que esta Convención ofrece para la definición de refugiado; en principio, estos parecen incluir factores que pondrían a la persona afectada en un mayor riesgo que el resto de la población. Cabe recordar que el artículo 4, apartado 3), letra c), establece que el examen de una solicitud de protección internacional debe tener en cuenta «la situación particular y las circunstancias personales del solicitante, incluidos factores tales como su pasado, sexo y edad, con el fin de evaluar si, dadas las circunstancias personales del solicitante, los actos a los cuales se haya visto o podría verse expuesto puedan constituir persecución o daños graves».

Por consiguiente, aunque el examen del artículo 15, letra c), debe apreciar tanto los riesgos específicos como los generales, las dificultades que han encontrado órganos jurisdiccionales nacionales para aplicar la «escala móvil» indica que su principal utilidad será para examinar las solicitudes basadas en riesgos generales. Muy a menudo, las solicitudes basadas en riesgos específicos deben resolverse con arreglo a la definición de refugiado o (si no existe un motivo contemplado en la Convención sobre el estatuto de los refugiados) con arreglo al artículo 15, letras b) o a). Cabe reiterar que al resolver casos de protección internacional, los órganos jurisdiccionales deben examinar en primer lugar si una persona tiene derecho a la protección de refugiado y, por consiguiente, la «escala móvil» del artículo 15, letra c), solo se aplicará si se ha decidido que el solicitante no ha demostrado un temor fundado a ser perseguido.

1.7. Vida o integridad física [de los civiles]

Como se señala en el asunto Elgafaji ([66]), el artículo 15, letra c), tiene un mayor alcance que el artículo 3 del CEDH y, por consiguiente, debe interpretarse por separado, pero teniendo en cuenta los derechos fundamentales que garantiza dicho Convenio.

Ni la DR ni el TJUE en sus resoluciones han definido los términos «vida o integridad física», que son dos importantes valores de los civiles que se ven afectados por la violencia indiscriminada en situaciones de conflicto armado internacional o interno.

Si se comparan las disposiciones del artículo 15, letras a) y b), que indican un tipo determinado de daño, con lo dispuesto en el artículo 15, letra c), resulta obvio que el daño que define esta última abarca un riesgo de daño más general ([67]).

El daño que podría afectar al solicitante no se limita al físico, sino que también puede ser psicológico o mental ([68]). El daño también podría derivarse de «formas indirectas de violencia, tales como la intimidación, la extorsión, el decomiso de bienes, el allanamiento de hogares y empresas, los registros y el secuestro» ([69]) que afecten a la integridad física de un civil. Es por ello que, al examinar el riesgo en caso de retorno, los órganos jurisdiccionales deben evaluar exhaustivamente toda una serie de elementos para apreciar la situación y condiciones locales.

Aún queda por responder la pregunta de si el riesgo para la «vida o la integridad física» se limita a un riesgo real de sufrir daños que violen derechos no derogables o si se extiende para incluir violaciones importantes de derechos sujetos a condiciones del solicitante. En el apartado 101 de la sentencia en el asunto KH (Iraq) se señala que:

([64]) Ibíd.
([65]) Ibíd.
([66]) Elgafaji, op. cit., nota al pie 5, apartado 28.
([67]) Ibíd., apartado 33.
([68]) ACNUR, Safe at Last, nota al pie 2, p. 60.
([69]) HM and others, op. cit., nota al pie 26, apartado 114.

> «esta disposición, que se centra en el objeto de la amenaza, fue objeto de cinco enmiendas de redacción. El Dr. McAdam (véase la pág. 75 supra) señala que la frase original «la vida, seguridad o libertad» fue suprimida finalmente, junto con otras fórmulas posteriores que giraban en torno al concepto de libertad [«la vida o integridad física, o la libertad de detención arbitraria»], debido a que algunos Estados miembros temían que ampliara excesivamente el ámbito de aplicación de la Directiva» ([70]).

El artículo 3 que comparten los Convenios de Ginebra de 1949 utiliza la frase «la vida y la integridad corporal» (y no «la vida o la integridad corporal» y en la sentencia en el asunto KH (Iraq) se señala que es evidente que esta frase no puede abarcar todo lo relacionado con objetos civiles. La definición del DIH de estos últimos incluye lo siguiente: «viviendas, comercios, escuelas y otros lugares de actividades no militares, lugares de esparcimiento y culto, medios de transporte, bienes culturales, hospitales y establecimientos y unidades médicos». Si bien la sentencia en el asunto Diakité deja claro que los principales términos del artículo 15, letra c), no deben interpretarse de acuerdo con el DIH, esta diferenciación parecería necesaria en cualquier definición.

En el apartado 107 de su sentencia en el asunto KH, el UKAIT observa una diferencia dentro del artículo 3, apartado 1, entre la letra a) violencia contra la «vida y la integridad corporal», por una parte, y la letra c) «los atentados contra la dignidad personal, especialmente los tratos humillantes y degradantes», por la otra. Este hecho llevó al Tribunal a dudar que el ámbito de aplicación material de la frase «la vida y la integridad corporal» pudiera extenderse a amenazas que equivalen a tratos inhumanos y degradantes. La limitación inherente del concepto de «vida o integridad física» dentro del DIH se pone de relieve igualmente por el hecho de que en el Protocolo adicional II (en cuyo momento se consideró que habría que dar un ámbito de aplicación material más amplio a la protección de civiles) se utilizó un texto complementario para ampliar dicha protección. El artículo 4, apartado 2, letra a), del mismo Protocolo prohíbe: «los atentados contra la vida, la salud y la integridad física o mental de las personas, en particular el homicidio y los tratos crueles tales como la tortura y las mutilaciones o toda forma de pena corporal». El Tribunal concluye que «no obstante, en vista de que es necesario conceder un significado amplio a «la vida o la integridad corporal», habría que aceptar que la frase debe incluir los medios para la supervivencia de una persona». El Tribunal Administrativo de Eslovenia sostiene que el valor protegido por el artículo 15, letra c), no es simplemente la «supervivencia» de los solicitantes de asilo, sino que también prohíbe los tratos inhumanos ([71]).

1.8. Ámbito de aplicación geográfico: país/zona/región

Para considerar la protección que concede del artículo 15, letra c) es fundamental evaluar la situación existente en el país de retorno ([72]). Sin embargo, no es necesario determinar si el conflicto armado es de ámbito nacional, sino que la evaluación debe centrarse en la región en la que vive el solicitante (o la zona de destino) y en determinar si dicha persona corre peligro en esa zona o en la ruta necesaria para llegar a ella. El artículo 8 reconoce igualmente que, incluso si el solicitante puede demostrar la existencia de un riesgo real de daño grave, como contempla el artículo 15, letra c), el derecho a recibir protección subsidiaria solo puede concederse si dicho solicitante no puede obtener protección interna en otra parte del país. Por consiguiente, la primera pregunta que hay que responder es si el solicitante corre un riesgo real de sufrir un daño grave en su zona de residencia (o en la ruta hacia esta). Si la respuesta es afirmativa, la segunda pregunta es si el riesgo de sufrir un daño grave puede evitarse mediante la obtención de protección interna en otra parte del país.

1.8.1. Identificación de la zona de residencia

Para decidir la ubicación de la zona de residencia del solicitante como destino de retorno se necesita un enfoque objetivo que tenga en cuenta cuestiones como la zona del último lugar de residencia y la zona de residencia habitual ([73]).

([70]) Asylum and Immigration Tribunal (Reino Unido), sentencia de 25 de marzo de 2008, KH [Article 15(c) Qualification Directive] Iraq CG [2008] UKAIT 00023.
([71]) Tribunal Administrativo de Eslovenia, sentencias de 25 de septiembre de 2013, I U 498/2012-17, y de 29 de enero de 2014, I U 1327/2013-10.
([72]) «El valor añadido del artículo 15, letra c), es su capacidad de ofrecer protección contra riesgos graves derivados de la situación y no dirigidos a una persona». ACNUR, Statement on Subsidiary Protection, op. cit., nota al pie 57.
([73]) Bundesverwaltungsgericht (Alemania), sentencia de 31 de enero de 2013, 10 C 15.12, apartado 14.

1.8.2. La zona de residencia como zona de destino

Por ello, al considerar los riesgos existentes en la zona de residencia del solicitante, también debe tenerse en cuenta si este puede o no viajar a dicho destino. Si no puede hacerlo, debido a que un conflicto armado afecta las rutas que cabría esperar que tomara, debe considerarse que el solicitante ha demostrado la existencia de un riesgo contemplado en el artículo 15, letra c), en su zona de destino.

El TEDH tuvo en cuenta la naturaleza geográfica del conflicto en un contexto de violencia generalizada en el asunto Sufi y Elmi ([74]). En la jurisprudencia nacional sobre el artículo 15, letra c), el TFA alemán y el Tribunal Nacional de Asilo francés dictaminaron que la apreciación no requiere que se analice la situación general a nivel nacional, sino la de la región afectada ([75]), incluida la de la ruta que debe tomarse desde el punto de partida hasta la zona de residencia ([76]). Esta posición coincide igualmente con la adoptada por los órganos jurisdiccionales británicos ([77]).

1.8.3. Protección contra un daño grave en la zona de destino

Cabe señalar que al considerar si existe un riesgo contemplado en el artículo 15, letra c), en la zona de residencia de una persona, dicho riesgo solo se tendrá en cuenta si no existe una protección efectiva para evitarlo. El artículo 7 ([78]) establece que la protección contra la persecución o los daños graves debe ser efectiva y de carácter no temporal. Dicha protección se brinda generalmente cuando los agentes mencionados en el artículo 7, apartado 1, letras a) y b), toman medidas razonables para impedir la persecución o el sufrimiento de daños graves, entre otras la disposición de un sistema jurídico eficaz para la investigación, el procesamiento y la sanción de acciones constitutivas de persecución o de daños graves, y el solicitante tiene acceso a dicha protección.

1.8.4. Protección interna

Si existe un riesgo contemplado en el artículo 15, letra c), en la zona de residencia del solicitante (como en el caso antes citado), es necesario preguntarse si existe una parte del país que no esté afectada por el conflicto a la que pudiera trasladarse el solicitante. A esto se le denomina la alternativa de protección interna (o huida interna o reubicación interna).

El artículo 8 reza así:

«Protección interna

1. Al evaluar la solicitud de protección internacional, los Estados miembros podrán establecer que un solicitante no necesita protección internacional si en una parte del país de origen este:

a) no tiene fundados temores a ser perseguido o no existe un riesgo real de sufrir daños graves, o

b) tiene acceso a la protección contra la persecución o los daños graves tal como se define en el artículo 7, y puede viajar con seguridad y legalmente a esa parte del país, ser admitido en ella y es razonable esperar que se establezca allí.

([74]) Sufi y Elmi, op. cit., nota al pie 14, apartados 210, 265-292.
([75]) M. Mohamad Adan, op. cit., nota al pie 31.
([76]) Bundesverwaltungsgericht (Alemania), op. cit., apartado 13f; M. Mohamad Adan, op. cit.
([77]) HM and others, op. cit., nota al pie 26.
([78]) Artículo 7 de la DR — Agentes de protección
«1. La protección contra la persecución o los daños graves solo la podrán proporcionar:
a) el Estado, o
b) partidos u organizaciones, incluidas las organizaciones internacionales, que controlan el Estado o una parte considerable de su territorio; siempre que quieran y puedan ofrecer protección con arreglo a lo dispuesto en el apartado 2.
2. La protección contra la persecución o los daños graves deberá ser efectiva y de carácter no temporal. En general se entenderá que existe esta protección cuando los agentes mencionados en el apartado 1, letras a) y b), tomen medidas razonables para impedir la persecución o el sufrimiento de daños graves, entre otras la disposición de un sistema jurídico eficaz para la investigación, el procesamiento y la sanción de acciones constitutivas de persecución o de daños graves, y el solicitante tenga acceso a dicha protección.
3. Al valorar si una organización internacional controla un Estado o una parte considerable de su territorio y proporciona la protección descrita en el apartado 2, los Estados miembros tendrán en cuenta la orientación que pueda desprenderse de los actos pertinentes de la Unión».

> 2. Al examinar si un solicitante tiene fundados temores a ser perseguido o corre un riesgo real de sufrir daños graves, o tiene acceso a la protección contra la persecución o los daños graves en una parte del país de origen según lo establecido en el apartado 1, los Estados miembros tendrán en cuenta las circunstancias generales reinantes en esa parte del país y las circunstancias personales del solicitante en el momento de resolver la solicitud, de conformidad con el artículo 4. A este fin, los Estados miembros garantizarán que se obtenga información exacta y actualizada de fuentes pertinentes como el Alto Comisionado de las Naciones Unidas para los Refugiados y la Oficina Europea de Apoyo al Asilo».

El considerando 27 establece:

> «El solicitante debe disponer efectivamente de protección interna contra la persecución o los daños graves en una parte del país de origen donde pueda viajar y ser admitido con seguridad y de forma legal y donde sea razonable esperar que pueda establecerse. En el caso de que los agentes de persecución o de daños graves sean el Estado o sus agentes, debe presuponerse que el solicitante no dispone de una protección efectiva. Cuando el solicitante sea un menor no acompañado, la disponibilidad de disposiciones adecuadas en materia de cuidados y tutela que respondan al interés superior del menor no acompañado debe formar parte de la evaluación para determinar si la protección es efectiva o no».

El TJUE refrendó la pertinencia de la protección interna en el asunto Elgafaji cuando dictaminó que «a la hora de realizar la valoración individual de una solicitud de protección subsidiaria [...] puede tomarse en consideración [...] la extensión geográfica de la situación de violencia indiscriminada así como el destino efectivo del solicitante en caso de expulsión al país de que se trate» ([79]).

La extensión geográfica y la protección interna son principios conectados entre sí, ya que puede considerarse implícito en su definición más amplia que la protección interna no solo incluye la protección concedida por terceros ([80]), sino también la autoprotección por medio del traslado a una parte del país en la que el conflicto no existe o la amenaza de violencia indiscriminada que causa el conflicto es menor.

El artículo 8, apartado 2, de la DR refundida (pero no de la original, véase más abajo) hace una referencia específica al acceso a la protección. El artículo 7 define los agentes de protección, entre los que incluye no solo a los estatales, sino también a los no estatales que controlan el Estado o una parte considerable de su territorio. El principio de protección interna puede hacer referencia a la totalidad del artículo 15 y puede considerarse que se aplica más a las letras a) y b) del artículo 15, en las que el daño va dirigido directamente a las personas, más que a la letra c) del mismo artículo. Ello se debe a que, una vez que se ha determinado que existe una amenaza de violencia indiscriminada como consecuencia de un conflicto armado en la zona de residencia, la posibilidad de que se pueda conceder protección interna en esa zona puede resultar insostenible, ya que en muchas situaciones de conflicto armado no cabe suponer que exista una protección efectiva. «La capacidad de los agentes de protección para brindar esta y los indicadores relativos a la inoperancia del Estado» se encuentran entre los indicadores para apreciar el nivel de violencia y la gravedad de la amenaza identificados por el ACNUR ([81]).

Por consiguiente, la evaluación de la situación, no solo en la zona de residencia del solicitante, sino también en otras partes del país en las que sea posible encontrar protección interna resulta fundamental para aplicar correctamente lo dispuesto en el artículo 15, letra c). Esta valoración de las circunstancias generales existentes y de las circunstancias personales del solicitante exige una apreciación exhaustiva. La DR exige que esta valoración se realice de conformidad con lo dispuesto en el artículo 4 (Valoración de hechos y circunstancias) y que se obtenga «información exacta y actualizada».

En las secciones 2.4 y 2.5 de la segunda parte se presenta un análisis más exhaustivo del ámbito de aplicación geográfico y la protección interna.

([79]) Elgafaji, op.cit., nota al pie 5, apartado 40.
([80]) Sin embargo, el artículo 7, apartado 1, letra b), establece que la protección solo puede ser concedida por agentes no estatales si estos controlan el Estado o una parte considerable de su territorio y quieren y pueden ofrecer protección con arreglo a lo dispuesto en el artículo 7, apartado 2, de la DR. Véase Tribunal Supremo Administrativo de la República Checa, resolución de 27 de octubre de 2011, en el asunto D.K. contra Ministerio del Interior, Azs 22/2011.
([81]) ACNUR, Safe at Last?, nota al pie 2.

Segunda parte: APLICACIÓN

2.1. Resumen: enfoque integral

En la primera parte se analizaron los elementos constitutivos del artículo 15, letra c). En esta segunda parte nos centraremos en cómo debe aplicarse esta disposición en la práctica.

Como ya se ha señalado, el análisis de la letra c) del artículo 15 requiere un enfoque integral. Los órganos jurisdiccionales deben tener en cuenta una serie de elementos: conflicto armado, la vida o la integridad física de los civiles, la amenaza grave e individual, la violencia indiscriminada, el umbral de violencia, el ámbito de aplicación geográfico y la alternativa de protección interna. Estos distintos elementos interactúan entre sí.

En el apéndice A figura una estructura decisoria arborescente cuya finalidad es contribuir a la definición del orden lógico de las preguntas que deben plantearse los órganos jurisdiccionales a la hora de decidir si una persona tiene derecho a protección subsidiaria en virtud del artículo 15, letra c). En esta sección nos centraremos en las cuestiones principales relativas a la aplicación que requieren explicación adicional.

2.2. Evaluación del nivel de violencia: un enfoque práctico

Las directrices formuladas por el TJUE en los asuntos Elgafaji ([82]) y Diakité ([83]) presentan un alcance limitado y, en gran parte, dejan en manos de los órganos jurisdiccionales nacionales la cuestión de cómo debe aplicarse en la práctica el artículo 15, letra c). En particular, no ayudan a los órganos jurisdiccionales nacionales a responder a la pregunta sobre cómo han de analizar i) la situación en la zona o región del país a fin de evaluar el nivel de violencia, y ii) si dicha violencia genera un riesgo real de sufrir daño grave en el caso de los civiles en general o de determinadas personas debido a sus circunstancias personales, o una combinación de ambas.

Hasta ahora, el TJUE no ha formulado ninguna directriz sobre los criterios que deben seguirse para evaluar el nivel de violencia de un conflicto armado. Los órganos jurisdiccionales tendrán que adoptar un enfoque proactivo al analizar las pruebas presentadas en apoyo de la solicitud. Cualquier criterio que apliquen los órganos jurisdiccionales nacionales requerirá una prueba de viabilidad práctica a fin de dar effet utile al artículo 15, letra c). En los Estados miembros, los asuntos basados en el artículo 15, letra c) presentan un carácter especial, porque el sujeto es un país en el que al menos partes del cual se encuentran en una situación de violencia y conflicto. Como se explica en la primera parte, los órganos jurisdiccionales deben tener en cuenta una serie de factores o indicadores; en este sentido, es importante basarse en la doctrina recogida en la jurisprudencia del TEDH y de los órganos jurisdiccionales nacionales.

2.2.1. Jurisprudencia del Tribunal de Estrasburgo

El enfoque seguido por el TEDH para evaluar el nivel de violencia a efectos del artículo 3 del CEDH —a fin de decidir si todos o la mayoría de los civiles corren un riesgo real de sufrir maltrato— se inspira en el apartado 241 de la sentencia dictada en el asunto Sufi y Elmi, a saber:

> «En el presente caso, los solicitantes alegaron que la violencia indiscriminada en Mogadiscio alcanzaba un nivel de intensidad suficiente como para suponer un riesgo real para la vida o la integridad física de cualquier civil que viviera en la capital. Aunque el Tribunal ya ha indicado que solo «en los casos más extremos» una situación de violencia general tendría la suficiente intensidad como para implicar tal riesgo, no ha ofrecido otras orientaciones sobre el modo en que puede evaluarse la intensidad de un conflicto. Sin

([82]) Elgafaji, op. cit., nota al pie 5, apartado 43.
([83]) Diakité, op. cit., nota al pie 7, apartado 30.

embargo, el Tribunal recuerda que el Tribunal de Asilo e Inmigración debía llevar a cabo una evaluación similar en los asuntos AM y AM (Somalia) ([84]) (antes citados), y al hacerlo definió los siguientes criterios: en primer lugar, si las partes en el conflicto empleaban métodos y tácticas bélicas que aumentaran el riesgo de muerte entre la población civil o atacaban directamente a civiles; en segundo lugar, si el uso de dichos métodos y tácticas estaba ampliamente extendido entre las partes en el conflicto; en tercer lugar, si los combates eran localizados o generalizados, y por último, el número de civiles muertos, heridos o desplazados como consecuencia de los combates. Aunque estos criterios no constituyen una relación exhaustiva que deba aplicarse a todos los casos futuros, el Tribunal considera en el contexto del presente caso que constituyen un parámetro adecuado para evaluar el nivel de violencia en Mogadiscio».

2.2.2. Órganos jurisdiccionales nacionales

Determinados órganos jurisdiccionales de varios Estados miembros han adoptado un enfoque similar para evaluar el nivel de violencia de los conflictos armados a los efectos del artículo 15, letra c). No obstante, hay ligeras diferencias entre los métodos aplicados, así como entre la importancia atribuida a los distintos indicadores.

El UKUT declaró que el nexo entre el conflicto armado generalizado y la violencia indiscriminada que plantea un riesgo real para la vida o la integridad física de la persona queda establecido cuando la intensidad del conflicto implica medios de combate (permitidos o no por el Derecho militar) que ponen en grave peligro a los no combatientes, ya sea de manera directa o indirecta ([85]). Para este tribunal, esto significa que las pruebas respecto al número de civiles muertos o heridos revisten una importancia capital a la hora de evaluar el nivel de violencia por lo que se refiere al artículo 15, letra c) ([86]). Sin embargo, el tribunal subraya la necesidad de adoptar un enfoque inclusivo al evaluar el nivel de violencia indiscriminada. Este enfoque requiere un análisis tanto cuantitativo como cualitativo del nivel de violencia. Un análisis cuantitativo tiene en cuenta el número de civiles muertos o heridos, el número de incidentes relacionados con la seguridad, etc. Un análisis de la violencia en curso debe tomar en cuenta las repercusiones de las amenazas de violencia, así como de la propia violencia física, la conducta de las partes en el conflicto armado y los efectos acumulativos a largo plazo cuando el conflicto se prolonga en el tiempo. Un enfoque incluyente, tanto a nivel cuantitativo como cualitativo, no solo debe determinar la cifra de civiles muertos y heridos, sino que también debe tener en cuenta la población desplazada y el grado de inoperatividad del Estado, que también son criterios importantes a la hora de evaluar el riesgo de ser víctima de la violencia indiscriminada ([87]). El Tribunal británico sostiene que incluso los asesinatos selectivos que no provocan daño a civiles, sino únicamente a combatientes, contribuyen a crear un clima de temor e inseguridad, que incrementa indirectamente la intensidad de la violencia ([88]). Es la razón por la que, en opinión de este tribunal, «nunca puede ser correcto limitarse a sustraer la violencia selectiva de la suma total de violencia indiscriminada» ([89]).

El TFA alemán dictaminó que es necesario efectuar una determinación cuantitativa aproximada del total de civiles que viven en la zona afectada, por un lado, y del número de actos de violencia indiscriminada cometidos por las partes en el conflicto contra la vida o integridad física de los civiles de esta región, por el otro, para evaluar el nivel de violencia. También es necesaria una evaluación general del número de víctimas y la gravedad de los daños (muertes y heridos) entre la población civil. Hasta este punto, pueden aplicarse consecuentemente los criterios para determinar la persecución de un grupo desarrollados en el marco del Derecho de asilo por el TFA ([90]). Además de la determinación cuantitativa del nivel de violencia, el enfoque del TFA exige una apreciación general del material estadístico, poniendo un acento especial en el número de víctimas y la gravedad del daño (muertos y heridos) entre la población civil. En todo caso, esta apreciación general incluiría igualmente un análisis de la situación de los servicios de atención médica en el territorio de que se trate, de cuya calidad y accesibilidad puede depender la gravedad de las heridas corporales, haciendo especial hincapié en las consecuencias que las heridas pueden tener sobre las víctimas ([91]).

([84]) Asylum and Immigration Tribunal (Reino Unido), sentencia en los asuntos AM y AM (conflicto armado: categorías de riesgo) Rev 1 Somalia CG [2008] UKAIT 00091, 27 de enero de 2009.
([85]) HM and others, op. cit., nota al pie 26, apartado 45.
([86]) Ibíd., apartado 43.
([87]) Ibíd., apartados 271-274.
([88]) Ibíd., apartado 292.
([89]) Upper Tribunal (Reino Unido), sentencia de 18 de mayo de 2012, en el asunto AK [Article 15(c)] Afghanistan CG v. the Secretary of State for the Home Department, [2012] UKUT 00163, apartado 207.
([90]) Sentencia 10 C 4.09, op. cit., nota al pie 28, apartado 34.
([91]) Sentencia 10 C 13.10., op. cit., nota al pie 37, apartado 23.

En un asunto relativo a la seguridad en Mogadiscio, el Consejo de Estado de los Países Bajos dictaminó en 2010 que la identificación de una situación excepcional en la que se aplique el artículo 15, letra c) a cualquier persona exige un examen que trascienda el número de muertos y heridos en la zona en cuestión e incluya otros factores pertinentes, como los desplazados internos, los refugiados que huyen del país y el carácter aleatorio de la violencia ([92]).

Según el Tribunal Nacional de Asilo y el Consejo de Estado de Francia, la intensidad de un conflicto armado alcanza el umbral del asunto Elgafaji en situaciones de violencia generalizada. Los desplazamientos forzosos, las violaciones del Derecho internacional humanitario y la ocupación de territorio también son elementos que miden la intensidad de la violencia generalizada ([93]).

2.2.3. Posición de ACNUR

De forma similar, ACNUR ha instado a los órganos jurisdiccionales a tener en cuenta elementos tanto cualitativos como cuantitativos, como parte de una «evaluación pragmática, íntegra y orientada hacia el futuro» que «no puede reducirse a un cálculo matemático de probabilidades» ([94]). Esta organización destaca la precaución a que obliga el manejo de estadísticas, con vistas a la variación de los métodos y criterios utilizados para la recopilación de datos, el hecho de que no todos los actos de violencia son denunciados y la importancia del trasfondo geográfico y temporal desde el que se analizan los incidentes ([95]). Además del número de incidentes de seguridad y de víctimas (incluyendo los muertos y heridos, y otras amenazas contra la integridad física) debe tenerse en cuenta «el entorno general de la seguridad en el país, el desplazamiento de población y los efectos de la violencia sobre la situación humanitaria en general» ([96]).

2.2.4. Conclusiones: lista no exhaustiva de posibles indicadores

Existe un consenso generalizado entre el UKUT, el Consejo de Estado francés, el Consejo de Estado neerlandés, el TFA alemán y el Tribunal Supremo de Eslovenia en que el nivel de violencia debe evaluarse tanto por su cantidad como por su calidad. Para los tribunales alemanes, la evaluación de la cantidad de violencia es un punto de partida imperativo a la hora de evaluar su calidad ([97]). Resoluciones dictadas por órganos jurisdiccionales de otros países europeos ponen de manifiesto un interés similar en que la evaluación tome en consideración tanto la cantidad como la calidad. No cabe duda de que una cantidad considerable de violencia es un elemento necesario, al margen del cual no se debe conceder la protección subsidiaria. Sin embargo, definir el umbral del artículo 15, letra c), no es una mera cuestión de análisis de datos cuantitativos.

En vista de las fluctuaciones de la jurisprudencia, sería imprudente intentar establecer una lista definitiva de posibles indicadores, pero un análisis de casos destacados, entre ellos, el asunto Sufi y Elmi, K.A.B ([98]) (relativo al artículo 3 del CEDH) y de las sentencias del TFA alemán, el UKUT, el Tribunal Nacional de Asilo francés, el Tribunal Supremo de Eslovenia (por citar algunos), y tomando como referencia las Directrices de aceptabilidad del ACNUR sobre países como Iraq, Somalia y Afganistán, señala que la evaluación debe regirse por tres principios:

a) En primer lugar, el enfoque debe ser integral e incluyente. Los órganos jurisdiccionales deben tener en cuenta un amplio espectro de variables relevantes.

b) En segundo lugar, los órganos jurisdiccionales no deben limitarse a realizar un análisis puramente cuantitativo de las cifras de civiles muertos y heridos, etc. El análisis tiene que ser cualitativo y cuantitativo. Al valorar la cantidad y la calidad, los órganos jurisdiccionales deben tener en cuenta la posibilidad de que determinados incidentes no se hayan denunciado y otras incertidumbres.

([92]) Raad van State (Países Bajos), sentencia de 26 de enero de 2010, 200905017/1/V2, ECLI:NL:RVS:2010:BL1483.
([93]) Baskarathas, op. cit., nota al pie 29; véase igualmente, CNDA, sentencia de 18 de octubre de 2011, n 10003854.
([94]) ACNUR, Safe at Last?, nota al pie 2, p. 104.
([95]) Ibíd., pp. 46 y 47.
([96]) Ibíd., p. 104.
([97]) H. Lambert, «The Next Frontier: Expanding Protection in Europe for Victims of Armed Conflict and Indiscriminate Violence», IJRL 2013, 224.
([98]) TEDH, sentencia de 5 de septiembre de 2013, K.A.B v Sweden, solicitud no 886/11.

c) En tercer lugar, sobre la base de la jurisprudencia, que a su vez absorbe los puntos de vista de estudios académicos, los órganos jurisdiccionales deben intentar dilucidar qué nos dicen las evidencias respecto a los indicadores de situaciones de violencia y conflicto (la lista que figura a continuación no pretende ser exhaustiva):

- Criterios del TEDH en el asunto Sufi y Elmi:
  - las partes en el conflicto y su fuerza militar relativa;
  - el uso de métodos y tácticas bélicas (riesgo de víctimas civiles);
  - el tipo de armamento utilizado;
  - el ámbito geográfico de los combates (localizado o generalizado);
  - el número de civiles muertos, heridos y desplazados como consecuencia de los combates.
- La capacidad o incapacidad del Estado para proteger a sus ciudadanos de la violencia (si es viable determinarla, ayudará a establecer los distintos agentes de protección y conocer su verdadero papel)/el grado de inoperancia del Estado).
- Las condiciones socioeconómicas (que deben incluir una valoración de las formas de asistencia económica y de otra índole de las organizaciones internacionales y ONG).
- Los efectos acumulados de los conflictos armados de larga duración.

En principio, estos indicadores no exhaustivos se aplicarán cuando deba evaluarse un riesgo general o específico para el solicitante. Dado que cada conflicto armado puede responder a diferentes pautas, resulta de suma importancia recordar que una lista de indicadores —como la anterior— nunca puede ser exhaustiva. Las características de un conflicto armado y sus víctimas civiles pueden dar lugar a otros indicadores que también deben tenerse en cuenta.

2.3. Aplicación de la evaluación mediante escala móvil

El concepto de escala móvil, que se deriva de la sentencia dictada en el asunto Elgafaji (aunque en ella no se describe como tal), ofrece un marco para evaluar la importancia relativa de los conceptos de riesgo general (cuando existe una violencia indiscriminada de tal nivel que una persona corre riesgo por el simple hecho de ser civil) y de riesgo específico (cuando existe una amenaza individualizada). Este concepto da efecto y contexto al texto del considerando 35 (anterior considerando 26) del preámbulo de la DR, ya que, en general, la existencia de una amenaza grave e individual para los civiles puede considerarse demostrada excepcionalmente cuando el grado de violencia indiscriminada que caracteriza al conflicto armado existente alcanza un nivel elevado: esta es la dimensión de riesgo real del artículo 15, letra c). Si existe un riesgo general, la credibilidad carece de relevancia o, para ser más preciso, la credibilidad se limita a comprobar si el solicitante procede de un país o región determinados.

Pero el solicitante aún tiene la posibilidad de acogerse al artículo 15, letra c), incluso cuando el nivel de violencia indiscriminado es menor, si puede demostrar que le afectan específicamente factores derivados de sus circunstancias personales: esta es la dimensión de riesgo específico del artículo 15, letra c). La escala móvil determina la forma en que debe evaluarse el riesgo específico: «cuanto más pueda demostrar el solicitante que le afectan específicamente elementos propios de su situación personal, menor será el grado de violencia indiscriminada exigido para que pueda acogerse a la protección subsidiaria» (sentencia en el asunto Elgafaji, apartado 39, sentencia en el asunto Diakité, apartado 31). En este punto será importante determinar la credibilidad.

Los elementos que deben tenerse en cuenta para evaluar el nivel de violencia indiscriminada se enumeran más arriba (véase la sección 1.3 «Violencia indiscriminada»).

Es evidente que la evaluación del riesgo específico contemplado en el artículo 15, letra c) debe proceder de manera similar al examen de las solicitudes de protección internacional basadas en las letras a) y b) del mismo artículo. Esto se desprende de la insistencia del TJUE en que «dicha disposición [el artículo 15, letra c)] debe ser objeto de una interpretación sistemática en relación con las otras dos situaciones a las que se hace referencia en dicho artículo 15 de la Directiva y, por lo tanto, debe interpretarse en estrecha relación con esta individualización» ([99]). El reto que la jurisprudencia nacional dictada hasta la actualidad plantea a los jueces (véase el apartado 2.3.1 de la segunda parte) es que, cuando se trata de aplicar el artículo 15, letra c) a situaciones en las que el nivel de violencia indiscriminada no es lo suficientemente elevado como para suponer un riego para los civiles en general, a menudo resulta difícil saber por qué el caso de un solicitante que puede demostrar que sus circunstan-

([99]) Elgafaji, op. cit., nota al pie 5, apartado 38.

cias personales aumentan el riesgo debe examinarse con arreglo al artículo 15, letra c). Como ya hemos señalado anteriormente, puede tener derecho a la protección de refugiado o a protección subsidiaria en virtud del artículo 15, letras b) ([100]) o a). Por ello, la principal utilidad del artículo 15, letra c), será en aquellos casos en que lo que es preciso determinar es si existe un riesgo general para todos los civiles.

Jurisprudencia nacional

Siguiendo lo establecido en el asunto Elgafaji, el Consejo de Estado francés dictaminó en el asunto Baskarathas ([101]) que el solicitante no está obligado a demostrar que es objeto de un riesgo específico debido a su situación personal cuando el nivel de violencia indiscriminada alcanza tal grado que existen motivos graves y manifiestos para creer que correría riesgo por el solo hecho de estar presente en el territorio, que era, según el Tribunal, lo que ocurría en Sri Lanka en el verano de 2009.

El Tribunal Nacional de Asilo francés tomó en consideración la corta edad del solicitante de asilo como elemento individual para evaluar el riesgo real de sufrir daño grave en el caso de varios solicitantes afganos. Según el Tribunal, este elemento incrementa el riesgo individual en la evaluación cuando el nivel de violencia es menor. Y por ello concedió protección subsidiaria. Este tribunal también tuvo en cuenta elementos relacionados con la corta edad del solicitante, como la muerte de sus progenitores, la ausencia de lazos familiares, la exposición a la violencia y el reclutamiento forzoso en una de las fuerzas armadas ([102]). Otro elemento individual que el tribunal aceptó como riesgo adicional se planteó en el caso de un hombre procedente de Kivo del Norte (República Democrática del Congo), en el que el Tribunal descubrió que los profesionales obligados a desplazarse por Angola quedaban expuestos a actos violentos cometidos por grupos armados ([103]). Un aspecto relevante de este caso consistía en saber si la profesión del solicitante es fundamental para su identidad, de modo que no sería razonable esperar por su parte que la cambiase a fin de evitar posibles daños.

El TFA alemán ha dado algunos ejemplos de circunstancias personales que incrementan la amenaza de violencia indiscriminada, por ejemplo, si la profesión del solicitante le obliga a estar cerca de actos de violencia, como es el caso de los médicos o los periodistas. También las circunstancias personales, como la religión o la pertenencia a un grupo étnico pueden tenerse en cuenta, si no dan lugar a la concesión del estatuto de refugiado. En caso de presentarse dichas circunstancias personales, el TFA exige igualmente un alto nivel de violencia indiscriminada o una grave amenaza para la población civil de la zona. Un indicador de esto puede ser el número de actos de violencia indiscriminada, el número de víctimas y la gravedad del daño sufrido por las víctimas civiles ([104]).

El Tribunal Superior Administrativo de Baviera no consideró que la pertenencia del solicitante a la minoría hazara (Afganistán) constituyese una circunstancia que incrementase el riesgo individual. De acuerdo con la información de que disponía el Tribunal, la situación general de los hazara, que siempre han sufrido discriminación, ha mejorado, aunque persisten tensiones tradicionales que reaparecen ocasionalmente. Los hazara siempre han vivido en las provincias de Parwar y Kabul y, de acuerdo con información facilitada por el ACNUR, muchos de ellos han regresado a esta región. La pertenencia de un solicitante al grupo religioso de los chiítas tampoco constituye una circunstancia «que incremente el riesgo» individual, ya que un 15 % de la población afgana profesa esta religión ([105]).

El Tribunal Superior Administrativo de Renania del Norte-Westfalia dictaminó que debía existir una amenaza grave e individual. Esto solo ocurre si los riesgos generales se acumulan de tal modo que todos los habitantes de una región se ven afectados grave y personalmente, o bien si alguien se ve especialmente afectado debido a circunstancias individuales que aumentan el riesgo. Estas circunstancias que aumentan el riesgo también pueden ser consecuencia de la pertenencia a un grupo ([106]).

([100]) Véanse las conclusiones del Abogado General en el asunto M'Bodj, op. cit., nota al pie 9 respecto al ámbito de aplicación del artículo 15, letra b).
([101]) Baskarathas, op. cit., nota al pie 29.
([102]) CNDA (Francia), sentencia de 21 de marzo de 2013, en al asunto M. Youma Khan, n° 12025577 C; CNDA, sentencia de 2 de julio de 2012, en el asunto M. Ahmad Zai, n° 12006088 C; CNDA, sentencia de 18 de octubre de 2011, en el asunto M. Hosseini, n° 10003854 C+; CNDA, sentencia de 3 de junio de 2011, en el asunto M. Khogyanai, n° 09001675 C; CNDA, sentencia de 20 de diciembre de 2010, en el asunto M. Haidari, n° 10016190 C+; CNDA, sentencia de 1 de septiembre de 2010, en el asunto M. Habibi, n° 09016933 C+.
([103]) CNDA, sentencia de 5 de septiembre de 2013, en el asunto M. Muela, n° 13001980 C.
([104]) Bundesverwaltungsgericht (Alemania), sentencia de 20 de febrero de 2013, BVerwG 10 C 23.12, apartado 33.
([105]) Tribunal Superior Administrativo de Baviera (Alemania), sentencia de 3 de febrero de 2011, 13a B 10.30394.
([106]) Tribunal Superior Administrativo de Renania del Norte-Westfalia (Alemania), sentencia de 29 de octubre de 2010, 9 A 3642/06.A.

En el asunto HM and others, el UKUT explica su parecer sobre el razonamiento del TJUE en el asunto Elgafaji:

> «En su opinión, el TJUE consideraba en este asunto que a una persona que corre un riesgo real de ser blanco específico o general de la violencia indiscriminada se le puede conceder protección cuando el nivel general de violencia sea suficiente como para determinar la existencia de un riesgo necesario para una persona que no presente ningún motivo específico para verse afectado por la violencia, a menos que esta alcance un nivel elevado» ([107]).

Este tribunal consideró mediante el uso de la escala móvil si podría decirse que existía un mayor riesgo para los civiles en Iraq, ya sean sunitas, chiítas, kurdos o antiguos miembros del Partido Baaz. Y concluyó que, en general, no era el caso. En el apartado 297, el tribunal señalaba:

> «En nuestra opinión, el resto de evidencias relativas a los sunitas y chiítas revelan una situación similar. Sin embargo, aunque por los motivos antes mencionados hemos observado que no existen evidencias suficientes en general para determinar que la identidad sunita o chiíta constituye en sí misma una «categoría de mayor riesgo» con arreglo al artículo 15, letra c), aceptamos que una persona puede demostrar la existencia de un riesgo real contemplado en dicha disposición, en función de sus circunstancias personales y, en particular, cuando debe regresar a una zona en la que los sunitas o chiitas son minoría. (Desde luego, esta persona puede demostrar la existencia de un riesgo real de persecución en virtud de la Convención sobre el estatuto de los refugiados o de un trato contrario al artículo 3 del CEDH)».

2.4. Ámbito de aplicación geográfico: país/zona/región

Los órganos jurisdiccionales que han recibido pruebas de la existencia de un conflicto armado en el país de origen deben determinar la extensión geográfica de dicho conflicto. Si la violencia indiscriminada en todo el país alcanza tal nivel que las personas corren el riesgo contemplado en el artículo 15, letra c), por el solo hecho de ser civiles, el solicitante tiene derecho a protección subsidiaria. Sin embargo, si la zona del país afectada por ese alto nivel de violencia indiscriminada se extiende únicamente a ciertas partes del país de origen, la capacidad del solicitante para demostrar la existencia de un riesgo real de daño grave en la zona de residencia en virtud del artículo 15, letra c), por el simple hecho de ser civil, dependerá de si la zona de residencia se encuentra dentro de los territorios en que existe dicho alto nivel de violencia (a menos que el Estado miembro de que se trate no aplique el artículo 8). También deben valorarse los aspectos prácticos de desplazarse, permanecer o establecerse en esa parte del país a fin de determinar si resulta razonable pedir al solicitante que se traslade a ella. Entre los factores que deben tenerse en cuenta figuran la seguridad en torno al aeropuerto o localidad de retorno, así como la seguridad de la ruta que es necesario tomar para viajar a la zona en que no existe conflicto. En un país en el que la libre circulación está restringida, es posible que deba determinarse si es legal establecerse en esa zona. Como ya se ha expuesto, si una persona no puede llegar en condiciones de seguridad a la zona de destino debido a la situación de conflicto armado existente en el país, se considera demostrada la existencia del riesgo contemplado en el artículo 15, letra c), en la zona de residencia.

2.5. Protección interna

Las disposiciones específicas del artículo 8, apartado 2, sobre protección interna se refieren a «una parte del país de origen». Huelga decir que, cuando se ha determinado que existe un riesgo de sufrir daño grave, como consecuencia de una violencia indiscriminada contraria al artículo 15, letra c), los órganos jurisdiccionales deben concluir que no existen posibilidades de protección interna (a menos que el Estado miembro de que se trate no aplique el artículo 8).

No puede considerarse que un solicitante presenta una alternativa de protección interna viable i) si las otras partes del país también presentan un riesgo real de sufrir daño grave (contra el cual no existe protección efectiva), o ii) si no es razonable pedir al solicitante que se establezca en ellas, o iii) si el solicitante no puede acceder en la práctica a ellas ([108]). Al considerar si existe protección contra el daño grave en otras partes del país es necesario

([107]) HM and others, op. cit., nota al pie 26, apartado 40.
([108]) A los que se denomina en ocasiones i) el aspecto de «seguridad», ii) el aspecto de «racionalidad», y iii) el aspecto de «acceso».

examinar la naturaleza de dicha protección y, para hacerlo, debe tenerse en cuenta la fuente de la protección, su efectividad y duración de acuerdo con el artículo 7.

El artículo 8, apartado 2, exige a los Estados miembros que tengan en cuenta las circunstancias existentes en el país de origen en el momento de adoptar la decisión. El UKUT dictaminó que ello no impone al Estado la obligación de demostrar que existe una parte del país a la que podría razonablemente pedirse el traslado de un solicitante que hubiese demostrado la existencia de un temor justificado en su zona de residencia. La carga de la prueba corresponde al solicitante, pero en la práctica es el Estado el que debe plantear la cuestión de la reubicación interna y, en ese caso, compete al solicitante determinar si resulta razonable establecerse en ese lugar ([109]).

2.5.1. Artículo 8 (de la Directiva original y de la DR refundida)

Algunas diferencias entre el artículo 8 de la Directiva original y el de la DR refundida no han sido objeto de examen por parte del TJUE hasta la actualidad, pero las modificaciones pueden tener implicaciones en la práctica. En la Directiva original, el artículo 8[110] reconocía que puede no existir amenaza en todo el país de origen y, por consiguiente, puede que un solicitante no necesite protección internacional si resulta razonable pedirle que permanezca en otra parte del país a pesar de los obstáculos técnicos para el regreso. La DR refundida (véase el apartado 1.8) modifica esta disposición y establece que no solamente puede pedirse razonablemente al solicitante que permanezca en esa parte del país, sino que también pueda viajar en condiciones de seguridad y de forma legal, ser admitido en esa parte del país y establecerse en ella. Ya no se menciona el término «obstáculos técnicos», cuya interpretación planteaba dificultades. Pueden existir argumentos sólidos para considerar que la formulación de estos aspectos de la disposición en la DR refundida tiene por finalidad aclarar lo que en la Directiva original estaba implícito.

El uso de la palabra «establecer» ([111]) en la DR refundida difiere del asignado al término «quedarse» en la Directiva original y es posible que prevea una situación de mayor estabilidad.

El artículo 8, apartado 2 de la DR refundida impone a los Estados miembros la obligación específica de obtener información exacta y actualizada de fuentes pertinentes sobre la situación en las partes propuestas del país a la hora de decidir si un solicitante cuenta con una alternativa de protección interna viable:

> «[…] los Estados miembros tendrán en cuenta las circunstancias generales reinantes en esa parte del país y las circunstancias personales del solicitante en el momento de resolver la solicitud, de conformidad con el artículo 4. A este fin, los Estados miembros garantizarán que se obtenga información exacta y actualizada de fuentes pertinentes como el Alto Comisionado de las Naciones Unidas para los Refugiados y la Oficina Europea de Apoyo al Asilo».

([109]) Upper Tribunal (Reino Unido), sentencia de 25 de noviembre de 2011, en el asunto AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia v Secretary of State for the Home Department, CG [2011] UKUT 00445 (IAC). En relación con la resolución más reciente sobre la situación en Mogadiscio, véase la resolución del Upper Tribunal en el asunto MOJ et.al. (Return to Mogadishu) (Rev1) (CG) [2014] UKUT 442 (IAC).

([110]) El artículo 8 de la Directiva original [que aún se aplica a Irlanda y al Reino Unido (véase la nota al pie 1)] reza así:

«Protección interna

1. Al evaluar la solicitud de protección internacional, los Estados miembros podrán establecer que un solicitante no necesita protección internacional si en una parte de su país de origen no hay fundados temores a ser perseguido o un riesgo real de sufrir daños graves, y si es razonable esperar que el solicitante se quede en esa parte del país.

2. Al examinar si otra parte del país de origen se ajusta a lo establecido en el apartado 1, los Estados miembros tendrán en cuenta las circunstancias generales reinantes en esa parte del país y las circunstancias personales del solicitante en el momento de resolver la solicitud.

3. El apartado 1 podrá aplicarse aunque existan obstáculos técnicos al retorno al país de origen.».

([111]) Algo que también aplica el TEDH, véase, por ejemplo, la sentencia de 11 de enero de 2007, en el asunto Salah Skeekh v Netherlands, solicitud no 1948/04 [2007] ECHR 36, apartado 141: «El Tribunal considera que una condición previa para poder recurrir a la alternativa de huida interna es la existencia de determinadas garantías, a saber: la persona que va a ser expulsada debe poder viajar a la zona de que se trate, ser admitido y poder establecerse en ella, sin las cuales podría infringirse lo dispuesto en el artículo 3, más aún si, a falta de dichas garantías, existe la posibilidad de que la persona expulsada termine en una parte del país de origen en la que puede ser objeto de malos tratos».

APÉNDICE A — Estructura decisoria arborescente

A. ¿Se ha denegado la protección en calidad de refugiado?

La protección subsidiaria solo puede concederse a personas que no cumplen los requisitos para ser refugiados [artículo 2, letra f)].

B. ¿Existe en la zona de residencia una situación que da lugar al riesgo contemplado en el artículo 15, letra c)?

1. ¿Existe en la zona de residencia del solicitante una situación de conflicto armado?
2. En caso afirmativo, ¿se caracteriza esta situación por una violencia indiscriminada de tal nivel que las personas corren un riesgo real de sufrir daños graves por el simple hecho de ser civiles? (Pregunta relativa al «riesgo general»)
3. Incluso si la respuesta a la segunda pregunta es negativa, ¿puede el solicitante demostrar, no obstante, la existencia de un riesgo real de sufrir daños graves específicos debido a sus circunstancias personales junto con el telón de fondo de una violencia indiscriminada (de nivel menor)? Cuanto mejor pueda demostrar el solicitante que está afectado específicamente, menor tendrá que ser el nivel de violencia indiscriminada (Pregunta relativa al «riesgo específico»).

Para responder afirmativamente a cualquiera de estas preguntas, los órganos jurisdiccionales deben cerciorarse de que no existe una protección efectiva contra dicho daño grave de conformidad con el artículo 7 (Pregunta relativa a la protección).

Puesto que se supone que el lugar de destino del solicitante es su zona de residencia, posiblemente sea necesario preguntarse si se puede llegar a ella en condiciones seguras. De no ser así, debe suponerse que el solicitante ha demostrado la existencia de un riesgo real de sufrir daño grave a lo largo de la ruta hacia la zona de destino y ello es suficiente para responder afirmativamente a la pregunta B.

C. ¿NO EXISTE POSIBILIDAD DE PROTECIÓN INTERNA?

Si la respuesta a las preguntas 2 o 3 es afirmativa, igualmente es necesario preguntarse (a menos que el Estado miembro de que se trate no aplique el artículo 8) si, de conformidad con dicho artículo, el solicitante puede evitar sufrir daños graves estableciéndose en otra parte del país de origen.

Esta investigación (que debe basarse en información exacta y actualizada procedente de fuentes pertinentes) tiene que determinar si:

- el solicitante está libre de sufrir daños graves en esta otra parte del país;
- el solicitante puede viajar en condiciones seguras y de forma legal, y ser admitido a ella;
- se puede pedir razonablemente al solicitante que se establezca en ella.

Para que esa otra parte del país sea segura es necesario determinar si en ella no existe un riesgo real de que el solicitante sufra daños graves (contra los que no existe una protección efectiva).

Para que esa otra parte del país sea accesible, el solicitante debe poder viajar, llegar y ser admitido a ella sin que se lo impidan obstáculos legales o prácticos (por ejemplo, la obligación de tener un determinado tipo de documento de identidad, que todas las rutas estén intransitables o la falta de seguridad a lo largo del camino).

Para que se considere razonable pedir al solicitante que se establezca en otra parte del país es necesario que ello no le provoque dificultades excesivas.

Para que el solicitante pueda establecerse en ese lugar es necesario comprobar que tiene la posibilidad de quedarse ahí de forma permanente e incondicional.

D. DERECHO A LA PROTECCIÓN SUBSIDIARIA

Si la respuesta a las preguntas de las secciones B y C es afirmativa, el solicitante cumple los requisitos del artículo 15, letra c), y (si no existen motivos de exclusión o cesación) ha demostrado tener derecho a recibir protección subsidiaria.

APÉNDICE B — Metodología

Metodología de las actividades de formación profesional para los miembros de órganos jurisdiccionales

Antecedentes e introducción

El artículo 6 del Reglamento por el que se crea la Oficina Europea de Apoyo al Asilo (EASO) ([112]) (en adelante, «el Reglamento») establece que la Oficina de Apoyo establecerá y desarrollará actividades de formación en las que podrán participar los miembros de todas las administraciones y órganos jurisdiccionales nacionales de los Estados miembros. A tal fin, la EASO aprovechará la experiencia de las instituciones académicas y otras organizaciones pertinentes y tendrá en cuenta la cooperación de la Unión ya existente en el ámbito del pleno respeto de la independencia de los órganos jurisdiccionales nacionales.

Con el fin de promover la mejora de los niveles de calidad y la armonización de las resoluciones en toda la UE, y de acuerdo con su mandato, la EASO imparte una doble formación que incluye la elaboración y publicación de materiales de formación profesional y la organización de actividades de formación profesional. Con esta metodología, la EASO pretende describir los procedimientos que se utilizarán para la ejecución de sus actividades de formación profesional.

Al realizar estas tareas, la EASO se compromete a seguir el enfoque y los principios que se recogen en el ámbito de su cooperación con los órganos jurisdiccionales, adoptados en 2013 ([113]).

Plan de estudios de formación profesional

Contenido y alcance — De acuerdo con el mandato que establece el Reglamento y en cooperación con los órganos jurisdiccionales, la EASO adoptará un plan de estudios de formación profesional destinado a presentar a los miembros de los órganos jurisdiccionales una sinopsis del Sistema Europeo Común de Asilo (en adelante, «SECA»). Teniendo en cuenta las necesidades comunicadas por la red de la EASO, la evolución de la jurisprudencia europea y nacional, el grado de divergencia en la interpretación de las disposiciones en la materia y los avances en este ámbito se elaborarán materiales de acuerdo, entre otras cosas, con la siguiente estructura (sin un orden en especial):

1. Introducción al SECA y al papel y responsabilidades de los órganos jurisdiccionales en el ámbito de la protección internacional
2. Acceso a los procedimientos que rigen la protección internacional y el principio de no devolución
3. Criterios de inclusión y protección subsidiaria a la vista de la Directiva de reconocimiento de la UE ([114])
4. Evaluación y credibilidad de las pruebas
5. Exclusión y fin de la protección a la vista de la Directiva de reconocimiento de la UE
6. Protección internacional en situaciones de conflicto:
7. Protección de refugiados en situaciones de conflicto
8. Transposición del artículo 15, letra c), de la Directiva de reconocimiento de la UE
9. Acogida en el contexto de la Directiva de condiciones de acogida de la UE ([115])

([112]) Reglamento (UE) no 439/2010 del Parlamento Europeo y del Consejo, de 19 de mayo de 2010, por el que se crea una Oficina Europea de Apoyo al Asilo (DO L 132 de 29.5.2010, p. 11) (http://eur-lex.europa.eu/LexUriServ/LexUri Serv.do?uri=OJ:L:2010:132:0011:0028:ES:PDF).
([113]) Nota sobre la cooperación de la EASO con los órganos jurisdiccionales de los Estados miembros, de 21 de agosto de 2013.
([114]) Directiva 2011/95/UE del Parlamento Europeo y del Consejo, de 13 de diciembre de 2011, por la que se establecen normas relativas a los requisitos para el reconocimiento de nacionales de terceros países o apátridas como beneficiarios de protección internacional, a un estatuto uniforme para los refugiados o para las personas con derecho a protección subsidiaria y al contenido de la protección concedida (refundición) (DO L 337 de 20.12.2011, p. 9) (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:000 9:0026:ES:PDF).
([115]) Directiva 2013/33/UE del Parlamento Europeo y del Consejo, de 26 de junio de 2013, por la que se aprueban normas para la acogida de los solicitantes de protección internacional (refundición) (DO L 180 de 29.6.2013, p. 96) (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:ES:PDF).

10. Tramitación a la vista del Reglamento Dublín III ([116])
11. Aspectos procesales a la vista de la Directiva de procedimientos de asilo de la UE ([117])
12. Acceso a los derechos que concede el marco jurídico de la UE tras el reconocimiento del estatuto de protección internacional
13. Procedimientos de retorno a la vista de la Directiva de retorno de la UE ([118])
14. Evaluación y uso de la información sobre el país de origen
15. Acceso a un recurso efectivo de conformidad con los instrumentos legales del SECA

El contenido detallado del plan de estudios, así como el orden en que se elaborarán los capítulos, se establecerá de acuerdo con una evaluación de necesidades realizada en cooperación con la red de órganos jurisdiccionales de la EASO (en adelante, «la red de la EASO») que actualmente incluye a los puntos de contacto nacionales de la EASO en los órganos jurisdiccionales de los Estados miembros, el Tribunal de Justicia de la UE (TJUE), el Tribunal Europeo de Derechos Humanos (TEDH) y los dos órganos judiciales con los que la EASO mantiene un canje oficial de notas: la Asociación Internacional de Magistrados de Derecho de Asilo (en adelante, «IARLJ») y la Asociación de Magistrados Europeos de Derecho Administrativo (en adelante, «AEAJ»). Asimismo, se consultará cuando resulte conveniente a otros socios, como el ACNUR, la Agencia de los Derechos Fundamentales de la Unión Europea (FRA), la Red Europea de Formación Judicial (REFJ) y la Academia de Derecho Europeo (ERA). También se reflejará en el plan anual de trabajo adoptado por la EASO en el marco de sus reuniones de planificación y coordinación.

Participación de expertos

Equipos de redacción — La EASO elaborará el plan de estudios en colaboración con la red de la EASO por medio de la creación de grupos de trabajo específicos (grupos de redacción) para elaborar cada capítulo. Los equipos de redacción estarán integrados por expertos designados a través de la red de la EASO y elegidos de acuerdo con criterios de selección previamente establecidos. La EASO publicará una convocatoria de expertos para elaborar cada capítulo de conformidad con su programa de trabajo y el plan concreto que se adopte en las reuniones anuales de planificación y coordinación.

Esta convocatoria se enviará a la red de la EASO y en ella se especificará el ámbito del capítulo que deba elaborarse, los plazos previstos y el número necesario de expertos. A continuación se invitará a los puntos de contacto nacionales de la EASO a que actúen como enlace con los órganos jurisdiccionales nacionales para identificar a los expertos interesados y disponibles para contribuir a la elaboración del capítulo.

Sobre la base de las candidaturas recibidas, la EASO transmitirá a su red una propuesta para la creación del equipo de redacción. La EASO elaborará esta propuesta de acuerdo con los siguientes criterios:

1. Si el número de candidatos recibido es igual o inferior al número de expertos necesario se invitará automáticamente a todos ellos a participar en el equipo de redacción.
2. Si el número de candidaturas recibidas supera el número de expertos necesario, la EASO procederá a una selección previa motivada de expertos. La selección previa se realizará del siguiente modo:
   – La EASO seleccionará prioritariamente a los expertos que estén disponibles para participar durante todo el proceso, incluidas todas las reuniones de expertos.
   – Si se presenta más de una candidatura del mismo Estado miembro, la EASO pedirá al punto de contacto que seleccione un experto. De este modo habrá una representación más amplia de los Estados miembros en el grupo.
   – A continuación, la EASO propondrá que se dé prioridad a miembros de órganos jurisdicciones por encima de los asistentes y ponentes.

([116]) Reglamento (UE) no 604/2013 del Parlamento Europeo y del Consejo, de 26 de junio de 2013, por el que se establecen los criterios y mecanismos de determinación del Estado miembro responsable del examen de una solicitud de protección internacional presentada en uno de los Estados miembros por un nacional de un tercer país o un apátrida (texto refundido) (DO L 180 de 29.6.2013, p. 31) (http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32013R0604&from=es).
([117]) Directiva 2013/32/UE del Parlamento Europeo y del Consejo, de 26 de junio de 2013, sobre procedimientos comunes para la concesión o la retirada de la protección internacional (refundición) (DO L 180 de 29.6.2013, p. 60) (http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32013L0032&from=es).
([118]) Directiva 2008/115/CE del Parlamento Europeo y del Consejo, de 16 de diciembre de 2008, relativa a normas y procedimientos comunes en los Estados miembros para el retorno de los nacionales de terceros países en situación irregular (DO L 348 de 24.12.2008, p. 98) (http://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:32008L0115&from=ES).

– Si las candidaturas siguen siendo superiores al número de expertos necesario, la EASO presentará una propuesta motivada de selección que tenga en cuenta la fecha en que se recibieron las candidaturas (dándose prioridad a las recibidas primero), así como el interés de la EASO por garantizar una amplia representación regional.

Asimismo, la EASO invitará al ACNUR a que designe a un representante para que se incorpore al equipo de redacción.

Se invitará a la red de la EASO a que exprese sus puntos de vista o haga sugerencias sobre la selección de los expertos propuestos en un plazo máximo de diez días. La selección final tendrá en cuenta los puntos de vista de la red de la EASO y confirmará la composición del equipo de redacción.

Proceso de consulta — La EASO llevará a cabo un proceso de consulta sobre la elaboración de los materiales de conformidad con lo dispuesto en el Reglamento. Con el fin de llevar a cabo este proceso de consulta, la EASO publicará una convocatoria de manifestación de interés dirigida a los miembros de su Foro Consultivo, que incluye representantes de los Estados miembros, organizaciones de la sociedad civil y otras organizaciones pertinentes, organizaciones académicas, así como otros expertos o académicos recomendados por la red de órganos jurisdiccionales de la EASO.

Teniendo en cuenta los conocimientos especializados y la familiaridad con el ámbito judicial de quienes respondan a la convocatoria, así como los criterios de selección de su Foro Consultivo, la EASO hará una propuesta motivada a su red en la que confirmará en última instancia la identidad de quienes deban participar en el proceso de consulta. A continuación se podrá invitar a los candidatos a participar en el proceso de consulta a que aborden todos los aspectos o se centren en áreas relacionadas con su ámbito de competencia.

Se invitará a la Agencia de los Derechos Fundamentales de la Unión Europea (FRA) a participar en el proceso de consulta.

Elaboración del plan de estudios

Fase de preparación — Antes de iniciar el proceso de redacción, la EASO preparará un conjunto de materiales, entre otros:

1. una bibliografía de los recursos y materiales pertinentes disponibles en la materia;
2. una recopilación de la jurisprudencia europea y nacional sobre el tema.

Los participantes en el proceso de consulta, junto con la red de la EASO ([119]), desempeñarán un papel importante durante la fase de preparación. A tal fin, la EASO comunicará a los participantes en el proceso de consulta y a la red de la EASO el alcance de cada capítulo y les remitirá un borrador de los materiales de preparación, junto con una invitación para que presenten la información adicional que consideren pertinente para esta labor. Esta información se reflejará en los materiales que a continuación se transmitirán al equipo de redacción correspondiente.

Proceso de redacción — La EASO organizará al menos dos reuniones de trabajo para la elaboración de cada capítulo. Durante la primera de ellas, el equipo de redacción:

- designará al coordinador o coordinadores del proceso de redacción;
- desarrollará la estructura del capítulo y adoptará el método de trabajo;
- distribuirá las tareas del proceso de redacción;
- elaborará una descripción básica del contenido del capítulo.

Bajo la dirección de su coordinador y en estrecha cooperación con la EASO, el equipo procederá a elaborar un borrador preliminar del capítulo de que se trate.

Durante la segunda reunión, el grupo:

([119]) Se consultará igualmente al ACNUR.

- examinará el borrador preliminar y llegará a un acuerdo sobre su contenido;
- velará por la coherencia de todas las partes y contribuciones al borrador;
- examinará el borrador desde una perspectiva didáctica.

El grupo podrá proponer a la EASO, en caso de ser necesario, la organización de otras reuniones para el desarrollo ulterior del borrador. Una vez finalizado, el borrador se transmitirá a la EASO.

Examen de calidad — La EASO transmitirá el primer borrador elaborado por el equipo de redacción a la red de la EASO, el ACNUR y los participantes en el proceso de consulta, a los que invitará a que examinen estos materiales a fin de ayudar al grupo de trabajo a mejorar la calidad de la versión definitiva.

Todas las sugerencias recibidas se transmitirán al coordinador del equipo de redacción, quien colaborará con el equipo de redacción para examinarlas y elaborar una versión definitiva. O bien, el coordinador podrá proponer que se organice otra reunión para examinar las sugerencias cuando estas sean sumamente extensas o afecten de forma considerable la estructura y contenido del capítulo.

A continuación, el coordinador transmitirá, en nombre del equipo de redacción, el capítulo a la EASO.

Proceso de actualización — La EASO invitará en el marco de las reuniones anuales de planificación y coordinación a la red de la EASO a que presente sus puntos de vista acerca de la necesidad de actualizar los capítulos del plan de estudios.

Sobre la base de este intercambio de puntos de vista, la EASO podrá:

- proceder a actualizaciones menores para mejorar la calidad de los capítulos, incluyendo la inclusión de la evolución de la jurisprudencia en la materia. En tal caso, la EASO elaborará directamente una primera propuesta de actualización, cuya adopción correrá a cargo de la red de la EASO;
- solicitar la creación de un equipo de redacción para actualizar uno o más capítulos del plan de estudios. En este caso, la actualización seguirá el mismo procedimiento que el utilizado para la elaboración del plan de estudios.

Aplicación del plan de estudios

En cooperación con los miembros de la red de la EASO y socios pertinentes (por ejemplo, la REFJ, la ERA, etc.), la EASO promoverá el uso del plan de estudios por parte de los establecimientos de formación nacionales. El apoyo de la EASO a este respecto incluirá:

Nota de orientación para mediadores — La EASO creará un equipo de redacción para elaborar una nota de orientación para mediadores siguiendo el mismo procedimiento utilizado para la elaboración de los distintos capítulos que componen el plan de estudios. Esta nota servirá como herramienta de referencia práctica para los mediadores y ofrecerá orientaciones para la organización e impartición de los talleres prácticos sobre el plan de estudios de formación profesional.

Talleres para mediadores — Por otra parte, tras la elaboración de cada capítulo del plan de estudios, la EASO organizará un taller para mediadores en el que se presentará una sinopsis exhaustiva del capítulo, así como de la metodología propuesta para organizar los talleres a nivel nacional.

- La designación de los mediadores y la preparación del taller — La EASO solicitará la ayuda de al menos dos miembros del equipo de redacción para contribuir a la preparación e impartición del taller. En caso de que ninguno de los miembros del equipo de redacción esté disponible para ello, la EASO publicará una convocatoria específica de mediadores expertos a través de la red de la EASO.
- Selección de los participantes — A continuación, la EASO enviará una invitación a la red de la EASO para identificar un determinado número de posibles mediadores con conocimientos específicos en la materia, que estén interesados y disponibles para organizar los talleres sobre el plan de estudios de formación profesional a nivel nacional. Si el número de candidaturas supera el número indicado en la invitación, la EASO hará una selección que dé prioridad a una amplia representación geográfica, y procederá a la selección de aquellos mediadores que tengan más probabilidades de facilitar la aplicación del plan de estudios a nivel nacional. La EASO podrá

estudiar la posibilidad de organizar otros talleres para mediadores en la medida que sea necesario y de acuerdo con su programa de trabajo y su plan anual de trabajo adoptados en el marco de sus reuniones de planificación coordinación.

Talleres nacionales — La EASO se pondrá en contacto, en estrecha colaboración con la red de la EASO, con establecimientos de formación judicial pertinentes a nivel nacional para promocionar la organización de talleres de ámbito nacional. Para ello, la EASO también promoverá la participación de los miembros de órganos jurisdiccionales que hayan contribuido a la elaboración del plan de estudios o participado en los talleres para mediadores de la EASO.

Talleres avanzados de la EASO

Asimismo, la EASO impartirá un taller anual avanzado sobre determinados aspectos del SECA con el fin de promover la cooperación en la práctica y un diálogo de alto nivel entre los miembros de los órganos jurisdiccionales.

Identificación de los ámbitos pertinentes — Los talleres avanzados de la EASO se centrarán en los ámbitos que presenten un alto nivel de divergencia en la interpretación a nivel nacional o en aquellos ámbitos en que la red de la EASO considere que la evolución de la jurisprudencia es importante. En el marco de sus reuniones anuales de planificación y coordinación, la EASO invitará a la red de la EASO, así como al ACNUR y a los miembros del grupo consultivo a presentar sugerencias sobre posibles ámbitos de interés. Sobre la base de estas sugerencias, la EASO hará una propuesta a la red de la EASO, la cual tomará la decisión definitiva acerca del ámbito sobre el cual deberá tratar el siguiente taller. Cuando resulte conveniente, los talleres darán lugar a la elaboración de un capítulo especializado dentro del plan de estudios.

Metodología — Para preparar los talleres, la EASO solicitará la ayuda de la red de la EASO, que contribuirá a la elaboración de la metodología para los talleres (por ejemplo, debates sobre casos, audiencias judiciales hipotéticas, etc.) y la preparación de los materiales. La metodología utilizada determinará el número máximo de participantes en cada taller.

Participación en los talleres de la EASO — Sobre la base de esta metodología y previa consulta a las asociaciones judiciales, la EASO determinará el número máximo de participantes en cada taller. A los talleres podrán asistir los miembros de los órganos jurisdiccionales europeos y nacionales, así como de la red de órganos jurisdiccionales de la EASO, incluida la REFJ, la FRA, la ERA y el ACNUR.

Antes de la organización de cada taller, la EASO enviará una invitación pública a la red de órganos jurisdiccionales de la EASO y a las organizaciones antes mencionadas, en la que mencionará el tema principal del taller, la metodología, el número máximo de participantes y el plazo de inscripción. La lista de participantes deberá garantizar una buena representación de los miembros de órganos jurisdiccionales y dar prioridad a la primera solicitud de inscripción que se reciba de cada Estado miembro.

Seguimiento y evaluación

La EASO promoverá en la realización de sus actividades un diálogo franco y transparente con la red de la EASO, los miembros de los distintos órganos jurisdiccionales, el ACNUR, las personas que participen en el proceso de consulta y los participantes en las actividades de la EASO, a los que se invitará a presentar a la EASO sus puntos de vista o sugerencias con el fin de mejorar la calidad de dichas actividades.

Por otra parte, la EASO elaborará cuestionarios de evaluación que distribuirá en sus actividades de formación profesional. La EASO incorporará directamente las sugerencias de mejora de poca envergadura e informará a la red de la EASO sobre la evaluación general de sus actividades en el marco de sus reuniones anuales de planificación y coordinación.

La EASO también presentará cada año a la red de la EASO un resumen de sus actividades, así como de las sugerencias de mejora recibidas, que se debatirán en las reuniones anuales de planificación y coordinación.

Principios de aplicación

- En la realización de sus actividades de formación profesional, la EASO tendrá en cuenta sus obligaciones en materia de rendición de cuentas y los principios aplicables al gasto público.
- La EASO y los órganos jurisdiccionales europeos y nacionales asumirán conjuntamente la responsabilidad del plan de estudios de formación profesional. Todos los socios deberán intentar llegar a un acuerdo sobre el contenido de cada uno de sus capítulos a fin de garantizar los auspicios judiciales del producto final.
- El plan de estudios resultante será parte del plan de estudios de formación profesional de la EASO, incluidos los derechos afines. Así pues, la EASO lo actualizará cuando sea necesario y propiciará la plena participación de los órganos jurisdiccionales europeos y nacionales en este proceso.
- Todas las decisiones relativas a la aplicación del plan de estudios y la selección de expertos se tomarán de común acuerdo por todos los socios.
- La redacción, adopción y aplicación del plan de estudios de formación profesional se realizarán de acuerdo con la metodología para las actividades de formación profesional para miembros de órganos jurisdiccionales.

La Valeta, 11 de diciembre de 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	CJEUs' 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
	"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".	
	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.	
	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: – 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. 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.	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

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
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.	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
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 Sheek 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.	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
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 were 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.	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

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
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. 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. 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).	UK - Upper Tribunal, 28 November 2011, AMM and others v Secretary of state for the Home Department [2011] UKUT 00445 ECtHR - Mamatkulov Askarov v Turkey, Applications Nos 46827/99 and 46951/99 Sweden - Migration Court of Appeal, 22 February 2011, UM 10061-09 ECtHR - Salah Sheekh v The Netherlands (Application No 1948/04) - resource ECtHR - Vilvarajah & Ors v United Kingdom, Application Nos 13163/87, 13164/87, 13165/87, 13447/87, 13448/87 ECtHR - Saadi v Italy, Application No 37201/06 ECtHR - HLR v France (Application No 24573/94) ECtHR - Hilal v United Kingdom, Application No 45276/99 ECtHR - F.H. v Sweden (Application No 32621/06) ECtHR - N. v. Finland, Application No 38885/02 ECtHR - Sufi and Elmi v. the United Kingdom, Application Nos 8319/07 and 11449/07 ECtHR - Kaboulov v. Ukraine, Application No 41015/04 ECtHR - Abdulaziz, Cabales and Balkandali v. the United Kingdom, Application Nos 9214/80, 9473/81 and 9474/81 ECtHR - Chalal v. the United Kingdom, Application No 1948/04 ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI ECtHR - Collins and Akaziebe v Sweden (Application No 23944/05) ECtHR - NA v UK, Application No 25904/07 ECtHR - Üner v. the Netherlands [GC], Application No 46410/99 ECtHR - Hakizimana v. Sweden, Application No 37913/05

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
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 was 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 M.S.S. v. Belgium and Greece***, 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 refoulement 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.	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
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.	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

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
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. 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. Conclusion: violation, if the decision to deport the applicant to Tunisia were to be enforced (unanimously).	Abdulaziz, Cabales and Balkandali v. the United Kingdom, judgment of 28 May 1985, Series A No 94, § 67 Ahmed v. Austria, judgment of 17 December 1996, Reports 1996-VI, § 38 and § 39 Al-Adsani v. the United Kingdom [GC], No 35763/97, § 59, ECHR 2001-XI Al-Moayad v. Germany (dev.), No 35865/03, §§ 65-66, 20 February 2007 Aydin v. Turkey, judgment of 25 September 1997, Reports 1997-VI, § 82 Belziuk v. Poland, judgment of 25 March 1998, Reports 1998-II, § 49 Boujlifa v. France, judgment of 21 October 1997, Reports 1997-VI, § 42 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 Chamaïev and Others v. Georgia and Russia, No 36378/02, § 335, ECHR 2005-III Fatgan Katani and Others v. Germany (dev.), No 67679/01, 31 May 2001

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
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. 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.	Ahmed v. Austria, judgment of 17 December 1996, Reports of Judgments and Decisions 1996-VI, p. 2206, §§ 38-41 Chahal v. the United Kingdom, judgment of 15 November 1996, pp. 1856 and 1859, §§ 86 and 97-98, Reports 1996-V Conka v. Belgium, No 51564/99, § 79, ECHR 2002-I H.L.R. v. France, 9 April 1997, Reports 1997-III, p. 758, § 37 and § 40 Hilal v. the United Kingdom, No 45276/99, §§ 59, 60 and 67-68, ECHR 2001-II Mamatkulov and Askarov v. Turkey [GC], Nos 46827/99 and 46951/99, ECHR 2005-I, § 67 and § 69 Selmouni v. France ([GC], No 25803/94, §§ 74-77, ECHR 1999-V T.I. v. the United Kingdom (dec.), No 43844/98, ECHR 2000-III Vilvarajah and Others v. the United Kingdom, judgment of 30 October 1991, Series A No 215, p. 36, § 107, and p. 37, §§ 111-112

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
(excerpt) - COUNTRY GUIDANCE (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. (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. (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. (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. (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. (vi) There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West. (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. (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. (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:(...)	AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC)
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.	
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.	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
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.	
Here the classic refugee law principle of surrogacy interferes with the positive finding on the threats originated in the blind violence prevailing in Alep.	
Claim was rejected both on Geneva Convention and subsidiary protection grounds.	

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
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.	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
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.	CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie ECtHR - D v The United Kingdom (Application No 30240/96) - resource ECtHR - Husseini 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
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.	
The Court nevertheless notes that the appellant's young age enhances the risk inherent to the situation of indiscriminate violence. Subsidiary protection was granted.	
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.	
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.	(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, Husseini – NJOZ 2012, 952).
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 *HM*. Personalised targeting was not addressed in *HM*; 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.	HM (Article 15)) (Iraq) v Secretary of State for the Home Department [2010] UKUT 331 (IAC)

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), Ninewah, 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 *Elgafaji*).
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 Columbia.

	The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
	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.	
	Of particular importance was the observation that decision-makers ensured that following *Elgafaji*, Case C-465/07 and *QD* (Iraq) [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.	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 Straatsscretaris 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
	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.	Italy - Court of Cassation, No 27310/2008
	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 *Sufi and Elmi v. the United Kingdom*, 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.	ECtHR - Sufi and Elmi v United Kingdom (Application Nos 8319/07 and 11449/07)
	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 Article15(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.	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

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
	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. 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.	
	Subsidiary protection was granted regardless of any personal reason.	
	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.	
	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'.	ECtHR - Chahal v the United Kingdom (Application No 22414/93) ECtHR - Salah Sheekh v The Netherlands, Application No 1984/04,

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
The Tribunal continued to regard as correct the summary of legal principles governing Article 15(c) of the Qualification Directive as set out in *HM* and others (Article 15(c)) *Iraq CG* [2010] *UKUT* 331 (IAC) and more recently in *AMM and Others* (conflict; humanitarian crisis; returnees; FGM) *Somalia CG* [2011] *UKUT* 00445 (IAC) and *MK* (documents - relocation) *Iraq CG* [2012] *UKUT* 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 lead 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.	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
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.	
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.	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
Subsidiary protection is granted regardless of any personal reason and despite remaining doubts about him having resided recently in Mogadiscio.	ECHR 28 June 2011, Sufi et Elmi c/ UK No 8319/07 and No 11449/07

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 Vreemdelin-genbetwistin-gen) - 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
	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.	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
	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.	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)
	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. 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.	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
	Subsidiary protection was granted regardless of any personal reason. The Court noted that internal relocation in another area of Somalia was not possible.	
	Subsidiary protection was granted regardless of any personal reason.	
	The Council of State reminds that firstly, based on the CJEU's judgment in *Elgafaji*, Article 15(b) QD must be interpreted according with the case-law of the ECtHR. Secondly, the Council of State underlines that the judgment of the ECtHR in *Saadi v. Italy* 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. 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.	(CJEU) Elgafaji (C-465/07) (ECtHR) Saadi c. Italie (37201/06)
		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
	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.	

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
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.	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)
Subsidiary protection was granted regardless of any personal reason.	ECHR 28 June 2011, Sufi et Elmi c/ UK No 8319/07 and No 11449/07
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.	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
The Tribunal considered the 'significance' of *Sufi and Elmi* 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 Sufi and Elmi. 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. 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 Sufi and Elmi. 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.	(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

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 *Elgafaji* 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
Despite the suggestion in *Sufi & Elmi* 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 *Elgafaji* [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 *NA v United Kingdom* [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 *NA v United Kingdom* and *Elgafaji* 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.	Significant cases cited: Sufi v United Kingdom (8319/07) (2012) 54 EHRR 9 AM (Armed Conflict: Risk Categories) [2008] UKAIT 91
Subsidiary protection was granted regardless of any personal reason.	
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.	(ECtHR) Saadi v Italy (Application No 37201/06) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (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
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. 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.	ECtHR - Collins and Akaziebe v Sweden (Application No 23944/05) ECtHR - Izevbekhai and Others v Ireland (Application No 43408/08) Czech Republic - Supreme Administrative Court, 30 September 2008, S.N. v Ministry of Interior, 5 Azs 66/2008-70 Czech Republic - Supreme Administrative Court, 28 July 2009, L.O. v Ministry of Interior, 5 Azs 40/2009 Czech Republic - Supreme Administrative Court, 16 September 2008, N.U. v Ministry of Interior, 3 Azs 48/2008-57 Czech Republic - Supreme Administrative Court, 24 January 2008, E.M. v Ministry of Interior, 4 Azs 99/2007-93 Czech Republic - Supreme Administrative Court, 25 November 2011, D.A. v Ministry of Interior, 2 Azs 100/2007-64
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 (*Elgafaji 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. 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. 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.	(ECtHR) NA v United Kingdom (Application No 25904/07) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07

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
	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.	
	Subsidiary protection was granted regardless of any personal reason.	
	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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
	The Council of State referred to case C-465/07 of the Court of Justice EU of 17 February 2009 (*Elgafaji vs. Staatssecretaris van Justitie*) 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. 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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
	Claim was rejected both on Geneva Convention and subsidiary protection grounds.	
	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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (Germany) Federal Administrative Court, 14 July 2009, 10 C 9.08 Federal Administrative Court, 14 July 2010, 10 B 7.10
	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.	

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 *HM (Iraq) v Secretary of State for the Home Department* [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
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. 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. 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. 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. 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.	CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie
Claim was rejected both on Geneva Convention and subsidiary protection grounds.	
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 *HM* 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 *HM*.	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
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).	

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 Somalian 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 *Elgafaji*, 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 a 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
	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: 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; b) the asylum seeker can enter that area safely; c) the asylum seeker can settle in the area and he/she can reasonably be expected to stay in that part of the country.	
	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.	
	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.	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
	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.	HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC)
	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. 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.	

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
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. 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. 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.	(Germany) Administrative Court Göttingen, 18 January 2006, 2 A 506/05 Federal Administrative Court, 14 July 2009, 10 C 9.08
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]. 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. 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].	
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.' 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. 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.	
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. 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. The conclusions of the decision of the UK's Immigration and Asylum Chamber in *HM and Others* (Article 15(c)) *Iraq CG* [2010] *UKUT* 331 (IAC) were consistent with the findings of the Minister's representative.	(UK) HM and Others (Article 15(c)) Iraq v. Secretary of State for the Home Department, CG [2010] UKUT 331 (IAC) (Ireland) D.C. v The Director of Public Prosecutions [2005] 4 IR 281 F.N. v Minister for Justice, Equality and Law Reform [2008] IEHC 107 G. v Director of Public Prosecutions [1994] 1 IR 374
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'. 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].	

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 *Elgafaji v Staatssecretaris van Justitie* (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
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.	Sweden - MIG 2007:29
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.	
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.	
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. 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. 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. 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.	(Germany) Federal Administrative Court, 14 July 2009, 10 C 9.08 Federal Administrative Court, 27 April 2010, 10 C 4.09
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. 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 *Elgafaji v Staatssecretaris van Justitie* (C-465/07), stating that the more the applicant can prove a serious and individual threat, the less indiscriminate violence is required. 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. 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. The SAC also held there was no internal flight alternative in Iraq (based on UNHCR Eligibility Guidelines). 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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (UK) HM and Others (Article 15(c)) Iraq v. Secretary of State for the Home Department, 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 *AM (Armed Conflict: Risk Categories)* [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, *inter alia*, 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 issue 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
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.	(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
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.	FO (Nigeria) v Secretary of State for the Home Department [2010] CSIH 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
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.	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)
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.	
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.	(Hungary) Metropolitan Court - 17. K. 30. 307/2009/8 Metropolitan Court - 24. K. 33.913/2008 Metropolitan Court - 17. K. 33.301/2008/15
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.	

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 *Elgafaji v Staatssecretaris van Justitie* (C-465/07) 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 *Elgafaji* 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
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. 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.	
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 *Secretary of State for the Home Department v HH* (Iraq) [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.	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
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.	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
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, *Elgafaji, QD (Iraq) v Secretary of State for the Home Department* [2009] EWCA Civ 620 and *HM* [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.	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
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 *El Gafaji* aims only at providing principles in matters of conflict-related risk assessment.	(ECtHR) NA v United Kingdom (Application No 25904/07) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07

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 that 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
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. 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. 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. 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.	(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
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 Elgafaji 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 *GS* (Article 15(c) Indiscriminate violence) *Afghanistan CG* [2009] *UKAIT 44* 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.	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) Afghanistan CG [2009] UKAIT 00044 GS (existence of internal armed conflict) Afghanistan CG [2009] UKAIT 00010 QD (Iraq) [2009] EWCA Civ 620 LQ (age: immutable characteristic) Afghanistan [2008] UKAIT 00005

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 Article15(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 Vreemdelin-genbetwistin-gen) - 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
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. 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. 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. 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. 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.	(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
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 be 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 *HM (Iraq) v Secretary of State for the Home Department* [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 *HM and others* (Article 15(c)) *Iraq CG* [2012] *UKUT* 00409.	Many cases cited, significant cases include: HH & Others (Somalia) [2010] EWCA Civ 426 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 00023 AH (Sudan) [2007] UKHL 49 Office Français de Protection des Réfugiés et Apatrides v Baskarathas, No 32095, 3 July 2009 Januzi [2006] UKHL 5
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. 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. 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.	(ECtHR) F.H. v Sweden (Application No 32621/06) NA v United Kingdom (Application No 25904/07) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
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.	
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].	(France) CE, 3 juillet 2009, Ofpra c/ M.A., n° 320295

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 Vreemdelin-genbetwistin-gen) - 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 Article15(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
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. 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).	(Germany) Federal Administrative Court, 27 April 2010, 10 C 4.09
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.	
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.	(CJEU) Elgafaji v Staatssecretaris van Justitie 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
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.	
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, *Elgafaji*, 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. Secretary of State for the Home Department*) 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. 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. 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.	(CJEU) Elgafaji v Staatssecretaris van Justitie 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
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.	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
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. 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. 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. 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.	(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
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, *HH (Iraq) v Secretary of State for the Home Department* [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.	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
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). 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. 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. 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.	(Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07 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
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 of 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
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.	
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 lead 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. 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.	(ECtHR) NA v United Kingdom (Application No 25904/07) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
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. 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. 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. 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. 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.	(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
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. 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 of 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. The applicant in this case furnished no particulars, documentation, information or evidence in relation to a threat from armed conflict. 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.	(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.
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.	
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.	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 *Elgafaji* 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
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.)	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
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 *AK* (Article 15(c)) *Afghanistan CG* [2012] *UKUT* 163 .	(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
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.	

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
• The Migration Court of Appeal noted that the *Elgafaji* 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, *Prosecutor v Dusko Tadic* . 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. 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. 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? • 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. • 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. • 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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (ICTY) Prosecutor v Tadic (IT-94-1-AR72) ICTY (UK) HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022 (Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07
The Court applied the Jurisprudence of the Court of Justice of the European Union (C-465/07. *Elgafaji*), 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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
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.	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

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 *sticto sensu*	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
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 *Elgafaji* C-465/07. The requirement in *Elgafaji* is essentially equivalent to this court's requirement of an 'individual accumulation' of a risk. 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. 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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07
Claim was rejected both on Geneva Convention and subsidiary protection grounds.	
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. 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.	
This is the first major post - *El Gafaji* 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/combats are actually taking place. The rationale is that the war may generate indiscriminate violence beyond the limits of the conflict zone.	

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 *KH (*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 *KH*, 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
	Appeals allowed and cases remitted to the Tribunal for reconsideration. The effects of the Tribunal's erroneous premise in *KH* 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, *KH* 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.	Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 1 WLR 2100 KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 23 R v Asfaw (Fregenet) [2008] UKHL 31 Saadi v United Kingdom (13229/03) (2008) 47 EHRR 17 Sheekh v Netherlands (1948/04) (2007) 45 EHRR 50 Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland (45036/98) (2006) 42 EHRR 1 K v Secretary of State for the Home Department [2006] UKHL 46 Muslim v Turkey (53566/99) (2006) 42 EHRR 16; Batayav v Secretary of State for the Home Department (No 2) [2005] EWCA Civ 366 R (on the application of Razgar) v Secretary of State for the Home Department (No 2) [2004] UKHL 27 R (on the application of Ullah) v Special Adjudicator [2004] UKHL 26 Criminal Proceedings against Lyckeskog (C99/00) [2003] 1 WLR 9 Pretty v United Kingdom (2346/02) [2002] 2 FLR 45 Aspichi Dehwari v Netherlands (37014/97) (2000) 29 EHRR CD74 Kurt v Turkey (24276/94) (1999) 27 EHRR 373 Osman v United Kingdom (23452/94) [1999] 1 FLR 193 HLR v France (24573/94) (1998) 26 .HRR 29 Chahal v United Kingdom (22414/93) (1997) 23 EHRR 413 D v United Kingdom (30240/96) (1997) 24 EHRR 423 Chiron Corp v Organon Teknika Ltd (No 3) [1996] RPC 535 Vilvarajah v United Kingdom (13163/87) (1992) 14 EHRR 248 Soering v United Kingdom (A/161) (1989) 11 EHRR 439
	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.	
	Subsidiary protection was granted regardless of any personal reason.	
	The Council of State concluded that it follows from the Elgafaji 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 Elgafaji 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 Elgafaji 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.	(ECtHR) NA v United Kingdom (Application No 25904/07) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
	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.	
	Claim was rejected both on Geneva Convention and subsidiary protection grounds.	

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
	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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (Germany) Federal Administrative Court, 18 July 2006, 1 C 15.05 Federal Administrative Court, 1 February 2007, 1 C 24.06
	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.	
	Claim was rejected both on Geneva Convention and subsidiary protection grounds. One of the few examples of IFA cases registered in French jurisprudence.	
	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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
	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.	(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (ICTY) Prosecutor v Tadic (IT-94-1-AR72) ICTY Prosecutor v Kunarac and Others (IT-96-23 and IT-96-23-1) ICTY

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
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 HH (Somalia) & Ors v Secretary of State for the Home Department [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.	Many cases cited, significant cases include: Elgafaji v Staatssecretaris van Justitie (C-465/07) [2009] 1 WLR 2100 HH and others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022 KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 00023 HS (returned asylum seekers) Zimbabwe CG [2007] UKAIT 00094 NA v UK Application No 25904/07 AG (Somalia) [2006] EWCA Civ 1342 M and Others (Lone women: Ashraf) Somalia CG [2005] UKIAT 00076 R (On the appellant of Adam v Secretary of State for the Home Department [2005] UKHL 66 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 R (Sivakumar) v Secretary of State for the Home Department [2003] 1 WLR 840 Ullah [2004] UKHL 26 Prestige Properties v Scottish Provident Institution [2002] EWHC 330 Adan v Secretary of State for the Home Department [1999] 1 AC 293; [1998] 2 WLR 703 Shah and Islam [1999] 2 AC 629 Vilvarajah and Others v United Kingdom [1991] 14 EHRR 248
The term 'internal armed conflict' has to 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. 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. 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.	(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

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 *Tadic* 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
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. 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. 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.	(Germany) Federal Administrative Court, 24 June 2008, 10 C 43.07
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: '(...) 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.'	
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 *Tadic* decision of the ICTY. Further relying on *Tadic*, 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. 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.' 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.	(ICTY) Prosecutor v Tadic (IT-94-1-AR72) ICTY

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
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'. 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. 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.	(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
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. 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.	(ECtHR) NA v United Kingdom (Application No 25904/07) (CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07
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'). 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. 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.	(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

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 *Tadic* 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
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. 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. 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. 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". 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. (...)	(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
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).	
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 *Tadic* 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.	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
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.'	

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 Vreemdelin-genbetwistin-gen) - 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 Vreemdelin-genbetwistin-gen)	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.

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views of EASO.

	The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
	Note: See also, more recently and adopting the same conclusion: Council of Alien Law Litigation (single judge), case 47380 of 24 August 2010.	
	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	
	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.	
	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.	
	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. 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. 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. 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.	(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

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

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