



Article 15, point c),
de la directive
qualification
aux conditions
que doivent remplir
les demandeurs d'asile
(2011/95/EU)

Analyse judiciaire

Janvier 2015

EASO curriculum for members of courts and tribunals



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ISBN 978-92-9243-357-4
doi:10.2847/813651

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Ils ont été invités à cet effet par le Bureau européen d'appui en matière d'asile (EASO), conformément à la méthodologie décrite à l'annexe B. La procédure de recrutement des membres du groupe de travail a été discutée lors de plusieurs réunions tenues en 2013 entre l'EASO et deux organismes avec lesquels il entretient une correspondance officielle, l'Association internationale des juges de droit des réfugiés (IARLJ) et la Fédération européenne des juges administratifs (AEAJ), ainsi qu'avec les associations judiciaires nationales de chaque État membre reliées par le réseau des juridictions de l'EASO.

Le groupe de travail s'est réuni à trois occasions, en avril, en juin et en septembre 2014, à Malte. Des membres du réseau de juges de l'EASO ont fait part, à titre individuel, de leurs observations sur un projet de document pour discussion. Il s'agit notamment des juges Johan Berg (Norvège), Uwe Berlit (Allemagne), Jakub Camrda (République tchèque), Jacek Chlebny (Pologne), Harald Dörig (Allemagne), Hesther Gorter (Pays-Bas), Andrew Grubb (Royaume-Uni), Fedora Lovricevic-Stojanovi (Croatie), John McCarthy (Royaume-Uni), Walter Muls (Belgique), John Nicholson (Royaume-Uni), Juha Rautiainen (Finlande), Marlies Stapels-Wolfrath (Pays-Bas) et Boštjan Zalar (Slovénie). Des membres du Forum consultatif de l'EASO ont également communiqué des observations, à savoir le Conseil européen sur les réfugiés et les exilés, et le Forum Réfugiés-Cosi. Le Global Migration Centre (Institut de hautes études internationales et du développement, Genève), le pôle de recherche national «On the Move» (université de Fribourg) et la revue «Refugee Survey Quarterly» (Oxford University Press) ont également fait part de leur opinion sur le texte. Toutes ces observations ont été prises en considération lors des réunions des 18 et 19 septembre 2014. Le groupe de travail remercie tous ceux et celles qui, au travers de leurs observations, ont aidé à la finalisation de ce chapitre.

Le présent chapitre sera régulièrement mis à jour conformément à la méthodologie décrite à l'annexe B.

Une compilation de la jurisprudence pertinente des juridictions européennes et nationales concernant les questions recensées dans l'analyse judiciaire est disponible sur le site internet de l'EASO: www.easo.europa.eu (en anglais uniquement). Le groupe de travail remercie la Base de données européenne du droit d'asile (EDAL), la Newsletter on European Asylum Issues (NEAIS) de l'université Radboud (Nimègue) ainsi que les membres du réseau de juridictions de l'EASO pour l'aide inestimable qu'ils ont apportée à la compilation de cette jurisprudence.

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LISTE DES ABRÉVIATIONS

AEAJ	Fédération européenne des juges administratifs
AGSD	Appartenance à un groupe social déterminé
CEdDH	Convention européenne de sauvegarde des droits de l’homme et des libertés fondamentales
CEDH	Cour européenne des droits de l’homme
CICR	Comité international de la Croix-Rouge
CJUE	Cour de justice de l’Union européenne
CNDA	Cour nationale du droit d’asile
DQ	Directive qualification
DIDH	Droit international sur les droits de l’homme
DIH	Droit international humanitaire
EASO	Bureau européen d’appui en matière d’asile
HCR	Haut-Commissariat des Nations unies pour les réfugiés
IARLJ	Association internationale des juges de droit des réfugiés
TAF	Tribunal administratif fédéral
TFUE	Traité sur le fonctionnement de l’Union européenne
TPIY	Tribunal pénal international pour l’ex-Yougoslavie
UE	Union européenne
UK	Royaume-Uni
UKAIT	Tribunal britannique des affaires d’asile et d’immigration (<i>United Kingdom Asylum and Immigration Tribunal</i>)
UKUT	Tribunal supérieur du Royaume-Uni (<i>United Kingdom Upper Tribunal</i>)

AVANT-PROPOS

La présente analyse judiciaire a pour objectif de mettre à la disposition des juridictions saisies de dossiers relatifs à la protection internationale, un instrument utile pour comprendre les problématiques liées à la protection, à savoir dans ce chapitre, l'article 15, point c), de la directive qualification (DQ). ⁽¹⁾ Cette disposition, qui par sa nature est susceptible d'influencer l'issue de nombreux dossiers traitant de la protection internationale, s'est avérée compliquée à appliquer dans la jurisprudence. Des études révèlent que plusieurs États membres en ont fait des interprétations divergentes ⁽²⁾. Les commentaires visent à aider le lecteur à comprendre la directive susvisée au travers de la jurisprudence de la Cour de justice de l'Union européenne (CJUE) et de la Cour européenne des droits de l'homme (CEDH), mais aussi des décisions importantes des juridictions des États membres. La jurisprudence nationale citée n'est pas exhaustive, mais vise à illustrer la manière dont la directive qualification a été transposée et interprétée. Ce chapitre relate la manière dont le groupe de travail comprend l'état actuel du droit. Il convient de rappeler que l'article 15, point c), fera vraisemblablement l'objet d'autres arrêts de la CJUE et l'attention du lecteur est attirée sur le fait qu'il importe de se tenir à jour de ces évolutions.

Il est supposé que le lecteur connaît la vaste structure du droit d'asile de l'Union européenne (UE), qui est reflétée dans l'acquis communautaire en matière d'asile. Le présent chapitre vise à aider non seulement ceux qui ne possèdent qu'une faible expérience, voire aucune expérience de son application dans le processus de décision judiciaire, mais aussi les plus chevronnés.

Cette analyse n'aborde qu'une partie de l'article 15, qui couvre trois catégories de personnes ayant besoin d'une protection subsidiaire et qui ne sont pas autrement habilitées à bénéficier d'une protection au titre de la convention relative au statut des réfugiés. En temps opportun, d'autres chapitres seront rédigés pour examiner les autres catégories qui, en résumé, portent sur la protection contre des risques comparables à ceux contraires aux articles 2 et 3 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales (CEDH).

Le présent chapitre compte deux parties. La première partie examine les éléments constitutifs de l'article 15, point c), tandis que la deuxième partie analyse la manière dont cette disposition doit être appliquée en pratique. L'annexe A contient un «schéma décisionnel», qui expose les questions que les juridictions doivent se poser à l'heure d'appliquer l'article 15, point c).

La CJUE a souligné que l'approche adoptée vis-à-vis de l'article 15, point c), doit s'inscrire dans le contexte de la directive dans son ensemble. De plus, la présente analyse n'aborde pas tous les éléments juridiques, comme l'exclusion, qui sont indispensables à l'appréciation en matière de protection subsidiaire. Ces éléments feront aussi l'objet de chapitres ultérieurs. La directive qualification présente les critères minimaux que les États membres doivent adopter, libre à eux d'élargir les catégories et la nature de la protection fournie.

Les éléments de la directive, y compris les considérants, pertinents aux fins de la présente analyse sont les suivants:

⁽¹⁾ Directive 2011/95/UE du Parlement européen et du Conseil du 13 décembre 2011 concernant les normes relatives aux conditions que doivent remplir les ressortissants des pays tiers ou les apatrides pour pouvoir bénéficier d'une protection internationale, à un statut uniforme pour les réfugiés ou les personnes pouvant bénéficier de la protection subsidiaire, et au contenu de cette protection (refonte), *Journal officiel*, L 337/9 du 20.12.2011, p. 9-26, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:FR:PDF>

Comme il est expliqué aux considérants 50 et 51, le Danemark, l'Irlande et le Royaume-Uni ne sont pas liés par la refonte de la directive qualification, étant donné qu'ils n'ont pas participé à son adoption. L'Irlande et le Royaume-Uni demeurent liés par la directive 2004/83/CE du Conseil du 29 avril 2004 concernant les normes minimales relatives aux conditions que doivent remplir les ressortissants des pays tiers ou les apatrides pour pouvoir prétendre au statut de réfugié ou les personnes qui, pour d'autres raisons, ont besoin d'une protection internationale, et relatives au contenu de ces statuts (*Journal officiel*, L 304/12 du 30.9.2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:FR:HTML>). Les États membres liés par la directive de refonte étaient tenus d'adopter la législation nationale nécessaire pour s'y conformer avant le 21 décembre 2013. La refonte de la directive qualification apporte un certain nombre de modifications substantielles à la directive 2004/83/CE, mais conserve le libellé de l'article 15, point c), et le considérant y relatif à l'identité, quoique ce dernier ait été renuméroté (considérant 35, anciennement considérant 26).

⁽²⁾ Voir, par exemple, «Safe at Last? Law and Practice in Selected Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence», HCR, juillet 2011, <http://www.unhcr.org/4e2d7f029.pdf> Le considérant 8 de la directive qualification de refonte souligne que «de fortes disparités [subsistent] d'un État membre à l'autre pour ce qui est de l'octroi de la protection et des formes que celle-ci [revêt]».

Considérants

- Considérant 6 - Les conclusions du Conseil européen de Tampere précisent [...] que les règles relatives au statut de réfugié devraient aussi être complétées par des mesures relatives à des formes subsidiaires de protection offrant un statut approprié à toute personne nécessitant une telle protection.
- Considérant 12 - L'objectif principal de la directive est, d'une part, d'assurer que tous les États membres appliquent des critères communs pour l'identification des personnes qui ont réellement besoin de protection internationale et, d'autre part, d'assurer un niveau minimal d'avantages à ces personnes dans tous les États membres.
- Considérant 33 - Il convient d'arrêter aussi des normes relatives à la définition et au contenu du statut conféré par la protection subsidiaire. La protection subsidiaire devrait compléter la protection des réfugiés consacrée par la convention de Genève.
- Considérant 34 - Il convient de fixer les critères communs que doivent remplir les demandeurs d'une protection internationale pour pouvoir bénéficier de la protection subsidiaire. Ces critères devraient être définis sur la base des obligations internationales au titre des instruments relatifs aux droits de l'homme et des pratiques déjà existantes dans les États membres.
- Considérant 35 - Les risques auxquels la population d'un pays ou une partie de la population est généralement exposée ne constituent normalement pas en eux-mêmes des menaces individuelles à qualifier d'atteintes graves.

Article 2, point f)

On entend par «personne pouvant bénéficier de la protection subsidiaire», tout ressortissant d'un pays tiers ou tout apatride qui ne peut être considéré comme un réfugié, mais pour lequel il y a des motifs sérieux et avérés de croire que la personne concernée, si elle était renvoyée dans son pays d'origine ou, dans le cas d'un apatride, dans le pays dans lequel il avait sa résidence habituelle, courrait un risque réel de subir les atteintes graves définies à l'article 15, l'article 17, paragraphes 1 et 2, n'étant pas applicable à cette personne, et cette personne ne pouvant pas ou, compte tenu de ce risque, n'étant pas disposée à se prévaloir de la protection de ce pays.

Article 15

Les atteintes graves sont: a) la peine de mort ou l'exécution; ou b) la torture ou des traitements ou sanctions inhumains ou dégradants infligés à un demandeur dans son pays d'origine; ou c) des menaces graves et individuelles contre la vie ou la personne d'un civil en raison d'une violence aveugle en cas de conflit armé interne ou international.

Les autres parties de la directive auxquelles il est fait référence dans la présente analyse sont citées dans les sections correspondantes.

L'article 78 du traité sur le fonctionnement de l'Union européenne (TFUE) dispose que l'Union développe une politique commune en matière d'asile, de protection subsidiaire et de protection temporaire visant à offrir un statut approprié à tout ressortissant d'un pays tiers nécessitant une protection internationale. Cette politique doit être conforme à la Convention de Genève du 28 juillet 1951 et au protocole du 31 janvier 1967 relatifs au statut des réfugiés, ainsi qu'aux «autres traités pertinents».

Dans sa proposition de directive qualification, en 2001, la Commission européenne exprimait l'objectif général de la directive en ces termes:

«La charte des droits fondamentaux de l'Union européenne ayant rappelé le droit à l'asile en son article 18, la présente proposition reflète le fait que le système doit reposer sur l'application intégrale et globale de la convention de Genève et être complété par des mesures offrant une protection subsidiaire aux personnes qui n'entrent pas dans le champ d'application de la convention, mais qui ont néanmoins besoin d'une protection internationale». ⁽³⁾

⁽³⁾ Commission européenne, proposition de directive du Conseil concernant les normes minimales relatives aux conditions que doivent remplir les ressortissants des pays tiers et les apatrides pour pouvoir prétendre au statut de réfugié ou de personne qui, pour d'autres raisons, a besoin d'une protection internationale, et relatives au contenu de ces statuts, 12 septembre 2001, COM(2001) 510 final.

La Commission européenne a présenté sa proposition de refonte de la directive concernant les normes minimales relatives aux conditions que doivent remplir les personnes nécessitant une protection internationale et à leur statut, en octobre 2009. ⁽⁴⁾

Elle proposait, entre autres, de clarifier d'importantes notions, telles que les «acteurs de la protection», la «protection à l'intérieur du pays» ou l'«appartenance à un certain groupe social», afin de permettre aux autorités nationales d'appliquer les critères de manière plus résolue et de distinguer plus rapidement les personnes ayant besoin de protection.

La Commission n'a proposé aucune modification de l'article 15, point c), dans la mesure où il est entendu que la CJUE a donné des orientations interprétatives dans l'arrêt Elgafaji ⁽⁵⁾ et a également conclu que, bien qu'il revête un champ d'application plus étendu que l'article 3 de la CEDDH, ses dispositions étaient largement compatibles avec celles de la CEDDH. ⁽⁶⁾

Sauf indication contraire, dans le présent chapitre, le terme «article» renvoie aux dispositions de la directive qualification.

⁽⁴⁾ Voir le communiqué de presse IP/09/1552, disponible à l'adresse http://europa.eu/rapid/press-release_IP-09-1552_fr.htm

⁽⁵⁾ CJUE (grande chambre), arrêt du 17 février 2009 dans l'affaire C-465/07, Meki Elgafaji et Noor Elgafaji/Staatssecretaris van Justitie.

⁽⁶⁾ Commission européenne, Proposition de directive du Parlement européen et du Conseil concernant les normes minimales relatives aux conditions que doivent remplir les ressortissants des pays tiers ou les apatrides pour pouvoir bénéficier d'une protection internationale, et relatives au contenu de cette protection, 21 octobre 2009, COM(2009) 551 final, exposé des motifs, p. 6.

Disponible à l'adresse : <http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52009PC0551&from=FR>

APPROCHE INTERPRÉTATIVE

Étant donné que la CJUE doit encore statuer sur un certain nombre d'éléments clés de l'article 15, point c), il est impératif que les juges nationaux chargés de les interpréter gardent à l'esprit et appliquent une approche «européenne» à l'interprétation de la législation de l'Union européenne. Comme la CJUE l'a exposé au point 27 de son arrêt *Diakité* ⁽⁷⁾, la signification et la portée de ces termes doivent être établies [...] «en tenant compte du contexte dans lequel ils sont utilisés et des objectifs poursuivis par la réglementation dont ils font partie (arrêts du 22 décembre 2008, *Wallentin-Hermann*, C-549/07, Rec. p. I-11061, point 17, et du 22 novembre 2012, *Probst*, C-119/12, point 20)».

L'approche adoptée par la CJUE a été qualifiée d'approche systémique ou «métatéléologique» se concentrant non seulement sur l'objet et la finalité des dispositions visées mais aussi ceux du régime de l'Union dans son ensemble, et s'appuyant sur les normes en matière de droits de l'homme contenues dans la charte des droits fondamentaux de l'Union européenne (ci-après la «charte») et les valeurs fondatrices de l'organisation. ⁽⁸⁾

Une approche globale

Il résulte de l'approche décrite ci-dessus que, pour interpréter les éléments clés de l'article 15, point c), il convient de les lire comme s'ils étaient liés entre eux et pas isolés les uns des autres. Cette approche assure la concordance avec l'approche adoptée pour les éléments clés de la définition de la notion de «réfugié». Il convient de garder à l'esprit que le droit de l'Union européenne prime sur les droits nationaux.

Contexte de l'article 15, point c), dans les décisions relatives aux demandes de protection internationale

Dans son arrêt du 8 mai 2014 dans l'affaire C-604/12, *HN/Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, la CJUE a confirmé que:

«29. À cet égard, il convient de relever que le libellé de l'article 2, sous e), de la directive 2004/83 définit la personne pouvant bénéficier de la protection subsidiaire comme tout ressortissant d'un pays tiers ou tout apatride qui ne peut être considéré comme étant un réfugié.

30. L'emploi du terme «subsidiaire» ainsi que le libellé de cet article indiquent que le statut conféré par la protection subsidiaire s'adresse aux ressortissants des pays tiers qui ne satisfont pas aux conditions requises pour bénéficier du statut de réfugié.

31. Par ailleurs, il ressort des considérants 5, 6 et 24 de la directive 2004/83 que les critères minimaux d'octroi de la protection subsidiaire doivent permettre de compléter la protection des réfugiés consacrée par la convention de Genève, en identifiant les personnes qui ont réellement besoin de protection internationale et en leur offrant un statut approprié (arrêt *Diakité*, C 285/12, EU:C:2014:39, point 33).

32. Il ressort de ces éléments que la protection subsidiaire prévue par la directive 2004/83 constitue un complément à la protection des réfugiés consacrée par la convention de Genève.»

Par conséquent, au moment de statuer en matière de protection internationale, les juridictions doivent avant tout examiner si une personne peut bénéficier d'une protection au titre du statut de réfugié. Dans la négative, il est nécessaire de vérifier si cette personne peut se voir accorder la protection subsidiaire au titre de l'article 15,

⁽⁷⁾ CJUE, arrêt du 30 janvier 2014 dans l'affaire C-285/12, *Aboubacar Diakité/Commissaire général aux réfugiés et aux apatrides*.

⁽⁸⁾ Notamment par Violeta Moreno Lax, «Of Autonomy, Autarky, Purposiveness and Fragmentation: The Relationship between EU Asylum Law and International Humanitarian Law», in D. Cantor et J.-F. Durieux (éd.), *Refuge from Inhumanity? War Refugees and International Humanitarian Law*, Martinus Nijhoff, 2014, p. 298.

points a), b) ⁽⁹⁾ ou c). L'accent mis sur l'article 15, point c), ne doit pas conduire les juridictions à négliger le cadre plus large de la protection.

Lorsqu'une personne n'a pas droit à la protection internationale, par exemple en raison d'une clause d'exclusion, il peut également s'avérer nécessaire de considérer l'article 3 de la CEEDH et, le cas échéant, les articles 4 et 19, paragraphe 2, de la charte (voir le considérant 16 de la directive qualification).

Le rôle de la CJUE et de la CEDH

La CJUE a pour mission de veiller à ce que le droit de l'Union européenne soit interprété et appliqué de manière uniforme. En vertu de l'article 267 TFUE, elle est compétente pour répondre aux questions ayant trait au droit communautaire qui lui sont soumises par les juridictions nationales (procédure de renvoi préjudiciel), auquel cas la Cour rend des arrêts d'interprétation.

Dans le cadre de la procédure établie à l'article 267 TFUE, la Cour ne statue pas sur le fond de l'affaire. Une fois qu'elle a donné son interprétation, l'affaire est renvoyée devant la juridiction nationale, qui rendra une décision sur la base de l'interprétation fournie. Les arrêts de la CJUE sont contraignants pour les États membres. ⁽¹⁰⁾

La CEDH, quant à elle, examine les demandes déposées par des particuliers et les renvois préjudiciels des États concernant les prétendues violations d'un droit garanti par la CEEDH qu'aurait commises un des 47 États parties à la Convention. Contrairement à la CJUE, elle statue sur les affaires qui lui sont soumises et, le cas échéant, transmet des constatations de fait. Ses arrêts sont contraignants pour les parties à la demande. Autrement, les arrêts de la Cour sont invoqués devant les juridictions afin de les convaincre en présence de faits ou de questions similaires.

⁽⁹⁾ La portée de l'article 15, point b), est plus limitée que celle de l'article 3, CEEDH. Voir à cet égard, les conclusions de l'avocat général dans l'affaire C-542/13 M'Bodj/Conseil des Ministres, 17 juillet 2014.

⁽¹⁰⁾ Pour des lignes directrices utiles concernant les renvois préjudiciels à la CJUE, voir les recommandations à l'attention des juridictions nationales, relatives à l'introduction de procédures préjudicielles (2012/C 338/01), publiées au *Journal officiel*, C 338 du 6.11.2012, disponible à l'adresse <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:FR:PDF> Voir également «Guide on preliminary references», publié par l'IARJ sur son site internet en mai 2014 (www.iarj.org); en anglais uniquement.

PARTIE I: LES ÉLÉMENTS CONSTITUTIFS

1.1. Risque réel d'atteintes graves

L'article 2, point f), renvoie à un «risque réel de subir les atteintes graves définies à l'article 15».

La protection subsidiaire s'adresse au ressortissant d'un pays tiers qui ne satisfait pas aux conditions requises pour être considéré comme un réfugié, mais pour lequel il y a des motifs sérieux et avérés de croire que l'intéressé, s'il était renvoyé dans son pays d'origine, courrait un «risque réel de subir les atteintes graves» [voir article 2, point f); ex article 2, point e)]. En ce qui concerne l'exigence de motifs sérieux et avérés, les États membre peuvent considérer qu'il incombe au demandeur de produire, dans les plus brefs délais, tous les éléments nécessaires à l'appui de la demande de protection internationale. D'autre part, il incombe aux États membres d'apprécier, en coopération avec le demandeur, les éléments pertinents de la demande (article 4, paragraphe 1). Dans ses conclusions relatives aux affaires jointes A, B et C ⁽¹¹⁾, l'avocat général Sharpston indiquait:

«Le processus de coopération aux termes de l'article 4, paragraphe 1, de la directive relative aux conditions n'est pas un procès. Il s'agit en réalité d'une occasion pour le demandeur de présenter son récit et les éléments de preuve dont il dispose, et pour les autorités compétentes de recueillir des informations, de voir et d'entendre le demandeur, d'évaluer son attitude et de s'interroger sur le caractère plausible et la cohérence de son récit. Le terme "coopération" suppose une collaboration entre les deux parties en vue d'un objectif commun. Il est vrai que cette disposition permet aux États membres d'exiger du demandeur qu'il présente les éléments nécessaires pour étayer sa demande. Il ne s'ensuit toutefois pas qu'il serait conforme à l'article 4 de la directive relative aux conditions d'imposer des modalités de preuve (par exemple, des exigences élevées en matière de preuve, notamment au-delà de tout doute raisonnable, ou un niveau de preuve exigé en matière pénale ou quasi-pénale) dont l'effet serait de rendre pratiquement impossible ou excessivement difficile pour un demandeur de présenter les éléments nécessaires pour appuyer sa demande aux termes de la directive relative aux conditions. [...] Cependant, lorsque des informations présentées justifient fortement de mettre en doute la véracité des arguments d'un demandeur d'asile, l'intéressé doit présenter une explication satisfaisante des discordances prétendues.»

L'élément de «risque réel» détermine le niveau de preuve requis pour se voir accorder la protection subsidiaire. ⁽¹²⁾ En d'autres termes, cet élément représente le degré de probabilité que la situation de violence aveugle donne lieu à des atteintes graves.

À ce jour, la CJUE n'a pas fourni d'interprétation précise de la notion de «risque réel». Néanmoins, elle a confirmé, relativement à l'article 15, point c), que le seul risque lié à la situation générale d'un pays n'est en principe pas suffisant. ⁽¹³⁾ Cependant, dans certaines situations exceptionnelles, le degré de violence aveugle atteint un niveau si élevé qu'un individu courrait, du seul fait de sa présence, un risque réel de menace grave. ⁽¹⁴⁾ En outre, il peut être supposé que le critère de «risque réel» exclut les risques relevant de la simple possibilité ou si faibles qu'ils en deviennent irréels ⁽¹⁵⁾. Le niveau de risque requis en vertu de cette disposition est décrit plus en détail à la section 1.3 sur la «violence aveugle» et à la section 1.6 sur les «menaces graves et individuelles».

La notion d'«atteintes graves» caractérise la nature et l'intensité de l'ingérence dans les droits d'une personne; pour que cette ingérence soit sérieuse elle doit revêtir une gravité suffisante. L'article 15 définit trois types

⁽¹¹⁾ Conclusions de l'avocat général dans les affaires jointes C-148/13, C-149/13 et C-150/13, A, B et C, 17 juillet 2014, points 73 et 74.

⁽¹²⁾ Cf. article 2, point d), qui exige une «crainte fondée» d'être persécuté pour pouvoir bénéficier du statut de réfugié.

⁽¹³⁾ Arrêt Elgafaji, précité à la note 5, point 37.

⁽¹⁴⁾ Ibid., points 35 et 43. Au point 36, la CJUE déclare également que l'article 15, point c), dispose d'un «champ d'application» propre, ce qui signifie qu'il revêt une portée supplémentaire par rapport aux atteintes graves visées aux points a) et b). Cependant, renvoyant à l'arrêt Elgafaji, la CEDH a indiqué, au point 226 de son arrêt du 28 juin 2011, Sufi et Elmi c. UK, requêtes n° 8319/07 et n° 11449/07, qu'elle n'était «pas convaincue que l'article 3 de la Convention, telle qu'interprétée dans N.A. c. Royaume-Uni [requête n° 25904/07, 17 juillet 2008] n'offre pas une protection comparable à celle accordée au titre de la directive sur les conditions à remplir par les demandeurs d'asile. Plus particulièrement, la Cour relève que le seuil fixé par les deux dispositions peut, dans des circonstances exceptionnelles, être atteint du fait d'une situation de violence générale d'une telle intensité que toute personne renvoyée dans la région courrait un risque du simple fait de sa présence». Par conséquent, il est peu probable que l'article 15, point c), aille bien au-delà de l'article 3 tel qu'il a été interprété par la CEDH dans l'arrêt Sufi et Elmi.

⁽¹⁵⁾ CEDH, arrêt du 7 juillet 1989, Soering c. Royaume-Uni, requête n° 14308/88, point 88.

d'atteinte qui constituent les conditions à remplir pour pouvoir bénéficier de la protection subsidiaire. En outre, la protection subsidiaire ne peut être accordée pour n'importe quel type d'atteinte, de discrimination ou de violation de droits, dont un individu peut être victime, mais uniquement pour un des trois types d'atteinte répondant aux critères de l'article 15, point a), b) ou c).

Gardant à l'esprit l'objectif du présent document, le texte ci-après se concentre essentiellement sur les atteintes graves au sens de l'article 15, point c), à savoir «des menaces graves et individuelles contre la vie ou la personne d'un civil en raison d'une violence aveugle en cas de conflit armé interne ou international».

Dans l'arrêt *Elgafaji*, bien qu'elle n'ait pas exclu de chevauchement, la CJUE a confirmé que l'atteinte définie à l'article 15, point c), couvre un risque plus général que ceux visés à l'article 15, points a) et b).⁽¹⁶⁾ D'après cet arrêt, ce qui est requis ce sont «des menaces [...] contre la vie ou la personne d'un civil, plutôt que des violences déterminées». En outre, si le degré de violence aveugle est suffisamment élevé, ces menaces sont inhérentes à une situation générale de «conflit armé interne ou international». Enfin, la violence en cause à l'origine desdites menaces est qualifiée d'«aveugle», terme qui implique qu'elle peut s'étendre à des personnes sans considération de leur situation personnelle.⁽¹⁷⁾ Les différents éléments de cette définition sont soigneusement développés dans la suite du présent document.

Qui plus est, du point de vue factuel, les types d'atteinte visés dans les catégories de l'article 15 peuvent, dans une certaine mesure, non seulement se chevaucher entre eux, mais aussi avec les actes de persécution définis à l'article 9.⁽¹⁸⁾ Dans ce cas, il est nécessaire de garder à l'esprit que l'octroi du statut de réfugié est prioritaire, si les autres conditions de l'article 2, point d), sont remplies. La CJUE a conclu que l'article 15, point b), correspondait en substance à l'article 3 de la CEDDH.⁽¹⁹⁾

1.2. Conflit armé

L'expression utilisée à l'article 15, point c), est «conflit armé interne ou international».

1.2.1. Conflit armé interne

La signification de ce terme a été clarifiée par la CJUE, dans l'arrêt *Diakité*. Au point 35, la Cour confirme que:

«[...] l'article 5, sous c), de la directive [2004/83] doit être interprété en ce sens que l'existence d'un conflit armé interne doit être admise, aux fins de l'application de cette disposition, lorsque les forces régulières d'un État affrontent un ou plusieurs groupes armés ou lorsque deux ou plusieurs groupes armés s'affrontent, sans qu'il soit nécessaire que ce conflit puisse être qualifié de conflit armé ne présentant pas un caractère international au sens du droit international humanitaire et sans que l'intensité des affrontements armés, le niveau d'organisation des forces armées en présence ou la durée du conflit fasse l'objet d'une appréciation distincte de celle du degré de violence régnant sur le territoire concerné.»

Au travers de cette interprétation, la Cour réalise deux choses:

Premièrement, elle apporte une *courte définition* de la notion de conflit armé interne (situation dans laquelle «les forces régulières d'un État affrontent un ou plusieurs groupes armés ou lorsque deux ou plusieurs groupes armés s'affrontent»⁽²⁰⁾).

Deuxièmement, elle opère un *rejet des approches relevant du droit international humanitaire (DIH)*: elle rejette ainsi deux approches différentes de la définition. Les approches rejetées sont décrites, d'une part, comme une

⁽¹⁶⁾ Arrêt *Elgafaji*, précité à la note 5, point 33.

⁽¹⁷⁾ *Ibid.*, point 34.

⁽¹⁸⁾ Cf. article 9, paragraphe 2, de la directive qualification, qui comporte une liste non exhaustive des types d'atteinte pouvant constituer des actes de persécution. Voir l'affaire pendante devant la CJUE, C-472/13, *Andre Lawrence Shepherd/Federal Republic of Germany*.

⁽¹⁹⁾ Arrêt *Elgafaji*, précité, point 28. Voir également l'affaire pendante devant la CJUE, C-562/13, *Centre public d'action sociale d'Ottignies-Louvain-La-Neuve/Moussa Abdida*, conclusions de l'avocat-général du 4 septembre 2014.

⁽²⁰⁾ Arrêt *Diakité*, précité à la note 7, point 28.

approche inhérente au DIH et, d'autre part, comme une approche qui considère qu'il existe un conflit armé interne, qu'à condition que ce conflit présente une certaine intensité et soit caractérisé par la mise en présence de forces armées présentant un niveau déterminé d'organisation ou une durée particulière du conflit. Étant donné que cette dernière est une approche de DIH, il est raisonnable de supposer que la CJUE rejette les approches «relevant du DIH». ⁽²¹⁾

1.2.1.1. Distinction entre la définition d'un conflit armé interne et la détermination du niveau de violence

Dans l'arrêt *Diakité*, il apparaît particulièrement important aux yeux de la CJUE que les juridictions distinguent:

- l'appréciation de l'existence d'un conflit armé, et
- l'appréciation du niveau de violence.

L'existence d'un conflit armé est nécessaire, mais pas une condition suffisante pour appliquer l'article 15, point c). En ce qui concerne le risque général que courent les civils ⁽²²⁾, l'article 15, point c), ne sera engagé que si la dernière appréciation révèle que le conflit armé se caractérise par une violence aveugle d'un tel niveau que les civils sont exposés à un risque réel d'atteintes graves. Ainsi, au point 30 de l'arrêt *Diakité*, la CJUE observe:

«En outre, il importe de rappeler que l'existence d'un conflit armé interne ne pourra conduire à l'octroi de la protection subsidiaire que dans la mesure où les affrontements entre les forces régulières d'un État et un ou plusieurs groupes armés ou entre deux ou plusieurs groupes armés seront exceptionnellement considérés comme créant des menaces graves et individuelles contre la vie ou la personne du demandeur de la protection subsidiaire, au sens de l'article 15, sous c), de la directive [2004/83], parce que le degré de violence aveugle qui les caractérise atteint un niveau si élevé qu'il existe des motifs sérieux et avérés de croire qu'un civil renvoyé dans le pays concerné ou, le cas échéant, dans la région concernée courrait, du seul fait de sa présence sur le territoire de ceux-ci, un risque réel de subir lesdites menaces (voir, en ce sens, arrêt *Elgafaji*, précité, point 43).»

1.2.1.2. Base de définition

La CJUE décrit sa définition de conflit armé comme fondée sur le «sens habituel [de celui-ci] en langage courant, tout en tenant compte du contexte dans lequel [il est utilisé] et des objectifs poursuivis par la réglementation dont ils font partie» (arrêt *Diakité*, point 27). Nous avons déjà souligné que, ce faisant, la Cour affirme clairement qu'il convient d'adopter une approche inhérente à l'Union aux fins de l'interprétation de l'article 15, point c).

Manifestement, la Cour souhaite mettre en évidence que les juridictions ne doivent pas chercher à refuser la protection au titre de l'article 15, point c), au motif que les affrontements armés n'atteignent pas le seuil requis par le DIH ou tout autre ensemble de normes extrinsèque comparable.

Au point 17 de l'arrêt *Diakité*, la CJUE décrit la première question à laquelle elle devait répondre comme étant articulée en deux parties: il s'agit dans un premier temps de déterminer si «l'existence d'un conflit armé interne doit être appréciée sur la base des critères établis par le droit international humanitaire et, si tel n'est pas le cas, quels critères doivent être employés pour apprécier l'existence d'un tel conflit [...]».

1.2.1.3. Application de la définition de la CJUE

La CJUE répond clairement par la négative à la première question, mais ensuite, quant aux critères à employer, elle ne fait qu'apporter une définition très claire, issue de la langue courante. Par conséquent, il appartient aux juridictions de développer et/ou d'utiliser cette définition dans la pratique. La définition de la CJUE est manifestement plus large que celle du DIH et pourrait inclure, par exemple, des affrontements armés résultant de guerres

⁽²¹⁾ Ibid., point 21.

⁽²²⁾ Voir également la section 1.6.1 sur les risques particuliers et la section 1.6.2 sur la notion d'«échelle dégressive» (le concept de sliding-scale).

entre trafiquants de drogue dans certains pays d'Amérique latine ⁽²³⁾. En conséquence, selon la situation dans le pays, les juridictions peuvent toujours être amenées, dans certaines circonstances, à décider s'il est question d'affrontements armés au sens de la Cour. À titre d'exemple, des émeutes et des insurrections où le recours à des armes est complètement ou essentiellement inexistant sembleraient ne pas remplir les conditions. Le seul recours aux armes peut ne pas suffire, à moins que ces armes soient utilisées au sein de groupes armés ou par ceux-ci. L'existence de groupes armés à elle seule peut ne pas suffire, par exemple, si lesdits groupes n'utilisent pas d'armes dans la pratique. Il faudrait également des preuves d'affrontements (c'est-à-dire, de combat) entre eux ou entre des groupes armés et les forces régulières de l'État.

1.2.1.4. Exigence de deux groupes armés ou plus

La définition de la CJUE semblerait exclure une situation où un seul groupe armé affronte l'ensemble de la population, bien que l'avocat général Mengozzi ait préconisé, dans ses conclusions relatives à l'affaire Diakité [à l'instar de la Cour d'appel anglaise dans l'affaire *QD (Iraq)*] ⁽²⁴⁾, que cette hypothèse devait être couverte également. Cependant, une telle situation peut s'avérer relativement rare.

1.2.2. Conflit armé international

Dans l'affaire Diakité, la CJUE n'a pas cherché à définir la notion de «conflit armé international» mais, *pari passu* avec son raisonnement relatif au «conflit armé interne», il semblerait que ce terme doive également s'entendre selon sa signification dans la langue courante et, par conséquent, ne doive pas imposer un seuil caractéristique du DIH. Il est néanmoins probable (tout comme en DIH) que se produisent des situations dans lesquelles un pays se trouve en état de conflit armé interne et international en même temps.

1.3. Violence aveugle

La notion de «violence aveugle» renvoie à la source du type particulier d'atteinte recensée à l'article 15, point c). Étant donné que cette disposition vise à offrir une protection (subsidaire) aux civils qui pâtissent des conséquences d'un conflit armé, la notion de «violence aveugle» doit s'interpréter au sens large.

Les besoins de protection d'une population donnée vivant dans un pays, ou une de ses régions, ne devraient pas être déterminés sur la base d'une approche étroite dans la définition des termes «violence» ou «aveugle», mais en vertu d'une appréciation globale des faits associée à un examen minutieux et exact du niveau de violence, en ce qui concerne la nature de la violence et son étendue.

1.3.1. Définition de la violence aveugle par la CJUE

Dans l'arrêt Elgafaji, la CJUE a jugé que le terme «aveugle» implique que la violence «peut s'étendre à des personnes sans considération de leur situation personnelle». ⁽²⁵⁾

La CJUE a mis en évidence la «situation exceptionnelle» nécessaire pour que l'article 15, point c), s'applique aux civils de manière générale. Dans l'arrêt Elgafaji, au point 35, la Cour indique clairement que pour que ce soit le cas:

«[...] le degré de violence aveugle caractérisant le conflit armé en cours [...] [doit atteindre] un niveau si élevé qu'il existe des motifs sérieux et avérés de croire qu'un civil renvoyé dans le pays concerné ou, le

⁽²³⁾ C. Bauloz, «The Definition of Internal Armed Conflict in Asylum Law», *Journal of International Criminal Justice*, 2014, p.11; C. Bauloz, «The (Mis)Use of IHL under Article 15(c) of the EU Qualification Directive», in D. Cantor et J.-F. Durieux (éd.), précité, p. 261.

⁽²⁴⁾ Cour d'appel (UK), *QD (Iraq) c. Secretary of State for the Home Department* [2009] EWCA Civ. 620, point 35.

⁽²⁵⁾ Arrêt Elgafaji, précité à la note 5, point 34.

cas échéant, dans la région concernée courrait, du seul fait de sa présence sur le territoire de ceux-ci, un risque réel de subir les menaces graves visées par l'article 15, sous c), de la directive».

1.3.2. Jurisprudence nationale

Depuis l'arrêt *Elgafaji*, les juridictions nationales, plutôt que de s'efforcer de préciser la définition de la notion, ont cherché à déceler les indices de sa nature et de sa portée (voir Partie II, Section 2.2. ci-dessous). Au Royaume-Uni, le Tribunal supérieur (UKUT) a jugé que des bombardements ou des tirs:

«peuvent dûment être considérés comme aveugles en ce sens que, bien qu'ils puissent avoir des cibles précises ou générales, ils exposent inéluctablement les civils qui se trouvent être sur les lieux à ce qui a été décrit dans la plaidoirie comme des dommages collatéraux. Les moyens utilisés peuvent être des bombes, qui peuvent toucher d'autres personnes que les cibles, ou des tirs, qui engendrent un risque moindre, mais cependant bien réel, de dommage collatéral». ⁽²⁶⁾

En ce qui concerne les cibles générales, le Tribunal supérieur a donné l'exemple des bombes qui explosent dans des lieux très fréquentés, comme les marchés, ou dans les endroits où des processions religieuses ou des rassemblements se déroulent. ⁽²⁷⁾ Le Tribunal administratif fédéral (TAF) allemand, dans son interprétation de l'arrêt *Elgafaji*, est également arrivé à la conclusion qu'il n'est pas nécessaire de déterminer si les actes de violence constituent ou non une violation du droit international humanitaire, car la notion de violence employée dans la directive qualification est vaste. ⁽²⁸⁾ La jurisprudence nationale a été le théâtre de nombreuses discussions concernant la mesure dans laquelle il convenait de tenir compte des effets indirects de la violence aveugle.

Le Conseil d'État français renvoie, quant à lui, aux attentats et aux exactions visant la population civile et la contraignant à des déplacements forcés comme caractéristiques de la violence aveugle. ⁽²⁹⁾ Ces caractéristiques étaient présentes dans le cas d'un demandeur qui devait traverser des régions d'Afghanistan touchées par une telle violence ⁽³⁰⁾; il n'a pas été requis aux fins de l'évaluation d'examiner la situation générale dans tout le pays, mais dans les régions concernées. ⁽³¹⁾

Dans deux arrêts, le Tribunal administratif de la République de Slovénie a mis en avant que les facteurs suivants devraient être pris en considération aux fins de l'évaluation du niveau de violence: décès et blessures au sein de la population civile suite aux combats, comprenant une éventuelle dynamique temporelle de leur nombre, nombre de personnes déplacées à l'intérieur du pays, conditions humanitaires élémentaires dans les centres pour personnes déplacées, couvrant l'approvisionnement en nourriture, l'hygiène et la sécurité, et la mesure dans laquelle «l'État échoue» à garantir l'infrastructure matérielle de base, l'ordre, les soins de santé, l'approvisionnement en nourriture, l'eau potable. Le Tribunal administratif a attiré l'attention sur le fait que la valeur protégée au regard de l'article 15, point c), n'est pas la seule «survie» des demandeurs d'asile, mais également l'interdiction de traitement inhumain ⁽³²⁾. La Cour suprême slovène a conclu que ces facteurs sont «juridiquement pertinents» ⁽³³⁾.

1.3.3. HCR

De manière analogue, pour le Haut-Commissariat aux réfugiés, le terme «aveugle» couvre les «actes de violence qui ne visent pas un objet ou un individu particulier, ainsi que les actes de violence visant un objet ou un individu particulier et dont les effets peuvent porter atteinte aux autres». ⁽³⁴⁾

⁽²⁶⁾ Tribunal supérieur, chambre compétente en matière d'immigration et de droit d'asile (UK), arrêt du 13 novembre 2012, *HM and others (Article 15(c)) Iraq CG/ the Secretary of State for the Home Department*, [2012] UKUT 00409(IAC), point 42.

⁽²⁷⁾ *Ibid.*

⁽²⁸⁾ Bundesverwaltungsgericht (Allemagne), arrêt du 27 avril 2010, 10 C 4.09, ECLI:DE:BVerwG:2010:270410U10C4.09.0, point 34.

⁽²⁹⁾ Conseil d'État (France), arrêt du 3 juillet 2009, n° 320295, Office Français de Protection des Réfugiés et Apatrides/M. Baskarathas, n° 320295.

⁽³⁰⁾ CNDA (France), arrêt du 11 janvier 2012, M. Samadi n° 11011903 C.

⁽³¹⁾ CNDA (France), arrêt du 28 mars 2013, M. Mohamed Adan n° 12017575 C.

⁽³²⁾ Tribunal administratif de Slovénie, arrêts du 25 septembre 2013, I U 498/2012-17 et du 29 janvier 2014 I U 1327/2013-10.

⁽³³⁾ Cour suprême de la République de Slovénie, arrêt du 10 avril 2014, I Up 117/2014.

⁽³⁴⁾ HCR, «Safe at last?», précité à la note 2, p. 103.

1.3.4. Formes générales de violence aveugle dans des conflits armés

La nature de la violence peut être un facteur essentiel pour déterminer si la violence semble «aveugle». Parmi les exemples de ces actes de violence aveugle pourraient figurer les bombardements massifs ciblés, les bombardements aériens, les guérillas, les dommages collatéraux lors d'attaques directes ou aveugles dans les zones urbaines, les états de siège, les terres brûlées, les tirs embusqués, les actes perpétrés par des escadrons de la mort, les attentats dans les lieux publics, les pillages, l'utilisation d'engins explosifs improvisés, etc.

1.3.5. Le rôle de la violence ciblée

Plus l'appréciation de la nature de la violence indique que la personne concernée a été ou aurait pu être victime d'une attaque ciblée, plus les juridictions devraient être attentives quant au fait qu'une personne puisse bénéficier d'une protection au titre du statut de réfugié et non d'une protection subsidiaire. En tout état de cause, aucune raison ne justifie de laisser la violence ciblée en dehors de l'équation à l'heure d'examiner le degré de violence aveugle dans la région concernée du pays. La violence ciblée couvre aussi bien le ciblage particulier que le ciblage général: certains actes de violence, quoiqu'ils soient ciblés, peuvent toucher un nombre considérable de civils. ⁽³⁵⁾

Un examen plus détaillé de la manière dont il convient d'évaluer le degré de violence aveugle figure aux points 2.2 et 2.3 de la deuxième partie.

1.4. En raison de

La protection subsidiaire est accordée, au titre de l'article 15, point c), à toute personne pour laquelle il y a des motifs sérieux et avérés de croire que, si elle était renvoyée dans son pays d'origine, elle courrait un risque réel de menaces graves et individuelles contre sa vie ou sa personne *en raison d'une violence aveugle*. Un élément crucial de l'examen du lien de causalité sera le niveau de ladite violence. ⁽³⁶⁾ Étant donné la vaste définition de la violence aveugle, il convient de ne pas appliquer l'exigence de lien de causalité de manière stricte. Les effets de la violence aveugle peuvent être directs ou indirects. Les effets indirects des actes de violence aveugle, comme une détérioration complète de l'ordre public résultant des conflits, devraient être envisagés dans une certaine mesure également.

Les actes criminels qui découlent de la détérioration de l'ordre public et autres effets indirects de la violence aveugle devraient-ils être considérés comme constitutifs d'une violence aveugle au sens de l'article 15, point c)?

En 2008, le Tribunal administratif fédéral allemand a conclu qu'il convenait de tenir compte de la violence criminelle, non commise par une des parties au conflit, uniquement aux fins de l'évaluation de la nature de la menace grave et individuelle contre la vie ou la personne. ⁽³⁷⁾ D'après le TAF, «les menaces générales contre la vie qui sont une simple conséquence d'un conflit armé - par exemple, du fait d'une détérioration des conditions d'approvisionnement - ne peuvent faire partie de l'évaluation de l'intensité du danger» ⁽³⁸⁾. Dès lors, ces menaces ne peuvent constituer une menace au sens de l'article 15, point c). En 2010, le Tribunal supérieur du Royaume-Uni a reconnu que la criminalité générale qui entraîne des atteintes correspondant au degré de gravité requis pourrait être le fruit d'un conflit armé lorsque les dispositions d'ordre public normales sont perturbées. Une sérieuse détérioration de l'ordre public laissant place à l'anarchie et à la criminalité et engendrant les atteintes graves visées à l'article 15, point c), peut en effet conduire à une violence aveugle, même si ce n'est pas nécessairement l'objectif. ⁽³⁹⁾ Il doit exister un lien de causalité suffisant entre la violence et le conflit, mais la violence aveugle touchant les civils ne doit pas nécessairement être le fait des combattants qui participent au conflit. ⁽⁴⁰⁾ Le Conseil

⁽³⁵⁾ Arrêt HM et autres, précité à la note 26, point 292.

⁽³⁶⁾ Voir H. Lambert, «Causation in International Protection from Armed Conflict», in D. Cantor et J.-F. Durieux (éd), précité, p. 65.

⁽³⁷⁾ Bundesverwaltungsgericht (Allemagne), arrêt du 17 novembre 2011, 10 C 13.10, ECLI: DE: BVerwG: 2011: 171 111U1 0C13.10.0, point 23.

⁽³⁸⁾ Bundesverwaltungsgericht (Allemagne), arrêt du 24 juin 2008, 10 C 43.07, ECLI: DE: BVerwG: 2008: 240608U10C43.0 7.0, point 35.

⁽³⁹⁾ Arrêt HM et autres, précité à la note 26, points 79-80.

⁽⁴⁰⁾ Ibid., point 45.

d'État français ⁽⁴¹⁾ et le Conseil d'État néerlandais ⁽⁴²⁾ ont jugé que les effets indirects des conflits armés devaient être pris en considération.

De même, le HCR souligne à cet égard qu'une détérioration de l'ordre public résultant d'une violence aveugle ou du conflit armé doit être prise en considération. Plus particulièrement, la source de la violence aveugle est insignifiante. ⁽⁴³⁾

À l'heure actuelle, nul ne peut encore prédire si la nouvelle approche, plus large, de la notion de conflit armé adoptée par la CJUE dans l'affaire *Diakité* conduira à une plus grande acceptation des effets indirects de la violence aveugle en tant que violence aveugle au sens de l'article 15, point c).

1.5. Civil

1.5.1. Champ d'application personnel de l'article 15, point c): limité aux civils

En toute logique, la qualité de civil est une condition préalable nécessaire pour pouvoir bénéficier de la protection accordée au titre de l'article 15, point c). ⁽⁴⁴⁾ Si un demandeur n'est pas un civil et se trouve de ce fait exclu du champ d'application de l'article 15, point c), il sera nécessaire de vérifier si l'admissibilité au statut de réfugié ou la protection au titre de l'article 15, points a) et b), ont été ou devraient être envisagées, à moins que le demandeur ne tombe sous le coup des causes d'exclusion (articles 12 et 17). Les articles 2 et 3 de la CEDH (qui ne sont pas soumis à des clauses d'exclusion) peuvent également s'appliquer.

1.5.2. L'approche de la définition suppose vraisemblablement un rejet de la définition du DIH

Vu la nature diverse des motifs mis en avant par la CJUE dans l'affaire *Diakité* pour rejeter le recours aux critères du DIH afin de définir la notion de conflit armé, il est à supposer qu'elle n'acceptera pas non plus une définition du terme «civil» tirée du DIH. ⁽⁴⁵⁾ En revanche, la Cour s'efforcera de donner au terme son sens habituel en langage courant, tout en tenant compte du contexte dans lequel il est utilisé et des objectifs poursuivis par la réglementation dont ils font partie (arrêt *Diakité*, point 27). Le fait que, même en DIH, la définition de ce terme ⁽⁴⁶⁾ n'emporte pas l'unanimité pourrait ajouter au caractère inadéquat d'une définition basée sur le DIH.

En raison de leur grande variété, les définitions des dictionnaires offrent peu de secours à cet égard et, en tout état de cause, n'appuient pas une signification conforme aux objectifs et finalités de la directive qualification. Une signification ordinaire pourrait être que les civils sont ceux qui ne sont pas des combattants ou des personnes qui ne combattent pas, mais cette définition est trop courte pour ajouter une quelconque substance à notre propos.

⁽⁴¹⁾ Arrêt *Baskarathas*, précité à la note 29.

⁽⁴²⁾ *Raad van State (Pays-Bas)*, arrêt du 7 juillet 2008, 200802709/1, ECLI:NL:RVS:2008:BD7524.

⁽⁴³⁾ HCR, «Safe at last?», précité à la note 2, p. 60 et 103.

⁽⁴⁴⁾ C. Bauloz, précité à la note 23, p. 253 – «Le champ d'application *ratione personae* de la protection subsidiaire accordée au titre de l'article 15, point c), est strictement limité aux civils ressortissants de pays tiers ou apatrides qui ne remplissent pas les conditions pour prétendre au statut de réfugié».

⁽⁴⁵⁾ Il n'existe pas de définition fixe en DIH, mais celle proposée par G. Mettraux, «International Crimes and the ad hoc Tribunals» (OUP, 2005) est généralement considérée comme conforme à la définition de droit coutumier, qui définit les civils comme étant «les personnes qui ne font pas, ou plus, partie des forces combattantes ou d'un groupe militaire armé partie au conflit». Le DIH prévoit une présomption en faveur de la protection et l'article 50, paragraphe 1, du premier protocole additionnel aux conventions de Genève dispose qu'«[e]n cas de doute, ladite personne sera considérée comme civile». Voir en outre E. Wilmshurst et S. Breau, «Perspective on the ICRC Study on Customary International Humanitarian Law», CUP, 2007, p. 10-11, 111-112 et 406.

⁽⁴⁶⁾ Bien que cela soit primordial eu égard au principe de distinction du DIH, l'étude du CICR sur les règles coutumières du DIH indique en guise de première règle que «[l]es parties au conflit doivent en tout temps faire la distinction entre civils et combattants» c.f. Henckaerts et L. Doswald-Beck, «Customary International Humanitarian Law», CUP, 2005).

1.5.3. Distinction entre militaires et non-militaires

Il est possible de déduire du fait que la CJUE, dans l'arrêt *Diakité*, considère manifestement qu'un conflit armé pourrait se produire même sans l'intervention d'un État ou que celui-ci y soit partie («ou dans laquelle deux ou plusieurs groupes armés s'affrontent»), que le terme sert essentiellement à distinguer les non-militaires du personnel militaire. Le personnel militaire peut couvrir aussi bien les membres des forces armées ou de la police d'un État que les membres de groupes de rebelles ou d'insurgés (parfois appelés «combattants irréguliers»).

1.5.4. Civils = tous les non-combattants?

S'il fallait recourir à la signification du terme «civil» en droit international des droits de l'homme (DIDH) ⁽⁴⁷⁾ (qui reconnaît de plus en plus la complémentarité entre le DIDH et le DIH), il se peut que le terme doive s'aligner sur le sens qui lui est donné communément à l'article 3 de la quatrième convention de Genève de 1949: «Les personnes qui ne participent pas directement aux hostilités, y compris les membres de forces armées qui ont déposé les armes et les personnes qui ont été mises hors de combat [...]». Cette dernière partie suggère que le fait de ne plus participer aux hostilités ne suffit pas: l'intéressé doit prendre des mesures pour se désengager activement. ⁽⁴⁸⁾

Un certain nombre de décisions nationales reflètent cette approche. Dans l'affaire *ZQ* (soldat en service) ⁽⁴⁹⁾, le Tribunal britannique des affaires d'asile et d'immigration (UKAIT) a mis en évidence qu'en DIH, le fait qu'un soldat ne soit pas en service ou soit en congé maladie ne lui confère pas nécessairement le statut de civil. Le Tribunal a cité la chambre d'appel du Tribunal pénal international pour l'ex-Yougoslavie (TPIY), qui a observé dans l'affaire *Blaskic* ⁽⁵⁰⁾, au point 114, que: «la situation concrète de la victime au moment où les crimes [crimes de guerre ou crimes contre l'humanité] ont été commis peut ne pas être un facteur déterminant quant à sa qualité de civil ou non. S'il est effectivement membre d'une organisation armée, le fait qu'il ne soit pas armé ou au combat au moment où les crimes ont été commis, ne lui confère pas le statut de civil». Dans l'affaire *HM* et autres, le Tribunal supérieur a conclu que la définition de «civil» ne devrait pas couvrir «quiconque participe à un conflit armé», ce qui inclut les membres des forces armées ou de la police. ⁽⁵¹⁾ Selon le Comité international de la Croix-Rouge (CICR), la notion de «civil» dans les conflits armés non-internationaux s'applique à «toutes les personnes qui ne font pas partie des forces armées de l'État ou de groupes armés organisés d'une partie au conflit».

1.5.5. Le terme «civil» exclut-il tous les membres des forces armées et de la police?

Gardant à l'esprit que la CJUE estime qu'il convient de replacer les termes clés dans le contexte dans lequel ils sont utilisés, tout en tenant compte des objectifs poursuivis par la réglementation dont ils font partie (arrêt *Diakité*, point 27), il se peut que le terme «civil» reçoive une signification plus large, de sorte qu'il désigne toutes les personnes qui ne sont pas des combattants ou tous ceux qui sont *hors de combat*. Ainsi, par exemple, contrairement à la position affichée en DIH, un membre des forces armées ou des services de police qui serait uniquement confronté à un risque réel d'atteintes graves alors qu'il n'est pas en service dans sa région d'origine pourrait être considéré comme remplissant les conditions requises. Le raisonnement de l'arrêt *Diakité* pourrait porter à croire

⁽⁴⁷⁾ Le considérant 24 de la directive qualification dispose qu'«[i]l convient de fixer les critères communs que doivent remplir les demandeurs d'une protection internationale pour pouvoir bénéficier de la protection subsidiaire. Ces critères devraient être définis sur la base des obligations internationales au titre des instruments relatifs aux droits de l'homme et des pratiques déjà existantes dans les États membres». Dans ses conclusions dans l'affaire *Diakité*, l'avocat général Mengozzi a souligné qu'il était clair à la lecture des travaux préparatoires que «la notion de protection subsidiaire se fonde principalement sur les instruments internationaux relatifs aux droits de l'homme».

⁽⁴⁸⁾ Dans son arrêt du 1^{er} juillet 1997, *Kalaç/Turquie*, requête n° 20704/92, la CEDH a conclu qu'en «choisissant une carrière militaire, M. Kalaç a accepté de sa propre initiative un système de discipline militaire qui, par sa nature même, prévoyait la possibilité de lui imposer certaines limitations des droits et libertés incombant aux forces armées qui ne pouvaient être imposées aux civils» (voir également l'arrêt de la CEDH du 8 juin 1976, *Engel et autres/Pays-Bas*, requêtes n° 5100/71 et autres, point 57). De manière plus générale, le DIDH considère de plus en plus qu'en ce qui concerne les situations de conflit armé, le DIH joue un rôle complémentaire et constitue en fait une *lex specialis*: voir Orna Ben-Naftali (éd.), «International Humanitarian Law and International Human Rights Law», OUP, 2011, p 3-10.

⁽⁴⁹⁾ Tribunal britannique des affaires d'asile et d'immigration (prédécesseur du Tribunal supérieur), arrêt du 2 décembre 2009, *ZQ (Serving Soldier) Iraq/Secretary of State for the Home Department*, CG [2009] UKAIT 00048.

⁽⁵⁰⁾ TPIY, chambre d'appel, arrêt du 29 juillet 2004, Procureur/Blaskic, affaire n° IT-95-14-A.

⁽⁵¹⁾ Arrêt *HM* et autres, précité à la note 26, cité également dans l'arrêt *ZQ* (soldat en service), précité à la note 49.

que la Cour a estimé que le terme devait recevoir une définition factuelle plutôt que d'être perçu comme désignant un statut juridique préconçu. ⁽⁵²⁾

1.5.6. La simple appartenance à un groupe armé suffit-elle à exclure le statut de civil?

Il serait incorrect d'essayer tout simplement de déduire, sur la base du raisonnement de la CJUE dans l'arrêt B et D ⁽⁵³⁾, le statut non civil d'une personne du fait de son appartenance à un groupe armé. Dans l'affaire B et D, qui portait sur l'application des clauses d'exclusion du statut de réfugié dans la directive qualification, la Cour a refusé d'opérer des assimilations automatiques sur la base des résolutions du Conseil de sécurité des Nations unies ou des instruments adoptés par l'Union européenne dans le cadre de la politique étrangère et de sécurité commune. Au point 89 de l'arrêt B et D, la CJUE a affirmé qu'il n'y avait pas de rapport direct entre la définition d'actes terroristes dans cette matière et la directive «quant aux objectifs poursuivis». Dès lors, «il [n'était] pas justifié que l'autorité compétente, lorsqu'elle envisage d'exclure une personne du statut de réfugié [...] se fonde uniquement sur son appartenance à une organisation figurant sur une liste adoptée en dehors du cadre que la directive a instauré». L'inscription sur une liste ou l'inclusion dans une définition proposée ne pourrait se substituer à une appréciation individuelle des faits concrets. De même, «la participation aux activités d'un groupe terroriste [...] ne saurait non plus relever nécessairement et automatiquement des causes d'exclusion prévues [...] [dans] la directive».

1.5.7. Indices du statut de civil

À supposer qu'il n'y ait pas d'adoption automatique d'une définition tirée du DIH ou de tout autre ensemble de normes extrinsèque et qu'en revanche, de même qu'il a été fait dans l'arrêt B et D, la CJUE exige «un examen complet de toutes les circonstances propres à chaque cas individuel», les indices suivants (pas nécessairement compatibles entre eux) pourraient être de quelque secours:

- un civil est une personne qui n'est pas partie au conflit et qui cherche simplement à continuer de vivre en dépit de la situation de conflit;
- le fait de ne pas être armé peut ne pas suffire à faire d'une personne un civil, lequel est également tenu d'être neutre dans le conflit;
- il est peu probable que les personnes qui participent volontairement à des groupes armés soient considérées comme des civils;
- la définition du terme «civil» semblerait vouloir exclure les participants à une guerre et, dès lors, couvrir les personnes qui ne participent ou ne participeraient pas activement aux hostilités;
- il convient d'examiner le rôle d'un individu au sein de l'organisation. Il convient de tenir compte de l'éventualité qu'un individu agisse (ou agirait) sous la contrainte. D'autre part, il convient également de prendre en considération, par exemple, le fait qu'une représentation politique apparemment civile dans une insurrection menée par des rebelles pourrait induire des décisions donnant lieu à des meurtres;
- les individus qui travaillent pour des institutions militaires, y compris les hôpitaux militaires, peuvent rencontrer des difficultés à être considérés comme des civils, même s'ils sont forcés de suivre des règles de commandement militaire;
- un individu exerçant une mission civile au sein de l'armée, comme un médecin, peut être considéré comme un civil, sauf si la fonction est assortie d'un grade militaire;
- ne pas posséder de grade militaire peut faciliter la tâche d'une personne qui invoque de facto un statut civil;
- l'article 43 sur les forces armées du protocole additionnel aux conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux (Protocole I), du 8 juin 1977, exclut de la définition des forces armées «le personnel sanitaire et religieux visé à l'article 33 de la III^e Convention». Un médecin de l'armée qui travaille dans un hôpital militaire mais qui ne combat pas peut être considéré comme exerçant

⁽⁵²⁾ C. Bauloz, précité à la note 23, soutient qu'«il convient de préférer une définition factuelle aux catégories fixes établies par la loi, lesquelles se concentrent sur des statuts trop rigides».

⁽⁵³⁾ CJUE (grande chambre), arrêt du 9 novembre 2010, dans les affaires jointes C-57/09 et C-101/09, Bundesrepublik Deutschland/B et D, affaires jointes C-57/09 et C-101/09.

essentiellement un devoir humanitaire, plutôt que militaire, promouvant le droit à la vie tel qu'il est protégé par la charte et la CEDDH; ⁽⁵⁴⁾

- la perception visuelle est l'un des critères permettant de reconnaître les civils et de les distinguer par rapport aux combattants. Aux fins de la détermination du statut, il est nécessaire d'examiner seulement les tâches qui incombent à la personne en sa qualité de non-civile et si l'individu pourrait être qualifié de non-civil à son retour.

1.5.8. Évaluation orientée vers l'avenir

Il convient de garder à l'esprit que, lors de l'évaluation de toutes des demandes de protection internationale, les juridictions s'intéressent principalement aux éventuels risques encourus au retour, c'est-à-dire à ce que sera la situation du demandeur s'il est renvoyé dans son pays d'origine. Le fait qu'une personne était un civil ou un combattant par le passé ne permettra pas nécessairement de déterminer si cette personne sera un civil ou un combattant à son retour, ou perçue comme tel.

1.5.9. En cas de doute

L'adoption d'une approche factuelle afin de déterminer si une personne est un civil (c'est-à-dire, qu'elle serait un civil à son retour) impose de mettre l'accent sur la prise en considération du principe selon lequel, pour citer l'article 50, paragraphe 1, du premier protocole additionnel aux conventions de Genève, intitulé «Définition des personnes civiles et de la population civile»: «[e]n cas de doute, ladite personne sera considérée comme civile».

En Belgique, le Conseil du contentieux des étrangers ⁽⁵⁵⁾ a conclu qu'à l'égard d'un demandeur qui a coopéré avec les autorités compétentes en matière d'asile en vue d'établir une demande, le bénéfice de tout doute doit être en faveur d'une interprétation considérant la personne comme un civil.

1.5.10. Anciens combattants et enrôlement de force

S'agissant des anciens combattants (incluant les enfants soldats), il convient de tenir compte du fait que la directive qualification n'avait pas pour objectif d'introduire des clauses d'exclusion supplémentaires, mais de définir les personnes nécessitant une protection. L'examen d'une clause d'exclusion ne devrait normalement avoir lieu qu'à un stade ultérieur. En France, la Cour nationale du droit d'asile a souligné, dans une affaire concernant un ressortissant afghan qui avait quitté l'armée, qu'un ancien combattant peut être considéré comme un civil. ⁽⁵⁶⁾

Le HCR a recommandé l'approche suivante:

«À cet égard, le terme "civil" utilisé à l'article 15, point c), ne devrait pas servir à exclure les anciens combattants qui sont à même de démontrer qu'ils ont renoncé aux activités militaires. Le fait qu'un individu était un combattant par le passé ne l'exclut pas nécessairement de la protection internationale s'il ou elle a véritablement renoncé aux activités militaires de manière permanente. Les critères permettant de déterminer si une personne satisfait à cet examen ont été définis par le Comité exécutif du HCR». ⁽⁵⁷⁾

Il est ainsi mis en évidence qu'un ancien combattant, tout particulièrement s'il faisait partie des forces armées de l'État, pourrait toujours être considéré comme un combattant à son retour.

Le ministère de l'intérieur britannique a indiqué, dans ses lignes directrices sur la procédure d'asile concernant la protection humanitaire du 15 mai 2013, que seuls les vrais anciens combattants, c'est-à-dire ceux qui ne sont

⁽⁵⁴⁾ Voir, par exemple, la Commission des droits de l'homme, décision du 10 juillet 1984, Stewart/Royaume-Uni, requête n° 10044/82, point 15, «l'idée que le droit à la vie dont jouit tout un chacun doit être protégé par la loi» invite les États non seulement à s'abstenir de prendre des vies «intentionnellement», mais aussi à adopter des mesures appropriées pour sauvegarder la vie. Cette affaire portait sur l'application de l'article 2, paragraphe 2, de la CEDDH.

⁽⁵⁵⁾ Conseil du contentieux des étrangers (Belgique), arrêt du 4 décembre 2007, affaire n° 4460.

⁽⁵⁶⁾ CNDA (France), arrêt du 24 janvier 2013, M. Miakhail, n°12018368 C+.

⁽⁵⁷⁾ HCR, «Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence», janvier 2008, p. 7. Disponible (en anglais uniquement) à l'adresse: <http://www.refworld.org/docid/479df7472.html>

pas partie au conflit, remplissent les conditions requises pour prétendre à la protection au titre de l'article 15, point c): «cela pourrait inclure les anciens combattants qui ont véritablement renoncé à une activité armée de manière permanente».

De manière générale, un demandeur qui a été enrôlé de force ⁽⁵⁸⁾ en tant que soldat/combattant ne perd pas son statut civil de ce fait mais, comme pour les enfants soldats, il semblerait que pour trancher la question, l'approche à adopter devrait reposer sur les faits, comme celle suivie par la CJUE dans l'affaire B et D (voir ci-dessus au point 1.5.6).

1.6. Menaces graves et individuelles

L'article 15, point c), exige du demandeur qu'il démontre qu'il court un risque réel de faire l'objet de menaces graves d'atteintes et pas nécessairement d'actes de violence concrets. Ces «menaces» s'entendent comme étant inhérentes à une situation de conflit générale et c'est essentiellement pour cela que cette disposition couvre un risque d'atteintes plus général que l'article 15, points a) et b) (voir arrêt Elgafaji, points 32 à 34). Au point 45, la CJUE a jugé:

«Par ces motifs, la Cour (grande chambre) dit pour droit: L'article 15, sous c), de la directive 2004/83/CE [...] lu en combinaison avec l'article 2, sous e), de la même directive, doit être interprété en ce sens que:

- l'existence de menaces graves et individuelles contre la vie ou la personne du demandeur de la protection subsidiaire n'est pas subordonnée à la condition que ce dernier rapporte la preuve qu'il est visé spécifiquement en raison d'éléments propres à sa situation personnelle;

- l'existence de telles menaces peut exceptionnellement être considérée comme établie lorsque le degré de violence aveugle caractérisant le conflit armé en cours, apprécié par les autorités nationales compétentes saisies d'une demande de protection subsidiaire ou par les juridictions d'un État membre auxquelles une décision de rejet d'une telle demande est déferée, atteint un niveau si élevé qu'il existe des motifs sérieux et avérés de croire qu'un civil renvoyé dans le pays concerné ou, le cas échéant, dans la région concernée courrait, du seul fait de sa présence sur le territoire de ceux-ci, un risque réel de subir lesdites menaces».

1.6.1. Risque général et risque spécifique

À la lumière de l'analyse réalisée par la CJUE dans l'arrêt Elgafaji, il est évident que l'existence de menaces graves et individuelles contre la vie ou la personne du demandeur n'est pas subordonnée à la condition que ce dernier rapporte la preuve qu'il est visé spécifiquement en raison d'éléments propres à sa situation personnelle. Un demandeur peut être considéré comme étant exposé à un risque général de faire l'objet de telles menaces si, exceptionnellement, le degré de violence aveugle caractérisant le conflit armé en cours atteint un niveau si élevé qu'il existe des motifs sérieux et avérés de croire qu'un civil renvoyé dans le pays concerné ou dans la région concernée courrait, du seul fait de sa présence sur le territoire de ceux-ci, un risque réel de subir lesdites menaces. Autrement dit, l'«individualisation» nécessaire pour démontrer que les menaces sont «individuelles» peut survenir soit en raison d'éléments de «risque spécifique» propres à la situation ou aux caractéristiques personnelles de l'intéressé, soit en raison d'éléments de «risque général» émanant d'une situation exceptionnelle caractérisée par un degré de violence très élevé.

⁽⁵⁸⁾ Il convient de distinguer les personnes recrutées conformément à la législation du pays d'origine (qui peut rendre le service militaire obligatoire) et les personnes forcées de rejoindre un groupe armé contre leur volonté (voir en outre HCR, «Principes directeurs sur la protection internationale n° 10: Demandes de statut de réfugié liées au service militaire dans le contexte de l'article 1A (2) de la Convention de 1951 et/ou du Protocole de 1967 relatifs au statut des réfugiés», 3 décembre 2013, notamment les points 35 à 41.

1.6.2. Notion d'«échelle dégressive» (Concept de sliding-scale)

L'article 15, point c), ne suppose pas d'opérer une dichotomie entre le risque général ou le risque spécifique auquel une personne serait exposée. Au contraire, la CJUE a élaboré un concept, connu sous la dénomination d'«échelle dégressive» (Concept de sliding-scale), selon lequel

«plus le demandeur est apte à démontrer qu'il est affecté spécifiquement en raison d'éléments propres à sa situation personnelle, moins sera élevé le degré de violence aveugle requis pour qu'il puisse bénéficier de la protection subsidiaire» (arrêt Elgafaji, point 39; arrêt Diakité, point 31). Le contraire vaut également: exceptionnellement, le degré de violence aveugle pourrait atteindre un niveau si élevé que, du seul fait de sa présence dans le pays ou la région concernée, le civil courrait un risque réel de faire l'objet d'atteintes graves (point 43). La Cour a conclu que cette interprétation ne contredisait pas le considérant 26 de la directive [de l'époque], étant donné que le libellé de celui-ci ouvre la possibilité à une telle situation exceptionnelle. ⁽⁵⁹⁾

Grâce à l'échelle dégressive (sliding-scale) ou, en d'autres termes, à l'examen de «proportionnalité inversée», la CJUE parvient à mettre en équilibre la menace individuelle et la violence aveugle et à montrer clairement comment la disposition doit être appliquée au cas par cas.

La notion de «risque général» de la CJUE peut être assimilée à la reconnaissance, dans la jurisprudence de la CEDH relative à l'article 3 de la CEDH, de la possibilité qu'un individu puisse encourir un risque réel d'atteintes graves uniquement du fait qu'il se trouve dans une situation caractérisée par des niveaux de violence exceptionnellement élevés. Dans l'arrêt NA/Royaume-Uni ⁽⁶⁰⁾, aux points 115 et 116, la CEDH a conclu:

115. Il ressort de l'examen de sa jurisprudence ci-avant que la Cour n'a jamais exclu qu'une situation générale de violence dans un pays de destination puisse présenter une intensité suffisante pour supposer que tout renvoi dans ledit pays constituerait nécessairement une violation de l'article 3 de la Convention. Néanmoins, la Cour réserverait une telle approche aux cas les plus extrêmes de violence générale, lorsqu'il existe un risque réel de mauvais traitements du simple fait qu'un individu y soit exposé à son retour.

116. Exceptionnellement, cependant, dans les affaires où un requérant allègue faire partie d'un groupe systématiquement exposé à une pratique de mauvais traitements, la Cour considère que la protection de l'article 3 de la Convention entre en jeu lorsque l'intéressé démontre qu'il y a des motifs sérieux et avérés de croire à l'existence de la pratique en question et à son appartenance au groupe visé (voir l'affaire Saadi/Italie, précitée, point 132). Dans ces circonstances, la Cour ne saurait alors obliger le requérant à démontrer l'existence d'autres caractéristiques particulières qui le distingueraient personnellement si, ce faisant, la protection offerte par l'article 3 devenait illusoire. Dans ce cas, le récit du requérant et les informations disponibles sur la situation du groupe en question dans le pays de destination seront déterminants (voir l'affaire Salah Sheekh, précitée, point 148).

Dans l'affaire Sufi et Elmi/Royaume-Uni, la CEDH a en outre précisé que l'application de cette approche requerrait (ce que nous avons appelé) une échelle dégressive. La CEDH a tout d'abord confirmé que, si un risque contraire à l'article 3 était établi, «le renvoi du requérant violerait nécessairement cet article, indépendamment du fait que ledit risque découle de la situation générale de violence, de la situation personnelle du requérant ou d'une combinaison des deux» (point 218).

À cet égard, un commentateur a souligné:

«En substance, le principe d'«échelle dégressive» (Concept de sliding-scale) dans l'affaire Elgafaji ne semble pas s'écarter fortement de cette jurisprudence récente de la CEDH, à tout le moins en ce qui concerne l'individualisation. Pour ce qui est des cas de violence aveugle extrêmement généralisée, le principe est formulé en des termes similaires. La CJUE a clairement indiqué, elle aussi, que cette situation serait «exceptionnelle». Lorsque la violence est d'une plus faible intensité, les deux cours exigent un certain degré d'individualisation». ⁽⁶¹⁾

⁽⁵⁹⁾ E. Tsourdi, «What Protection for Persons Fleeing Indiscriminate Violence? The Impact of the European Courts on the EU Subsidiary Protection Regime», in D. Cantor et J-F Durieux (éd.), précité, p. 277.

⁽⁶⁰⁾ CEDH, arrêt du 17 juillet 2008, NA/Royaume-Uni, requête n° 25904/07,

⁽⁶¹⁾ E. Tsourdi, précité à la note 59, p. 281.

S'il existe une «échelle dégressive» dans le cadre de l'article 3 de la CEDDH, alors il doit y en avoir une aussi pour l'article 15, point b) ⁽⁶²⁾. La difficulté consiste maintenant à déterminer l'approche de cette individualisation dans le cadre de l'article 15, point c): «[I]a deuxième difficulté découle du principe d'échelle dégressive (Concept de sliding-scale) au moment de définir les éléments propres à la situation personnelle du demandeur dans les affaires où la violence présente une plus faible intensité». ⁽⁶³⁾ L'avocat général Maduro a relevé qu'«en expliquant les éléments pertinents afin d'évaluer si une personne est individuellement affectée est ressortie à titre d'exemple leur appartenance à un groupe social déterminé (AGSD)». ⁽⁶⁴⁾ L'appartenance à un groupe social déterminé reflète la convention relative au statut des réfugiés de 1951.

Cependant, si la «situation personnelle» correspond à l'appartenance à un groupe social déterminé ou à l'un des quatre autres motifs prévus par la convention relative au statut des réfugiés de 1951, le cadre adéquat pour examiner la demande pourrait alors être celui de la définition de réfugié. ⁽⁶⁵⁾

En tout état de cause, la situation personnelle qui doit être démontrée ici ne peut être limitée aux motifs prévus par la convention relative au statut des réfugiés pour définir le statut de réfugié; ces motifs sembleraient en principe inclure des éléments exposant l'intéressé à un risque accru par rapport au reste de la population. Il doit être rappelé que l'article 4, paragraphe 3, point c), exige que l'évaluation d'une demande de protection internationale tienne compte du «statut individuel et la situation personnelle du demandeur, y compris des facteurs comme son passé, son sexe et son âge, pour déterminer si, compte tenu de la situation personnelle du demandeur, les actes auxquels le demandeur a été ou risque d'être exposé pourraient être considérés comme une persécution ou une atteinte».

Par conséquent, bien que l'examen réalisé dans le cadre de l'article 15, point c), porte aussi bien sur des risques spécifiques que sur des risques généraux, les difficultés rencontrées par les juridictions nationales en appliquant l'«échelle dégressive» (le concept de sliding-scale) donnent à penser que sa principale utilité résidera dans le traitement des demandes fondées sur un risque général. En effet, les demandes basées sur un risque spécifique devraient très souvent se résoudre en vertu de la définition de réfugié ou, à défaut de motif tiré de la convention relative au statut des réfugiés, en vertu de l'article 15, point b) ou a). Il vaut la peine de répéter que, lorsqu'elles statuent sur des affaires de protection internationale, les juridictions doivent tout d'abord vérifier si une personne peut bénéficier d'une protection au titre du statut de réfugié. Dès lors, la question de l'application de l'«échelle dégressive» (Concept de sliding-scale) dans le cadre de l'article 15, point c), ne sera soulevée que s'il a été décidé qu'un demandeur n'a pas démontré une crainte fondée d'être persécuté.

1.7. Contre la vie ou la personne [d'un civil]

Comme il est affirmé dans l'arrêt Elgafaji ⁽⁶⁶⁾, l'article 15, point c), revêt un champ d'application plus étendu que celui de l'article 3 de la CEDDH et doit par conséquent s'interpréter de manière indépendante, mais en tenant dûment compte des droits fondamentaux garantis par la CEDDH.

Ni la directive qualification ni la CJUE dans ses décisions n'a défini les termes «vie» ou «personne»: deux valeurs essentielles pour un civil qui fait l'objet de violence aveugle dans des situations de conflit armé interne ou international.

Il ressort clairement de la comparaison des dispositions de l'article 15, points a) et b), qui indiquent un type particulier d'atteinte, avec la disposition de l'article 15, point c), que l'atteinte définie dans cette dernière couvre un risque plus général. ⁽⁶⁷⁾

L'atteinte dont le demandeur pourrait faire l'objet ne se limite pas à son intégrité physique, mais peut également être de nature psychologique ou mentale ⁽⁶⁸⁾. L'atteinte pourrait également résulter de «formes indirectes de violence, comme l'intimidation, le chantage, la saisie de biens, les rafles dans les maisons et les entreprises,

⁽⁶²⁾ ⁶² E. Tsourdi, précité, p. 288.

⁽⁶³⁾ Ibid.

⁽⁶⁴⁾ Ibid.

⁽⁶⁵⁾ Ibid.

⁽⁶⁶⁾ Arrêt Elgafaji, précité à la note 5, point 28.

⁽⁶⁷⁾ Ibid., point 33.

⁽⁶⁸⁾ HCR, «Safe at Last?», précité à la note 2, p. 60.

les points de contrôle et l'enlèvement»⁽⁶⁹⁾, qui touchent la «personne» du civil. C'est la raison pour laquelle, à l'heure d'examiner le risque en cas de retour, les juridictions doivent vérifier minutieusement tout un éventail d'éléments afin d'apprécier la situation et les conditions locales.

La question demeure ouverte quant à savoir si la menace contre «la vie ou la personne» se limite à un risque réel de subir une atteinte qui viole des droits indérogeables ou si elle s'étend à d'importantes atteintes aux droits qualifiés d'un demandeur. Dans l'affaire KH (Irak), il est relevé au point 101 que:

«[c]ette disposition, qui porte sur l'objet de la menace, a connu cinq propositions d'amendements. D^r Mc Adam (voir supra, p. 75) souligne que la formule originale "la vie, la sécurité ou la liberté", de même que les formulations ultérieures fondées sur la notion de liberté ["la vie ou l'intégrité physique ou la liberté contre les détentions arbitraires"], a finalement été supprimée du fait que certains États membres craignaient qu'elle élargisse indûment la portée de la directive.»⁽⁷⁰⁾

L'article 3 commun aux conventions de Genève de 1949 utilise la formule «atteinte à la vie et à l'intégrité corporelle» (et non «contre la vie ou la personne»). En outre, l'arrêt rendu dans l'affaire KH (Iraq) signale que cette formule n'est manifestement pas susceptible de couvrir tout ce qui relève des *biens* civils. Cette dernière notion est définie en DIH comme incluant «les habitations, les magasins, les écoles et les autres lieux destinés aux activités non militaires, les lieux de récréation et de culte, les moyens de transport, les biens culturels, les hôpitaux ainsi que les établissements et unités médicales». Si l'arrêt Diakité indique clairement que les termes clés de l'article 15, point c), ne doivent pas se voir appliquer une lecture basée sur le DIH, il semblerait que cette différenciation s'avère nécessaire pour toute définition.

Dans l'affaire KH, le Tribunal britannique des affaires d'asile et d'immigration a observé, au point 107, une distinction au sein de l'article 3, paragraphe 1, entre le point a), sur les «atteintes à la vie et à l'intégrité corporelle», d'une part, et le point c), sur les «atteintes à la dignité des personnes, notamment les traitements humiliants et dégradants», d'autre part. Cette constatation a conduit le Tribunal à douter que le champ d'application matériel de la formule «à la vie et à l'intégrité corporelle» puisse s'étendre aux menaces équivalant à des traitements humiliants et dégradants. La limite intrinsèque de la notion «à la vie ou à la personne» en DIH est encore indiquée par le fait que le deuxième protocole additionnel (époque à laquelle il était estimé que la protection des civils devait recevoir un champ d'application matériel plus large) utilise un libellé complémentaire pour étendre cette protection. L'article 4, paragraphe 2, point a) de la même convention prohibe «les atteintes portées à la vie, à la santé et au bien-être physique ou mental des personnes, en particulier le meurtre, de même que les traitements cruels tels que la torture, les mutilations ou toutes formes de peines corporelles». Le Tribunal conclut que «[a]ttentifs cependant au fait que "la vie ou la personne" doivent s'interpréter dans un sens large, nous accepterions que cette formule couvre les moyens de survie d'une personne». Le Tribunal administratif slovène a jugé que la valeur protégée au regard de l'article 15, point c), n'est pas la seule «survie» des demandeurs d'asile, mais également l'interdiction de traitement inhumain⁽⁷¹⁾.

1.8. Champ d'application géographique: pays/région

Aux fins de l'examen de la protection au titre de l'article 15, point c), il est essentiel d'évaluer la situation régnant dans le pays de retour.⁽⁷²⁾ Cependant, il n'est pas nécessaire de déterminer si le conflit armé s'étend à l'ensemble pays. Au contraire, il convient de se concentrer sur la région où un demandeur vit (région de destination) et de déterminer si la personne en question court un risque dans cette région ou sur la route y conduisant. L'article 8 reconnaît, par ailleurs, que même si un demandeur peut démontrer un risque réel d'atteintes graves au sens de l'article 15, point c), dans sa région d'origine, l'admissibilité au bénéfice de la protection subsidiaire ne peut être établie que si le demandeur n'est pas en mesure d'obtenir une protection dans une autre partie du pays. Dès lors, la première question à se poser est de savoir si un demandeur court un risque réel d'atteintes graves dans sa région d'origine (ou sur la route y conduisant). Dans l'affirmative, la deuxième question à se poser alors est de savoir si les atteintes peuvent être évitées en obtenant une protection ailleurs à l'intérieur du pays.

⁽⁶⁹⁾ Arrêt HM et autres, précité à la note 26, point 114.

⁽⁷⁰⁾ Tribunal des affaires d'asile et d'immigration (Royaume-Uni), arrêt du 25 mars 2008, KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 00023.

⁽⁷¹⁾ Tribunal administratif de Slovénie, arrêts du 25 septembre 2013, I U 498/2012-17 et du 29 janvier 2014 I U 1327/2013-10.

⁽⁷²⁾ «La valeur ajoutée de l'article 15, point c), est la possibilité qu'il offre de fournir une protection contre des menaces graves résultant de la situation locale, plutôt que contre des menaces visant l'individu.» HCR, «Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence», précité à la note 57.

1.8.1. Détermination de la région d'origine

Afin de déterminer l'endroit correspondant à la région d'origine du demandeur en tant que destination de retour, il est nécessaire d'appliquer une approche factuelle tenant compte d'éléments tels que la région du dernier lieu de résidence et la région de résidence habituelle ⁽⁷³⁾.

1.8.2. La région d'origine en tant que région de destination

Dans le cadre de l'examen du risque auquel serait exposé le demandeur dans sa région d'origine, il convient dès lors de vérifier s'il est possible ou non de voyager jusqu'à cette destination. Si ce n'est pas le cas, en raison d'un conflit armé touchant les routes que le demandeur serait raisonnablement en droit d'emprunter, il convient de considérer que ce dernier a démontré l'existence d'un risque au sens de l'article 15, point c), dans sa région de destination.

Dans l'affaire Sufi et Elmi ⁽⁷⁴⁾, la CEDH a tenu compte de la nature géographique du conflit dans le contexte d'une violence généralisée. Dans la jurisprudence nationale relative à l'article 15, point c), le TAF allemand et la CNDA ont conclu que l'évaluation n'appelle pas un examen de la situation générale dans l'ensemble du pays, mais dans la région concernée ⁽⁷⁵⁾, y compris la route à emprunter entre le point de départ et la région d'origine. ⁽⁷⁶⁾ Cette jurisprudence concorde également avec la position adoptée par les juridictions britanniques. ⁽⁷⁷⁾

1.8.3. Protection contre les atteintes graves dans la région de destination

Il convient de souligner qu'au moment de vérifier l'existence d'un risque au sens de l'article 15, point c), dans la région d'origine d'une personne, ce risque ne sera établi que s'il n'existe aucune protection effective contre lui. L'article 7 ⁽⁷⁸⁾ précise que la protection doit être effective et non temporaire. Une telle protection est généralement accordée lorsque les acteurs visés à l'article 7, paragraphe 1, points a) et b), prennent des mesures raisonnables pour empêcher les atteintes graves, entre autres lorsqu'ils disposent d'un système judiciaire effectif permettant de déceler, de poursuivre et de sanctionner les actes constituant une persécution ou une atteinte grave, et lorsque le demandeur a accès à cette protection.

1.8.4. Protection à l'intérieur du pays

S'il existe un risque au sens de l'article 15, point c), dans la région d'origine du demandeur (comme ci-dessus), il conviendra de se demander s'il existe une partie du pays épargnée par le conflit et dans laquelle l'intéressé pourrait raisonnablement se réinstaller. Il s'agit là de l'alternative de la protection à l'intérieur du pays (ou de fuite interne ou principe de réinstallation interne).

L'article 8 dispose:

⁽⁷³⁾ Bundesverwaltungsgericht (Allemagne), arrêt du 31 janvier 2013, 10 C 15.12, point 14.

⁽⁷⁴⁾ Arrêt Sufi et Elmi, précité à la note 14, points 210, 265-292.

⁽⁷⁵⁾ Arrêt M. Mohamad Adan, précité à la note 31.

⁽⁷⁶⁾ Bundesverwaltungsgericht (Allemagne), précité, point 13f; M. Mohamad Adan, précité.

⁽⁷⁷⁾ Arrêt HM et autres, précité à la note 26.

⁽⁷⁸⁾ Article 7 de la directive qualification - Acteurs de la protection

«1. La protection contre les persécutions ou les atteintes graves ne peut être accordée que par:

a) l'État; ou

b) des partis ou organisations, y compris des organisations internationales, qui contrôlent l'État ou une partie importante du territoire de celui-ci, pour autant qu'ils soient disposés à offrir une protection au sens du paragraphe 2 et en mesure de le faire.

2. La protection contre les persécutions ou les atteintes graves doit être effective et non temporaire. Une telle protection est généralement accordée lorsque les acteurs visés au paragraphe 1, points a) et b), prennent des mesures raisonnables pour empêcher les persécutions ou les atteintes graves, entre autres lorsqu'ils disposent d'un système judiciaire effectif permettant de déceler, de poursuivre et de sanctionner les actes constituant une persécution ou une atteinte grave, et lorsque le demandeur a accès à cette protection.

3. Lorsqu'ils déterminent si une organisation internationale contrôle un État ou une partie importante de son territoire et si elle fournit une protection au sens du paragraphe 2, les États membres tiennent compte des orientations éventuellement données par les actes de l'Union en la matière.»

Protection à l'intérieur du pays

1. Dans le cadre de l'évaluation de la demande de protection internationale, les États membres peuvent déterminer qu'un demandeur n'a pas besoin de protection internationale lorsque dans une partie du pays d'origine:

- a) il n'a pas une crainte fondée d'être persécuté ou ne risque pas réellement de subir des atteintes graves; ou
- b) il a accès à une protection contre les persécutions ou les atteintes graves au sens de l'article 7, et qu'il peut, en toute sécurité et en toute légalité, effectuer le voyage vers cette partie du pays et obtenir l'autorisation d'y pénétrer et que l'on peut raisonnablement s'attendre à ce qu'il s'y établisse.

2. Lorsqu'ils examinent si un demandeur a une crainte fondée d'être persécuté ou risque réellement de subir des atteintes graves, ou s'il a accès à une protection contre les persécutions ou les atteintes graves dans une partie du pays d'origine conformément au paragraphe 1, les États membres tiennent compte, au moment où ils statuent sur la demande, des conditions générales dans cette partie du pays et de la situation personnelle du demandeur, conformément à l'article 4. À cette fin, les États membres veillent à obtenir des informations précises et actualisées auprès de sources pertinentes, telles que le Haut-Commissariat des Nations unies pour les réfugiés et le Bureau européen d'appui en matière d'asile.

Le considérant 27 dispose:

La protection à l'intérieur du pays contre les persécutions ou les atteintes graves devrait être effectivement offerte au demandeur dans une partie du pays d'origine lorsqu'il peut, en toute sécurité et en toute légalité, effectuer le voyage vers cette partie du pays et obtenir l'autorisation d'y pénétrer et que l'on peut raisonnablement s'attendre à ce qu'il s'y établisse. Lorsque les acteurs des persécutions ou des atteintes graves sont l'État ou ses agents, il devrait exister une présomption selon laquelle une protection effective n'est pas offerte au demandeur. Si le demandeur est un mineur non accompagné, l'existence d'arrangements appropriés en matière de soins et de garde, répondant à l'intérêt supérieur du mineur non accompagné, devrait être un élément à prendre en compte dans l'évaluation visant à déterminer si une protection est réellement offerte.

La CJUE reconnaît l'importance de la protection à l'intérieur du pays dans l'arrêt *Elgafaji*, dans lequel elle indique que «lors de l'évaluation individuelle d'une demande de protection subsidiaire, [...] il peut notamment être tenu compte de: [...] l'étendue géographique de la situation de violence aveugle ainsi que de la destination effective du demandeur en cas de renvoi dans le pays concerné». ⁽⁷⁹⁾

Le champ d'application géographique et la protection à l'intérieur du pays sont des principes connexes en ce qu'il est possible de considérer que la protection à l'intérieur du pays, dans sa définition la plus large, inclut implicitement non seulement la protection offerte par des tiers ⁽⁸⁰⁾ mais aussi l'autoprotection consistant en la réinstallation dans une partie du pays épargnée par le conflit ou dans laquelle la menace de violence aveugle causée par le conflit est moindre.

L'article 8, paragraphe 2, de la directive 2011/95/UE (pas la directive 2004/83/CE, voir ci-après) renvoie expressément à l'accès à la protection. L'article 7 définit les acteurs de la protection de manière à inclure non seulement les acteurs étatiques, mais aussi les acteurs non-étatiques qui contrôlent l'État ou une partie importante du territoire de celui-ci. Le principe de protection à l'intérieur du pays est lié à l'article 15 dans son ensemble et peut être considéré comme trouvant davantage à s'appliquer dans le cadre de l'article 15, points a) et b), où le nœud de la question est la portée individuelle, plutôt qu'au regard de l'article 15, point c). Cela s'explique par le fait qu'une fois qu'une menace de violence aveugle résultant d'un conflit armé dans la région d'origine a été établie, la possibilité de protection intérieure dans cette région peut ne pas être viable car, dans de nombreuses situations de conflit armé, un léger doute peut exister quant à la disponibilité d'une protection effective. «La capacité

⁽⁷⁹⁾ Arrêt *Elgafaji*, précité à la note 5, point 40.

⁽⁸⁰⁾ Cependant, l'article 7, paragraphe 1, point b), précise que la protection ne peut être accordée par des acteurs non étatiques que s'ils contrôlent l'État ou une partie importante du territoire de celui-ci, pour autant qu'ils soient disposés à offrir une protection au sens du paragraphe 2 de la directive qualification, et en mesure de le faire. Voir Cour suprême administrative de la République tchèque, décision du 27 octobre 2011, D.K./Ministry of Interior, Azs 22/2011.

des acteurs de la protection à offrir une protection et les indices liés à l'échec de l'État» font partie des éléments d'évaluation du niveau de violence et de menace grave décelé par le HCR. ⁽⁸¹⁾

L'évaluation de la situation non seulement dans la région d'origine du demandeur, mais aussi dans d'autres régions du pays où celui-ci pourrait bénéficier d'une protection à l'intérieur du pays, est dès lors essentielle à un examen approprié de la demande au titre de l'article 15, point c). Cette évaluation des circonstances générales qui prévalent et de la situation personnelle du demandeur requiert un examen exhaustif. La directive qualification exige que cette évaluation s'opère conformément à l'article 4 (Évaluation des éléments) et l'obtention d'«informations précises et actualisées».

Une analyse plus approfondie du champ d'application géographique et de la protection à l'intérieur du pays est fournie dans la deuxième partie, aux points 2.4 et 2.5.

⁽⁸¹⁾ HCR, «Safe at Last?», précité à la note 2.

PARTIE II: APPLICATION

2.1. Résumé: une approche globale

Dans la première partie, nous avons étudié les éléments constitutifs de l'article 15, point c). Dans cette partie, nous mettrons l'accent sur la manière dont la disposition doit être appliquée dans la pratique.

Comme nous l'avons signalé précédemment, l'évaluation de l'article 15, point c), appelle une approche globale. Les juridictions doivent tenir compte d'un certain nombre d'éléments: conflit armé, menace contre la vie ou la personne d'un civil, menaces graves et individuelles, violence aveugle, seuil de violence, champ d'application géographique et alternative de la protection à l'intérieur du pays. Ces différents éléments interagissent entre eux.

L'annexe A présente un schéma décisionnel destiné à déterminer l'ordre logique des questions que les juridictions doivent se poser dans l'évaluation de l'admissibilité au bénéfice de la protection subsidiaire au titre de l'article 15, point c). Dans la présente section, l'accent est mis sur les principaux problèmes d'application qui nécessitent des éclaircissements.

2.2. Évaluation du niveau de violence - une approche pratique

Les orientations données par la CJUE dans les arrêts *Elgafaji* ⁽⁸²⁾ et *Diakité* ⁽⁸³⁾ ont une portée limitée et laissent visiblement une très grande marge aux juridictions nationales pour décider de la manière dont l'article 15, point c), doit s'appliquer dans la pratique. Plus précisément, la CJUE n'aide pas les juridictions à savoir comment elles devraient procéder, premièrement, pour évaluer la situation dans la région concernée du pays de manière à apprécier le niveau de violence et, deuxièmement, pour déterminer si cette violence a pour effet d'engendrer un risque réel d'atteinte grave soit pour les civils en général soit pour les individus en fonction de leur situation personnelle ou la combinaison des deux.

Jusqu'à présent, la CJUE n'a donné aucune orientation concernant les critères d'évaluation du niveau de violence dans un conflit armé. Les juridictions devront adopter une approche pratique pour évaluer les preuves produites à l'appui de la demande. Tous les critères appliqués par les juridictions nationales exigeront une vérification de la possibilité pratique de manière à conférer un effet utile à l'article 15, point c). À l'échelon des États membres, les affaires relatives à l'article 15, point c), sont particulières car elles portent sur un pays dont au moins certaines parties se trouvent dans une situation de violence et de conflit. Comme il a été expliqué dans la première partie, les juridictions nationales doivent tenir compte d'un certain nombre d'éléments ou d'indices. À cet égard, il importe de se baser sur les enseignements de la jurisprudence de la CEDH et des juridictions nationales.

2.2.1. Jurisprudence strasbourgeoise

L'approche suivie par la CEDH pour évaluer le niveau de violence aux fins de l'article 3, CEDH - afin de décider si tous les civils ou la plupart d'entre eux courent un risque réel de subir des mauvais traitements - est décrite dans l'affaire *Sufi et Elmi*, au point 241:

«En l'espèce, les demandeurs ont invoqué que la violence aveugle à Mogadiscio était d'un degré d'intensité suffisant pour constituer un risque réel pour la vie ou la personne de tout civil dans la capitale. Bien que la Cour ait précédemment indiqué qu'une situation de violence générale serait d'une intensité suffisante pour représenter un tel risque seulement «dans les cas les plus extrêmes», elle n'a pas fourni d'autres orientations en ce qui concerne la manière dont un conflit doit être évalué. Cependant, la Cour

⁽⁸²⁾ Arrêt *Elgafaji*, précité à la note 5, point 43.

⁽⁸³⁾ Arrêt *Diakité*, précité à la note 7, point 30.

rappelle que le Tribunal des affaires d'asile et d'immigration avait été amené à réaliser une évaluation similaire dans l'affaire AM et AM (Somalie) ⁽⁸⁴⁾ (citée ci-avant) et, ce faisant, a relevé les critères suivants: il convient, premièrement, de déterminer si les parties au conflit ont eu recours à des méthodes et tactiques de guerre qui ont accru le risque de victimes civiles ou visaient directement des civils; deuxièmement, d'examiner si lesdites méthodes ou tactiques sont largement suivies par les parties au conflit; troisièmement, de vérifier si les combats étaient localisés ou répandus; et, enfin, de considérer le nombre de civils tués, blessés et déplacés en raison des combats. Bien que ces critères ne doivent pas être considérés comme une liste exhaustive à appliquer à toutes les affaires à venir, en l'espèce, la Cour estime qu'ils constituent des repères appropriés pour évaluer le niveau de violence à Mogadiscio.»

2.2.2. Juridictions nationales

Plusieurs juridictions des États membres ont adopté une approche similaire pour évaluer le degré de violence que présentent des conflits armés aux fins de l'article 15, point c). Il existe cependant de légères différences dans les méthodes appliquées, ainsi que dans l'importance accordée aux différents indices.

Pour le Tribunal supérieur (Royaume-Uni), le lien entre un conflit armé généralisé et la violence aveugle représentant un risque réel pour la vie ou la personne est réalisé lorsque l'intensité du conflit suppose l'utilisation de moyens de combat (autorisés ou non par le droit de la guerre) qui mettent sérieusement en danger les non-combattants de façon directe ou indirecte. ⁽⁸⁵⁾ Pour le Tribunal, cela signifiait que l'accent mis sur les preuves relatives aux nombres de civils tués ou blessés était primordial dans l'évaluation du niveau de violence eu égard à l'article 15, point c). ⁽⁸⁶⁾ Néanmoins, le Tribunal a souligné qu'il était nécessaire d'adopter une approche inclusive aux fins de l'évaluation du degré de violence aveugle. Cette approche exige un examen du niveau de violence à la fois sous l'angle quantitatif et l'angle qualitatif. Un examen quantitatif porte sur le nombre de civils tués ou blessés, le nombre d'incidents de sécurité, etc., tandis que l'examen qualitatif de la violence en cours doit tenir compte de l'incidence des menaces de violence, ainsi que de la violence physique à proprement parler, de l'attitude des parties au conflit et des effets cumulés à long terme chaque fois que le conflit dure un certain temps. Une approche inclusive, à la fois quantitative et qualitative, devrait aller au-delà de la détermination des chiffres de victimes civiles - blessés ou morts - et doit garder à l'esprit que le déplacement de population et le degré d'échec de l'État sont également des critères pertinents pour évaluer le risque de devenir une victime de violence aveugle. ⁽⁸⁷⁾ Au Royaume-Uni, le Tribunal susvisé a jugé que même les exécutions soigneusement ciblées qui ne blessent pas de civils mais uniquement des combattants, contribuent à instaurer un climat de crainte et d'insécurité qui, indirectement, accroît l'intensité de la violence. ⁽⁸⁸⁾ C'est pourquoi, de l'avis du Tribunal, «il ne saurait jamais être juste de tenter une soustraction pure et simple de la violence ciblée de la somme globale de violence aveugle». ⁽⁸⁹⁾

Le TAF allemand a conclu qu'une détermination quantitative approximative du nombre total de civils vivant dans la région concernée, d'une part, et du nombre d'actes de violence aveugle commis par les parties au conflit contre la vie ou la personne des civils dans cette région, d'autre part, était nécessaire pour évaluer le niveau de violence. En outre, une évaluation générale du nombre de victimes et de la gravité des pertes (morts ou blessés) parmi la population civile est nécessaire. Dans cette mesure, les critères visant à établir la persécution d'un groupe qui ont été élaborés par le TAF en vertu de la législation sur le statut des réfugiés peuvent également être appliqués en conséquence. ⁽⁹⁰⁾ En outre de la détermination quantitative du niveau de violence, l'approche du TAF requiert une appréciation générale des statistiques qui prend en considération le nombre de victimes et la gravité des atteintes (décès et blessures) parmi la population civile. En tout état de cause, cette appréciation générale inclurait également une évaluation des prestations de soins de santé sur le territoire concerné, de la qualité et l'accessibilité desquels peut dépendre la gravité des lésions corporelles occasionnées, en prêtant attention aux conséquences permanentes que les lésions peuvent entraîner pour les victimes. ⁽⁹¹⁾

⁽⁸⁴⁾ Tribunal des affaires d'asile et d'immigration (Royaume-Uni), AM & AM (armed conflict: risk categories) Rev 1 Somalia CG [2008] UKAIT 00091, 27 janvier 2009.

⁽⁸⁵⁾ Arrêt HM et autres, précité à la note 26, point 45.

⁽⁸⁶⁾ Ibid., point 43.

⁽⁸⁷⁾ Ibid., points 271 à 274.

⁽⁸⁸⁾ Ibid., point 292.

⁽⁸⁹⁾ Tribunal supérieur, arrêt du 18 mai 2012, AK (Article 15(c)) Afghanistan CG v. the Secretary of State for the Home Department, [2012] UKUT 00163(IAC), point 207.

⁽⁹⁰⁾ Arrêt 10 C 4.09, précité à la note 28, point 34.

⁽⁹¹⁾ Arrêt 10 C 13.10., précité à la note 37, point 23.

Dans une affaire relative à la sécurité à Mogadiscio, le Conseil d'État néerlandais a décidé, en 2010, que la reconnaissance d'une situation exceptionnelle dans laquelle l'article 15, point c), s'appliquerait à tout individu nécessitant de regarder au-delà du nombre de morts et de blessés dans la région en question pour envisager d'autres éléments importants, tels que les déplacements à l'intérieur du pays, la fuite des réfugiés et le caractère aléatoire de la violence. ⁽⁹²⁾

Selon la Cour nationale du droit d'asile et le Conseil d'État français, l'intensité d'un conflit armé atteint le seuil fixé dans l'arrêt Elgafaji lorsqu'il présente une violence généralisée. Les déplacements forcés, les violations du droit international humanitaire et l'occupation de territoire sont également des éléments permettant de mesurer l'intensité de la violence généralisée. ⁽⁹³⁾

2.2.3. Position du Haut-Commissariat aux réfugiés

Le Haut-Commissariat aux réfugiés a lui aussi demandé instamment aux juridictions de prendre en considération des éléments quantitatifs et qualitatifs dans le cadre d'une «évaluation pragmatique, globale et prospective» qui «ne peut se réduire à un calcul de probabilité mathématique». ⁽⁹⁴⁾ L'organisation attire l'attention sur la prudence dont il faut faire preuve en traitant des statistiques, en raison de la variété des méthodes et des critères utilisés dans la collecte de données, de la sous-déclaration des actes de violence, et de l'importance du champ d'application géographique et temporel à l'aune desquels les incidents sont considérés. ⁽⁹⁵⁾ En outre du nombre d'incidents de sécurité et de victimes (comprenant des décès, des blessures et d'autres menaces contre la personne), «le climat de sécurité général dans le pays, les déplacements de population et les répercussions de la violence sur la situation humanitaire globale» devraient être pris en considération. ⁽⁹⁶⁾

2.2.4. Conclusions - Liste non-exhaustive des indices possibles

Il existe un consensus général entre l'UKUT, le Conseil d'État français, le Conseil d'État néerlandais, le TAF allemand et la Cour suprême slovène sur le fait que le niveau de violence doit être évalué sous les angles quantitatif et qualitatif. Pour les juridictions allemandes, l'évaluation quantitative de la violence est un point de départ nécessaire pour l'évaluation qualitative. ⁽⁹⁷⁾ Les décisions rendues par les juridictions ailleurs en Europe présentent un même souci d'évaluation à la fois quantitative et qualitative. Il ne peut exister aucun doute sur le fait qu'une concentration significative de violence est nécessaire, sans quoi la protection subsidiaire ne sera pas accordée. Cependant, le seuil de l'article 15, point c), va au-delà d'une simple analyse quantitative de données.

À la lumière d'une jurisprudence en constante évolution, il ne serait pas sensé d'essayer de dresser une liste figée d'indices possibles, mais un examen des principales affaires, dont Sufi et Elmi, K.A.B. ⁽⁹⁸⁾ (au sujet de l'article 3, CEeDH), ainsi que de la jurisprudence du TAF allemand, du Conseil d'État néerlandais, de l'UKUT, de la Cour nationale du droit d'asile française, de la Cour suprême slovène (pour n'en citer que quelques-uns) et en se référant aux principes directeurs du HCR sur des pays comme l'Irak, la Somalie, et l'Afghanistan, trois principes devraient régir l'évaluation:

a) premièrement, l'approche doit être globale et inclusive. Les juridictions doivent tenir compte d'un vaste éventail de variables pertinentes;

b) deuxièmement, les juridictions ne devraient pas se limiter à un examen purement quantitatif des nombre de morts et de blessés parmi les civils, etc. L'approche doit être aussi bien quantitative que qualitative. Lorsqu'elles évaluent la quantité et la qualité, les juridictions devraient garder à l'esprit la probabilité d'incidents non déclarés et d'autres incertitudes;

⁽⁹²⁾ Raad van State (Pays-Bas), arrêt du 26 janvier 2010, 200905017/1, ECLI:NL:RVS:2010:BL1483.

⁽⁹³⁾ Arrêt Baskarathas, précité à la note 29; voir également CNDA, arrêt du 18 octobre 2011, n 10003854.

⁽⁹⁴⁾ HCR, «Safe at Last?», précité à la note 2, p. 104.

⁽⁹⁵⁾ Ibid., p. 46 et 47.

⁽⁹⁶⁾ Ibid., p. 104.

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

⁽⁹⁸⁾ CEDH, arrêt du 5 septembre 2013, K.A.B./Suède, requête n° 886/11.

c) troisièmement, sur la base de la jurisprudence, qui à son tour intègre les observations des études universitaires, les juridictions devraient considérer en particulier ce que les preuves nous enseignent sur les indices de situations de violence et de conflit (la liste suivante ne se veut pas exhaustive):

- les «critères Sufi et Elmi» en vertu de la CEDDH:
 - les parties au conflit et leurs forces militaires respectives;
 - les méthodes et tactiques de guerre appliquées (risque de victimes civiles);
 - le type d'arme utilisée;
 - l'étendue géographique des combats (localisés ou largement répandus);
 - le nombre de civils tués, blessés et déplacés en raison des combats;
- la capacité ou l'incapacité d'un État à protéger ses citoyens contre la violence (dans la mesure du possible, il aidera à mettre en place les différents acteurs potentiels de la protection et à compenser leur rôle effectif) / le degré de l'échec de l'État);
- les conditions socio-économiques (qui devraient comprendre l'évaluation de l'aide économique et autres formes d'assistance fournies par des organisations internationales et ONG);
- les effets cumulés des conflits armés de longue durée.

En principe, ces indices non-exhaustifs s'appliqueront pour l'analyse d'un risque général ou spécifique à l'égard d'un demandeur. Étant donné que tout conflit armé pourrait suivre des modèles différents, il est de la plus haute importance de se rappeler qu'une liste d'indices (comme ci-dessus) ne peut jamais être exhaustive. Les caractéristiques d'un conflit armé et de ses victimes civiles peuvent conduire à la prise en considération d'autres indices.

2.3. Application de l'évaluation par l'échelle dégressive (concept de sliding-scale)

Le concept d'échelle dégressive (sliding-scale), tiré de l'arrêt *Elgafaji* (quoiqu'il ne soit pas décrit en tant que tel), fournit un cadre d'évaluation de l'importance relative des notions de risque général (qui entend que la violence aveugle atteint un niveau si élevé que le simple fait d'être un civil met une personne en péril) et de risque spécifique (supposant l'existence d'une menace individuelle). Ce concept confère une effectivité et un contexte au libellé du considérant 35 (ex 26) du préambule à la directive qualification: l'existence d'une menace grave et individuelle à l'égard des civils peut exceptionnellement être considérée comme établie lorsque le degré de violence aveugle caractérisant le conflit armé en cours atteint un niveau élevé; il s'agit de la dimension de risque général de l'article 15, point c). En présence d'un risque général, la question de la crédibilité n'est pas pertinente. Plus précisément, la crédibilité se limite à contrôler si le demandeur provient d'une région ou d'un pays déterminé.

Le demandeur peut néanmoins toujours se voir accorder une protection au titre de l'article 15, point c), même lorsque le degré de violence aveugle est réduit, s'il est en mesure de démontrer qu'il est particulièrement concerné du fait d'éléments propres à sa situation personnelle: il s'agit là de la dimension de risque spécifique de l'article 15, point c). L'échelle dégressive (le concept sliding-scale) façonne la manière dont le risque spécifique doit être évalué: «plus le demandeur est apte à démontrer qu'il est affecté spécifiquement en raison d'éléments propres à sa situation personnelle, moins sera élevé le degré de violence aveugle requis pour qu'il puisse bénéficier de la protection subsidiaire» (arrêt *Elgafaji*, point 39; arrêt *Diakité*, point 31). Ici, l'évaluation de la crédibilité sera importante.

Les éléments à prendre en considération pour évaluer le degré de violence aveugle ont été énumérés ci-dessus (voir point 1.3, «Violence aveugle»).

De toute évidence, l'évaluation d'un risque spécifique en vertu de l'article 15, point c), doit suivre une méthode similaire à l'évaluation des demandes de protection internationale basées sur l'article 15, points a) et b). Cela résulte de l'insistance de la CJUE sur le fait que «cette disposition [article 15, point c)] doit faire l'objet d'une interprétation systématique par rapport aux deux autres situations visées audit article 15 et doit donc être interprétée en relation étroite avec cette individualisation». ⁽⁹⁹⁾ La difficulté pour les juges nationaux à ce jour (voir partie II, point 2.31, ci-dessous) survient à l'heure d'appliquer l'article 15, point c), aux situations où le degré de violence aveugle n'est pas suffisamment élevé pour exposer les civils en général à un risque. Il est souvent difficile

⁽⁹⁹⁾ Arrêt *Elgafaji*, précité à la note 5, point 38.

de distinguer pourquoi un demandeur à même de démontrer une situation personnelle qui augmente le risque doit faire l'objet d'un examen au titre de l'article 15, point c). Comme il a été observé précédemment, il peut en fait être admissible au bénéfice de la protection accordée au titre du statut de réfugié ou de la protection subsidiaire en vertu de l'article 15, points b) ⁽¹⁰⁰⁾ ou a). Dès lors, il se peut que l'article 15, point c), présente son utilité essentiellement dans les affaires où la question consiste à déterminer s'il existe un risque général pour l'ensemble de la population civile.

Jurisprudence nationale

Suivant l'arrêt Elgafaji, le Conseil d'État français a déclaré dans l'affaire Baskarathas ⁽¹⁰¹⁾ qu'il n'était pas nécessaire qu'un demandeur apporte la preuve qu'il est visé particulièrement en raison de sa situation personnelle, lorsque le degré de violence aveugle atteint un niveau tel qu'il existe des motifs sérieux et avérés de croire qu'un civil courrait un risque du seul fait de sa présence sur le territoire, ce qui était le cas au Sri Lanka pendant l'été 2009 selon le Conseil d'État.

Dans plusieurs affaires relatives à l'Afghanistan, la Cour nationale du droit d'asile française a pris en considération le jeune âge du demandeur d'asile en tant qu'élément individuel dans l'évaluation du risque réel d'atteinte grave. Selon la Cour, le jeune âge est un élément individuel qui favorise le risque qu'il faut prendre en considération dans l'appréciation lorsque le niveau de violence est réduit. La protection subsidiaire a dès lors été accordée. La Cour a également tenu compte d'éléments liés à ce jeune âge, comme le décès des parents, l'absence de liens familiaux, l'exposition à la violence et l'enrôlement de force dans une des forces armées. ⁽¹⁰²⁾ Un autre facteur individuel accepté par la Cour comme favorisant le risque est apparu dans une affaire relative à un homme originaire du Nord-Kivu (République Démocratique du Congo), dans laquelle la Cour a estimé que les professionnels qui devaient voyager vers et depuis l'Angola seraient exposés à des actes de violence commis par les groupes armés. ⁽¹⁰³⁾ Une question pertinente en l'espèce consistait à savoir si la profession du demandeur est un élément fondamental de son identité, de sorte qu'il ne serait pas raisonnable d'attendre de sa part qu'il en change afin d'éviter d'éventuelles atteintes.

Le TAF allemand a donné des exemples de situations personnelles qui accroissent la menace de violence aveugle: par exemple, la profession du demandeur lorsque celle-ci le force à se trouver proche des actes de violence, comme dans le cas des médecins ou des journalistes. De même, des situations personnelles comme la religion ou l'ethnie peuvent être prises en considération si elles ne conduisent pas à l'octroi du statut de réfugié. À propos de ces situations personnelles, le TAF a également requis un niveau élevé de violence aveugle ou une menace importante pesant sur la population civile dans la région. Les indices pouvant appuyer ces allégations sont le nombre d'actes de violence aveugle, le nombre de victimes et la gravité des pertes parmi les civils. ⁽¹⁰⁴⁾

Le Tribunal administratif supérieur de Bavière n'a pas considéré que l'appartenance du demandeur à la minorité Hazara (Afghanistan) soit un facteur individuel «favorisant le risque». Selon les informations dont le Tribunal disposait, la situation générale des Hazaras, qui souffrent de tout temps de discrimination, s'est améliorée, même si d'anciennes tensions persistent et resurgissent de temps à autre. Les Hazaras ont toujours vécu dans les provinces de Parwân et de Kaboul et, selon les informations provenant du HCR, de nombreux Hazaras sont retournés dans cette région. De même, l'appartenance d'un demandeur au groupe religieux chiite ne constitue pas un facteur personnel favorisant le risque, étant donné que 15 pour cent de la population afghane sont chiites. ⁽¹⁰⁵⁾

Pour le Tribunal administratif supérieur de Rhénanie-du-Nord - Westphalie, l'existence d'une menace grave et individuelle doit être établie, et ce n'est le cas que si les risques généraux s'accumulent de telle sorte que l'ensemble des habitants d'une région sont gravement et personnellement touchés, ou si une personne a été touchée en particulier du fait de facteurs personnels augmentant le risque. Ces facteurs personnels susceptibles d'accroître le risque peuvent également résulter de l'appartenance de la personne concernée à un groupe. ⁽¹⁰⁶⁾

⁽¹⁰⁰⁾ Voir les conclusions de l'avocat général dans l'affaire M'Boj, précité à la note 9, en ce qui concerne la portée de l'article 15, point b).

⁽¹⁰¹⁾ Arrêt Baskarathas, précité à la note 29.

⁽¹⁰²⁾ CNDA (France), arrêt du 21 mars 2013, M. Youma Khan, n° 12025577 C; CNDA, arrêt du 2 juillet 2012, M. Ahmad Zai, n° 12006088 C; CNDA, arrêt du 18 octobre 2011, M. Hosseini, n° 10003854 C+; CNDA, arrêt du 3 juin 2011, M. Khogyani, n° 09001675 C; CNDA, arrêt du 20 décembre 2010, M. Haidari, n° 10016190 C+; CNDA, arrêt du 1^{er} septembre 2010, M. Habibi, n° 09016933 C+.

⁽¹⁰³⁾ CNDA, arrêt du 5 septembre 2013, M. Muela, n° 13001980 C.

⁽¹⁰⁴⁾ Bundesverwaltungsgericht (Allemagne), arrêt du 20 février 2013, BVerwG 10 C 23.12, point 33.

⁽¹⁰⁵⁾ Tribunal administratif supérieur de Bavière (Allemagne), arrêt du 3 février 2011, 13a B 10.30394.

⁽¹⁰⁶⁾ Tribunal administratif supérieur de Rhénanie-du-Nord - Westphalie (Allemagne), arrêt du 29 octobre 2010, 9 A 3642/06.A.

Dans l'affaire HM et autres, l'UKUT a expliqué son point de vue sur le raisonnement de la CJUE dans l'affaire Elgafaji:

«La CJUE semblait considérer dans cette affaire qu'une personne exposée à un risque réel d'être la cible spécifique ou plus générale de violence aveugle pouvait se voir accorder la protection si le niveau de violence général ne suffisait pas à établir le risque nécessaire à l'égard de celle qui n'était pas en mesure de démontrer quelque motif spécifique pour lequel elle ferait l'objet d'actes de violence à moins que cette violence n'atteigne un niveau élevé.»⁽¹⁰⁷⁾

Le Tribunal a examiné si, par référence à l'échelle dégressive (au concept de sliding-scale), il était possible de dire que les civils irakiens, qui étaient sunnites ou chiites, kurdes, ou d'anciens Baasistes, couraient un risque accru. Il a conclu qu'en général ce n'était pas le cas. Au point 297, le Tribunal a déclaré:

«À notre sens, les autres preuves relatives aux sunnites et aux chiites révèlent une situation similaire. Bien que nous estimions pour les motifs énoncés ci-avant que les preuves ne fussent pas à établir que l'identité sunnite ou chiite constitue en soi une "catégorie présentant un risque accru" au sens de l'article 15, point c), nous acceptons cependant qu'en fonction de la situation personnelle, et en particulier celle d'un retour dans une région où ses frères sunnites ou chiites seraient minoritaires, une personne peut être en mesure d'établir l'existence d'un risque réel au sens de l'article 15, point c). (Naturellement, elle peut être aussi en mesure d'établir un risque réel de persécution en vertu de la convention relative au statut des réfugiés ou de traitement contraire à l'article 3 de la CEDDH).»

2.4. Champ d'application géographique: pays/région

Les juridictions qui ont reçu les preuves de l'existence d'un conflit armé dans le pays d'origine devront établir l'étendue géographique dudit conflit. Si la violence aveugle qui règne dans le pays atteint un niveau tel que des personnes sont exposées au risque visé à l'article 15, point c), du simple fait d'être des civils, le demandeur sera alors admissible au bénéfice de la protection subsidiaire. Cependant, si la partie du pays touchée par une violence aveugle d'un tel niveau est limitée géographiquement à seulement une ou quelques régions du pays d'origine, alors (sauf si l'État membre concerné n'applique pas l'article 8) la capacité d'un demandeur à démontrer un risque réel d'atteintes graves dans sa région d'origine aux fins de l'article 15, point c), du simple fait qu'il est un civil, dépendra de l'existence d'un tel degré de violence dans la région d'origine. Les modalités pratiques du voyage et du séjour ou de l'établissement dans cette région du pays devront également être évaluées de manière à pouvoir décider s'il est raisonnable d'attendre du demandeur qu'il se réinstalle là-bas. Les facteurs à prendre en considération peuvent inclure la sécurité aux alentours de l'aéroport/la ville de retour, ainsi que la sécurité de la route à emprunter pour accéder à la région où le conflit ne sévit pas. Dans un pays où la liberté de circulation intérieure est restreinte, il se peut qu'il faille statuer sur la légalité de l'établissement dans la région concernée. Comme il a été exposé précédemment, si une personne ne peut atteindre la région de destination en toute sécurité en raison du conflit armé dans le pays, alors il est estimé qu'un risque au sens de l'article 15, point c) a été établi dans cette région d'origine.

2.5. Protection à l'intérieur du pays

Les dispositions particulières relatives à la protection à l'intérieur du pays énoncées à l'article 8, paragraphe 2, renvoient à «une partie du pays d'origine». Il va sans dire que lorsqu'il a été constaté qu'il existe un risque d'atteintes graves en raison d'une violence aveugle contraire à l'article 15, point c), les juridictions doivent alors avoir conclu que la protection à l'intérieur du pays n'est pas disponible (sauf si l'État membre concerné n'applique pas l'article 8).

Un demandeur ne peut être réputé disposer d'une alternative de la protection à l'intérieur du pays viable si la ou les autres parties du pays présentent également un risque réel de subir des atteintes graves (contre lesquelles il n'existe pas de protection effective), s'il est déraisonnable de s'attendre à ce que le demandeur s'y établisse à

⁽¹⁰⁷⁾ Arrêt HM et autres, précité à la note 26, point 40.

nouveau ou si le demandeur ne pourrait obtenir un accès effectif à cette ou ces régions ⁽¹⁰⁸⁾. L'examen de l'existence d'une protection contre les atteintes graves dans une ou plusieurs autres parties du pays nécessite de se pencher sur la nature de ladite protection et, pour ce faire, il convient de prêter attention à la source de la protection, son effectivité et sa durée conformément à l'article 7.

L'article 8, paragraphe 2, impose aux États membres de considérer les circonstances qui prévalent dans le pays d'origine au moment de prendre leur décision. L'UKUT a estimé que cette disposition ne charge pas légalement l'État d'apporter la preuve de l'existence d'une région dans le pays où le demandeur, qui a établi une crainte fondée dans sa région d'origine, pourrait raisonnablement s'installer. La charge légale incombe au demandeur mais, dans la pratique, la question de la réinstallation à l'intérieur du pays doit être soulevée par l'État, auquel cas il appartiendra au demandeur de faire valoir qu'il ne serait pas raisonnable de se réinstaller à cet endroit. ⁽¹⁰⁹⁾

2.5.1. Article 8 (directive qualification) 2004/83/CE et 2011/95/UE

L'article 8 de la directive 2004/83/CE et celui de la directive 2011/95/UE présentent des différences qui n'ont pas encore été soumises à l'examen de la CJUE, mais les modifications peuvent entraîner des conséquences pratiques. L'article 8 de la directive 2004/83/CE ⁽¹¹⁰⁾ reconnaissait que la menace peut ne pas s'étendre à l'ensemble du pays d'origine et, dès lors, qu'un demandeur n'aurait pas besoin de la protection internationale s'il est raisonnable de penser que cette personne peut séjourner dans une autre partie du pays en dépit d'obstacles techniques au retour. La directive 2011/95/UE (voir ci-dessus au point 1.8) modifie cette disposition en exigeant non seulement que l'on puisse raisonnablement s'attendre à ce que le demandeur puisse séjourner dans la partie du pays visée, mais aussi qu'il puisse effectuer le voyage vers cette partie du pays, en toute sécurité et en toute légalité, et obtenir l'autorisation d'y pénétrer et que l'on puisse raisonnablement s'attendre à ce qu'il s'y établisse. Il n'y a plus aucune référence au terme «obstacles techniques», dont l'interprétation posait des difficultés. Il y a de très bonnes raisons de considérer que la formulation de ces aspects lors de la refonte est destinée à clarifier ce qui était implicite dans la version initiale.

L'emploi du verbe «s'établir» ⁽¹¹¹⁾ dans la directive 2011/95/UE est différent du verbe «rester» utilisé dans la directive 2004/83/CE; il se peut qu'une situation de plus grande stabilité soit envisagée.

L'article 8, paragraphe 2, de la directive 2011/95/UE impose aux États membres, lorsqu'ils sont amenés à décider si un demandeur dispose d'une alternative de protection à l'intérieur du pays viable, le devoir spécifique d'obtenir des informations précises et actualisées auprès de sources pertinentes sur les conditions dans la ou les autres régions du pays proposées:

«[...] les États membres tiennent compte, au moment où ils statuent sur la demande, des conditions générales dans cette partie du pays et de la situation personnelle du demandeur, conformément à l'article 4. À cette fin, les États membres veillent à obtenir des informations précises et actualisées auprès de sources pertinentes, telles que le Haut-Commissariat des Nations unies pour les réfugiés et le Bureau européen d'appui en matière d'asile.

⁽¹⁰⁸⁾ Ces trois hypothèses sont parfois appelées la clause de «sécurité», la clause de «caractère raisonnable» et la clause d'«accès» respectivement.

⁽¹⁰⁹⁾ Tribunal supérieur (Royaume-Uni), arrêt du 25 novembre 2011, AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia v. Secretary of State for the Home Department, CG [2011] UKUT 00445 (IAC). Pour la décision la plus récente sur la situation à Mogadiscio, veuillez vous reporter à la décision du Tribunal supérieur dans l'affaire MOJ and others (Return to Mogadishu) (Rev1) (CG) [2014] UKUT 442 (IAC).

⁽¹¹⁰⁾ L'article 8 original [qui s'applique toujours à l'Irlande et au Royaume-Uni (voir note de bas de page 1)] dispose:

«Protection à l'intérieur du pays

1. Dans le cadre de l'évaluation de la demande de protection internationale, les États membres peuvent déterminer qu'un demandeur n'a pas besoin de protection internationale lorsque, dans une partie du pays d'origine, il n'y a aucune raison de craindre d'être persécuté ni aucun risque réel de subir des atteintes graves et qu'il est raisonnable d'estimer que le demandeur peut rester dans cette partie du pays.

2. Lorsqu'ils examinent si une partie du pays d'origine est conforme au paragraphe 1, les États membres tiennent compte, au moment où ils statuent sur la demande, des conditions générales dans cette partie du pays et de la situation personnelle du demandeur.

3. Le paragraphe 1 peut s'appliquer nonobstant l'existence d'obstacles techniques au retour vers le pays d'origine.»

⁽¹¹¹⁾ Ce qui est également appliqué par la CEDH: voir l'arrêt du 11 janvier 2007, Salah Sheekh/Pays-Bas, requête n° 1948/04 [2007] ECHR 36, point 141: «[La Cour] estime que pour qu'un État puisse valablement invoquer l'existence d'une possibilité de fuite interne, certaines garanties doivent être réunies: la personne dont l'expulsion est envisagée doit être en mesure d'effectuer le voyage vers la zone concernée et d'obtenir l'autorisation d'y pénétrer et de s'y établir, faute de quoi il peut y avoir un problème sous l'angle de l'article 3, surtout si en l'absence de pareilles garanties la possibilité existe que la personne concernée échoue dans une partie de son pays d'origine où elle risque de subir des mauvais traitements.»

ANNEXE A — Schéma décisionnel

A. Refus de la protection au titre du statut de réfugié?	
La protection subsidiaire ne peut être accordée qu'aux personnes qui ne remplissent pas les conditions pour se voir octroyer le statut de réfugié [article 2, point f)].	
B. Situation dans la région d'origine entraînant le risque visé à l'article 15, point c)?	
	1. La situation dans la région d'origine du demandeur est-elle celle d'un conflit armé?
	2. Si oui, cette situation se caractérise-t-elle par une violence aveugle d'un niveau si élevé que les personnes courent un risque réel de subir des atteintes graves du simple fait d'être des civils? (<i>La question du «risque général»</i>)?
	3. Même si la réponse à la deuxième question est négative, le demandeur peut-il néanmoins démontrer un risque réel de subir des atteintes graves en vertu d'atteintes spécifiques dues à sa situation personnelle combinée avec le contexte de violence aveugle (de niveau inférieur)? Plus le demandeur peut démontrer qu'il est touché personnellement, moins le degré de violence aveugle requis devra être élevé (<i>la question du «risque spécifique»</i>).
Pour répondre de manière affirmative à ces questions, les juridictions doivent être convaincues qu'il n'existe pas de protection effective contre de telles atteintes graves conformément à l'article 7 (<i>la question de la protection</i>).	
Lorsque la région d'origine du demandeur est supposée être le lieu de destination, il peut être nécessaire de se demander s'il est possible d'y accéder en toute sécurité. Le cas échéant, il doit alors être supposé que le demandeur a démontré un risque réel de subir des atteintes graves <i>en route</i> vers la région de destination et que cela suffit pour satisfaire à la question B.	
C. AUCUNE POSSIBILITÉ DE PROTECTION À L'INTÉRIEUR DU PAYS?	
Si la réponse aux questions 2 ou 3 est affirmative, il reste néanmoins nécessaire de se demander (sauf si l'État membre concerné n'applique pas l'article 8) si, conformément à l'article 8, un demandeur peut éviter ces atteintes graves en s'établissant ailleurs dans le pays d'origine.	
Cet examen (qui doit reposer sur des informations précises et actualisées obtenues auprès de sources pertinentes) suppose de se demander:	
	<ul style="list-style-type: none">• si le demandeur est à l'abri d'atteintes graves dans cette autre partie du pays;• s'il peut effectuer le voyage vers cette partie du pays en toute sécurité et en toute légalité, et obtenir l'autorisation d'y pénétrer;• s'il est raisonnable de s'attendre à ce qu'il s'y établisse.
Pour qu'une autre partie du pays soit sûre, il convient de se demander si cette région est exempte d'un risque réel pour le demandeur de subir des atteintes graves (contre lesquelles il n'existe pas de protection effective).	
Pour qu'une autre partie du pays soit accessible, le demandeur doit pouvoir voyager/atteindre la destination et obtenir l'autorisation d'y pénétrer, sans en être empêché par des obstacles légaux ou pratiques (par exemple, l'obligation de posséder un type particulier de document d'identité ou que toutes les routes conduisant jusque-là soient impraticables ou une insécurité en route).	
Pour qu'il soit considéré raisonnable qu'un demandeur s'établisse dans une autre partie du pays, il faut se demander si cet établissement engendrera des difficultés excessives.	
Pour qu'un demandeur puisse s'y établir, il faut vérifier s'il est possible d'y rester de manière non temporaire et sans condition.	
D. ADMISSIBILITÉ AU BÉNÉFICE DE LA PROTECTION SUBSIDIAIRE	
Si les réponses aux sections B et C sont affirmatives, le demandeur remplit les conditions de l'article 15, point c), et (en l'absence de motifs d'exclusion ou de cessation) il a prouvé qu'il est admissible au bénéfice de la protection subsidiaire.	

ANNEXE B — Méthodologie

Méthodologie applicable aux activités de perfectionnement professionnel proposée aux membres des juridictions

Contexte et introduction

L'article 6 du règlement instituant l'EASO ⁽¹¹²⁾ (ci-après le «règlement») dispose que le Bureau d'appui organise et développe des formations destinées aux membres des juridictions des États membres. À cet effet, l'EASO tire parti du savoir-faire des institutions universitaires et autres organisations importantes, et tient compte de la coopération de l'Union dans le domaine, dans le strict respect de l'indépendance des juridictions nationales.

Afin de favoriser l'amélioration des normes de qualité et l'harmonisation des décisions à travers l'Union européenne, et conformément à son mandat légal, l'EASO apporte un double soutien à la formation qui comprend l'élaboration et la publication d'outils de perfectionnement professionnel, d'une part, et l'organisation d'activités de perfectionnement professionnel, d'autre part. Au travers de la présente méthodologie, l'EASO tend à décrire les procédures qui seront suivies dans l'exécution de ses activités en matière de perfectionnement professionnel.

En entreprenant ces tâches, l'EASO s'engage à suivre les principes consacrés dans le domaine de la coopération entre l'EASO et les juridictions tels qu'ils ont été adoptés en 2013 ⁽¹¹³⁾.

Programme de perfectionnement professionnel

Contenu et portée - Conformément au mandat légal qui lui a été conféré par le règlement et en coopération avec les juridictions, l'EASO adoptera un programme de perfectionnement professionnel destiné à fournir aux membres des juridictions une vue d'ensemble complète du régime d'asile européen commun (ci-après le «RAEC»). Compte tenu des besoins qui ont été communiqués par le réseau EASO, des évolutions jurisprudentielles européennes et nationales, le degré de divergence dans l'interprétation des dispositions pertinentes et les évolutions dans ce domaine, des outils seront élaborés conformément à la structure suivante (aucun ordre particulier), mais sans s'y limiter:

1. Introduction au RAEC et rôle et responsabilités des juridictions dans le domaine de la protection internationale
2. Accès aux procédures régissant la protection internationale et principe de non-refoulement
3. Critères applicables à l'inclusion et à la protection subsidiaire à la lumière de la directive qualification ⁽¹¹⁴⁾
4. Évaluation des preuves et crédibilité
5. Exclusion et fin de la protection à la lumière de la directive qualification
6. Protection internationale dans les situations de conflit:
 - la protection des réfugiés en situation de conflit
 - l'application de l'article 15, point c), de la directive qualification
7. Réception dans le cadre de la directive de l'Union européenne sur les conditions d'accueil ⁽¹¹⁵⁾

⁽¹¹²⁾ Règlement (UE) n° 439/2010 du Parlement européen et du Conseil du 19 mai 2010 portant création d'un Bureau européen d'appui en matière d'asile, publié au Journal officiel, L 132/11 du 29.5.2010, p. 11-28, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:FR:PDF>

⁽¹¹³⁾ Note sur la coopération entre l'EASO et les juridictions des États membres, 21 août 2013.

⁽¹¹⁴⁾ Directive 2011/95/UE du Parlement européen et du Conseil du 13 décembre 2011 concernant les normes relatives aux conditions que doivent remplir les ressortissants des pays tiers ou les apatrides pour pouvoir bénéficier d'une protection internationale, à un statut uniforme pour les réfugiés ou les personnes pouvant bénéficier de la protection subsidiaire, et au contenu de cette protection (refonte), Journal officiel, L 337/9 du 20.12.2011, p. 9-26, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:FR:PDF>

⁽¹¹⁵⁾ Directive 13/33/UE du Parlement européen et du Conseil du 26 juin 2013 établissant des normes pour l'accueil des personnes demandant la protection internationale (refonte), Journal officiel, L 180/96 du 29.6.2013, p. 96-116, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:FR:PDF>

8. Traitement des demandes à la lumière du règlement Dublin III ⁽¹¹⁶⁾
9. Aspects procéduraux à la lumière de la directive sur les procédures d'asile de l'UE ⁽¹¹⁷⁾
10. Accès aux droits conférés dans le cadre juridique de l'UE à la suite de la reconnaissance d'un statut de protection internationale
11. Procédures de rapatriement à la lumière de la directive de l'UE sur le retour au pays ⁽¹¹⁸⁾
12. Évaluation et utilisation des informations sur le pays d'origine
13. Accès à un recours efficace conformément aux instruments juridiques du REAS

Le contenu détaillé du programme ainsi que l'ordre dans lequel les chapitres seront rédigés seront définis à la suite d'une évaluation des besoins réalisée en coopération avec le réseau de juridictions de l'EASO (ci-après le «réseau EASO»), qui à l'heure actuelle se compose de points de contact nationaux au sein des juridictions des États membres, de la Cour de justice de l'Union européenne (CJUE), de la Cour européenne des droits de l'homme (CEDH), et de deux organismes avec lesquels l'EASO entretient une correspondance officielle: l'Association internationale des juges de droit des réfugiés (IARLJ) et Fédération européenne des juges administratifs (AEAJ). En outre, d'autres partenaires, dont le HCR, l'Agence des droits fondamentaux de l'Union européenne (FRA), le réseau européen de formation judiciaire (REFJ) et l'Académie de droit européen (ERA), seront également consultés selon qu'il conviendra. Il sera également abordé dans le programme de travail annuel adopté par l'EASO dans le cadre de ses réunions de planification et de coordination.

Participation d'experts

Équipes de rédaction - Le programme sera mis au point par l'EASO en coopération avec le réseau EASO par la création de groupes de travail ad hoc (équipes de rédaction) en vue de l'élaboration de chaque chapitre. Ces équipes de rédaction seront composées d'experts désignés par le réseau EASO et choisis selon des critères de sélection déterminés. Conformément au programme de travail de l'EASO et au plan concret adopté lors des réunions annuelles de planification et de coordination, l'EASO lancera un appel aux experts en vue de la réalisation de chaque chapitre.

Cet appel sera envoyé au réseau EASO en précisant la portée du chapitre à élaborer, le calendrier prévu et le nombre d'experts qui sera nécessaire. Les points de contact nationaux de l'EASO seront alors invités à communiquer avec les juridictions nationales afin de recenser les experts intéressés et disponibles pour contribuer à la rédaction du chapitre.

Sur la base des nominations reçues, l'EASO communiquera au réseau une proposition pour la création de l'équipe de rédaction. Cette proposition sera préparée par l'EASO conformément aux principes ci-après.

1. Si le nombre de nominations reçues est égal ou inférieur au nombre d'experts requis, tous les experts désignés seront automatiquement invités à participer à l'équipe de rédaction.
2. Si le nombre de nominations reçues est supérieur au nombre d'experts requis, l'EASO procédera à une présélection motivée des experts. Cette présélection se déroulera comme suit:
 - l'EASO sélectionnera en priorité les experts qui sont disponibles pour participer à l'ensemble du processus, y compris la participation à toutes les réunions d'experts;
 - si plusieurs experts sont nommés par un même État membre, l'EASO contactera son correspondant et lui demandera de sélectionner un expert. Cela permettra une plus large représentation des États membres au sein du groupe;
 - l'EASO proposera alors de donner la priorité aux membres des juridictions par rapport aux assistants juridiques ou aux rapporteurs;
 - si le nombre de nominations demeure supérieur au nombre d'experts requis, l'EASO émettra une proposition de sélection motivée qui tient compte des dates auxquelles les nominations ont été reçues

⁽¹¹⁶⁾ Règlement (EU) n° 604/2013 du Parlement européen et du Conseil du 26 juin 2013 établissant les critères et mécanismes de détermination de l'État membre responsable de l'examen d'une demande de protection internationale introduite dans l'un des États membres par un ressortissant de pays tiers ou un apatride (refonte), Journal officiel, L 180/31 du 29.6.2013, p. 31-59, <http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32013R0604&from=fr>

⁽¹¹⁷⁾ Directive 13/32/UE du Parlement européen et du Conseil du 26 juin 2013 relative à des procédures communes pour l'octroi et le retrait de la protection internationale (refonte), Journal officiel, L 180/60 du 29.6.2013, p. 60-95, <http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32013L0032&from=fr>

⁽¹¹⁸⁾ Directive 2008/115/CE du Parlement européen et du Conseil du 16 décembre 2008 relative aux normes et procédures communes applicables dans les États membres au retour des ressortissants de pays tiers en séjour irrégulier, Journal officiel, L 348/98 du 24.12.2008, p. 98-107, <http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32008L0115&from=FR>

(les premières seraient privilégiées) ainsi que de l'importance pour l'EASO d'assurer une vaste représentation régionale.

L'EASO invitera également le HCR à désigner un représentant pour rejoindre l'équipe de rédaction.

Les membres du réseau EASO seront invités à faire part de leur point de vue et à formuler des suggestions quant à la sélection d'experts proposée dans un délai maximal de 10 jours. La sélection finale tiendra compte des points de vue du réseau EASO et confirmera la composition de l'équipe de rédaction.

Processus de consultation - Conformément au règlement, l'EASO s'engagera dans un processus de consultation en ce qui concerne l'élaboration des outils. En vue de l'introduction de ce processus de consultation, l'EASO lancera un appel à manifestation d'intérêt aux membres du Forum consultatif de l'EASO, associant des représentants des États membres, des organisations de la société civile et autres organisations pertinentes, le monde universitaire ainsi que d'autres spécialistes ou experts universitaires recommandés par le réseau de juridictions de l'EASO.

En fonction de l'expérience et de la familiarité avec le domaine judiciaire de ceux qui répondent à l'appel, ainsi que sur la base des critères de sélection du Forum consultatif de l'EASO, l'EASO fera une proposition motivée au réseau EASO, qui confirmera finalement l'identité des personnes associées au processus de consultation. Ensuite, les candidats au processus de consultation pourront être invités à couvrir tous les sujets ou se limiter aux domaines relevant de leur expérience particulière.

L'Agence des droits fondamentaux de l'Union européenne (FRA) sera invitée à prendre part au processus de consultation.

Élaboration du programme

Phase préparatoire - Avant d'entamer le processus de rédaction, l'EASO préparera un ensemble d'outils, comprenant de manière non exhaustive:

1. une bibliographie des sources et outils pertinents disponibles sur le thème;
2. une compilation de la jurisprudence européenne et nationale en la matière.

Les participants au processus de consultation, de même que le réseau EASO ⁽¹¹⁹⁾, joueront un rôle important pendant la phase préparatoire. À cet effet, l'EASO informera les participants au processus de consultation et le réseau EASO de l'étendue de chaque chapitre et communiquera un projet des outils préparatoires, ainsi qu'une invitation à fournir des informations supplémentaires jugées pertinentes pour le travail. Ces informations seront intégrées aux documents qui seront alors transmis à l'équipe de rédaction concernée.

Processus de rédaction - L'EASO organisera au moins deux réunions de travail pour l'élaboration de chaque chapitre. Au cours de la première réunion, l'équipe de rédaction:

- désignera un ou plusieurs coordinateurs du processus de rédaction;
- définira la structure du chapitre et adoptera la méthode de travail;
- distribuera les tâches relatives au processus de rédaction;
- élaborera une description élémentaire du contenu du chapitre.

Sous la coordination du coordinateur de l'équipe, et en étroite collaboration avec l'EASO, l'équipe procédera à la rédaction d'un premier projet du chapitre concerné.

Au cours de la deuxième réunion, l'équipe de rédaction:

- réexaminera le premier projet et s'accordera sur son contenu;
- veillera à la cohérence de toutes les parties et contributions au projet;

⁽¹¹⁹⁾ Le HCR sera également consulté.

- révisera le projet du point de vue didactique.

Au besoin, le groupe peut proposer à l'EASO d'organiser des réunions supplémentaires afin de poursuivre l'élaboration du projet. Une fois terminé, le projet sera communiqué à l'EASO.

Examen de la qualité - L'EASO communiquera le premier projet réalisé par l'équipe de rédaction au réseau EASO, au HCR et aux participants au processus de consultation, qui seront invités à examiner les outils en vue d'aider le groupe de travail à améliorer la qualité du texte final.

Toutes les suggestions reçues seront transmises au coordinateur de l'équipe de rédaction, qui s'organisera avec son équipe pour examiner les suggestions formulées et préparer un texte final. Il est également possible que le coordinateur suggère d'organiser une réunion supplémentaire afin d'étudier les suggestions lorsque celles-ci sont particulièrement nombreuses ou influencent fortement la structure et le contenu du chapitre.

Le coordinateur transmettra ensuite le chapitre à l'EASO au nom de l'équipe de rédaction.

Processus d'actualisation - Dans le cadre des réunions de planification et de coordination annuelles, l'EASO invitera le réseau EASO à faire part de ses avis concernant la nécessité de mettre à jour les chapitres du programme.

Sur la base de cet échange, l'EASO peut:

- entreprendre des mises à jour mineures afin d'améliorer la qualité des chapitres, y compris insérer des évolutions jurisprudentielles pertinentes. Dans ce cas, l'EASO préparera directement une première proposition de mise à jour, dont l'adoption sera prise en charge par le réseau EASO;
- demander la création d'une équipe de rédaction afin de mettre à jour un ou plusieurs chapitres du programme. Dans ce cas, la mise à jour suivra la même procédure que celle prévue pour l'élaboration du programme.

Mise en œuvre du programme

En coopération avec les membres du réseau EASO et les partenaires concernés (par exemple, le REFJ, l'ERA), l'EASO encouragera également l'utilisation du programme de formation par les institutions de formation nationales. Le soutien de l'EASO à cet égard comprend les instruments ci-après.

Une note d'orientation à l'intention des animateurs - Suivant la même procédure que celle décrite pour l'élaboration des différents chapitres constitutifs du programme, l'EASO constituera une équipe de rédaction chargée d'élaborer une note d'orientation à l'intention des animateurs. Celle-ci servira d'outil de référence pratique pour les animateurs et procurera des orientations pour l'organisation et l'animation d'ateliers pratiques durant le programme de perfectionnement professionnel;

Des ateliers pour les animateurs - En outre, après l'élaboration de chaque chapitre du programme, l'EASO organisera un atelier pour les animateurs afin de leur donner une présentation approfondie du chapitre ainsi que la méthodologie suggérée pour l'organisation d'ateliers au niveau national.

- **Nomination des animateurs et préparation de l'atelier** - L'EASO cherchera à obtenir l'aide d'au moins deux membres de l'équipe de rédaction afin de l'assister dans la préparation et l'animation de l'atelier. Si aucun membre de l'équipe de rédaction n'est disponible à cet effet, l'EASO lancera un appel aux animateurs experts via le réseau EASO.
- **Sélection des participants** - L'EASO enverra ensuite une invitation au réseau EASO afin de désigner un nombre d'animateurs potentiels ayant une expérience spéciale dans ce domaine et qui sont intéressés et disponibles pour organiser des ateliers sur le programme de perfectionnement professionnel au niveau national. Si le nombre de désignations devait dépasser le nombre précisé dans l'invitation, l'EASO privilégiera une vaste représentation géographique ainsi qu'une sélection d'animateurs parmi les plus susceptibles d'animer l'exécution du programme au niveau national. Au besoin et conformément à son programme de travail et au plan de travail annuel, tel qu'adopté dans le cadre des réunions de planification et de coordination de l'EASO, l'EASO peut envisager l'organisation d'ateliers supplémentaires pour les animateurs.

Ateliers nationaux - En étroite collaboration avec le réseau EASO, l'EASO prendra contact avec les institutions de formation judiciaire pertinentes au niveau national afin de promouvoir l'organisation des ateliers à l'échelle nationale. Ce faisant, l'EASO soutiendra également l'engagement des membres des juridictions qui ont contribué à l'élaboration du programme ou ont participé aux ateliers de l'EASO pour animateurs.

Les ateliers avancés de l'EASO

L'EASO organisera également un atelier avancé annuel sur une sélection d'aspects du RAEC afin de promouvoir la coopération pratique et un dialogue de haut niveau parmi les membres des juridictions.

Détermination des domaines pertinents - Les ateliers avancés de l'EASO mettront l'accent sur des domaines présentant de grands écarts dans leur interprétation nationale ou des domaines dans lesquels l'évolution jurisprudentielle est jugée importante par le réseau EASO. Dans le cadre de ses réunions de planification et de coordination annuelles, l'EASO invitera le réseau EASO ainsi que le HCR et les membres du groupe consultatif à suggérer des domaines d'intérêt potentiels. S'inspirant de ces suggestions, l'EASO communiquera une proposition au réseau EASO, qui décidera finalement du domaine abordé par le prochain atelier. À chaque fois que cela s'avère pertinent, les ateliers aboutiront à l'élaboration d'un chapitre en lien avec le programme.

Méthodologie - Pour la préparation des ateliers, l'EASO cherchera à obtenir le soutien du réseau EASO, qui contribuera à l'élaboration de la méthodologie des ateliers (par exemple, débats sur les affaires, simulations d'audiences, etc.) et à la préparation des outils. La méthodologie appliquée déterminera le nombre maximal de participants à chaque atelier.

Participation aux ateliers de l'EASO - Conformément à la méthodologie et en concertation avec les associations judiciaires, l'EASO déterminera le nombre maximal de participants à chaque atelier. L'atelier sera ouvert aux membres des juridictions européennes et nationales et du réseau de juridictions de l'EASO, y compris au REFJ, à la FRA, à l'ERA et au HCR.

Préalablement à l'organisation de chaque atelier, l'EASO lancera une invitation publique au réseau de juridictions de l'EASO et aux organisations mentionnées ci-dessus, en précisant le thème de l'atelier, la méthodologie, le nombre maximal de participants et la date limite pour l'inscription. La liste des participants respectera une bonne représentation des membres des juridictions et privilégiera la première demande d'inscription reçue de chaque État membre.

Suivi et évaluation

Dans l'exercice de ses activités, l'EASO favorisera un dialogue ouvert et transparent avec le réseau EASO, les différents membres des juridictions, le HCR, les participants au processus de consultation et les participants aux activités de l'EASO, lesquels seront invités à faire part à l'EASO de tout avis ou suggestion susceptible d'améliorer la qualité de ses activités.

En outre, l'EASO dressera des questionnaires d'évaluation qui seront distribués lors de ses activités de perfectionnement professionnel. Les suggestions d'amélioration mineures seront directement intégrées par l'EASO, qui informera son réseau de l'évaluation générale de ses activités dans le cadre de sa réunion annuelle de planification et de coordination.

Chaque année, l'EASO communiquera également à son réseau un aperçu de ses activités ainsi que les suggestions de nouvelles améliorations pertinentes reçues et qui seront discutées lors des réunions de planification et de coordination annuelles.

Principes d'exécution

- Dans l'exercice de ses activités de perfectionnement professionnel, l'EASO tiendra dûment compte de la responsabilité publique de l'EASO et des principes applicables en matière de dépenses publiques.
- L'EASO et les juridictions européennes et nationales ont une responsabilité commune pour le programme de perfectionnement professionnel. Tous les partenaires s'efforceront de s'accorder sur le contenu de chacun des chapitres de manière à garantir un produit final élaboré sous les «auspices judiciaires».
- Le programme qui en résulte fera partie du programme de développement professionnel de l'EASO, y compris les droits y relatifs. En tant que tel, l'EASO actualisera le programme lorsque c'est nécessaire et associera pleinement les juridictions européennes et nationales au processus.
- Toutes les décisions relatives à l'exécution du programme et à la sélection des experts seront prises moyennant l'accord de tous les partenaires.
- L'élaboration, l'adoption et l'exécution du programme de perfectionnement professionnel seront réalisées conformément à la méthodologie applicable aux activités de perfectionnement professionnel offertes aux membres des juridictions.

Grand Harbour, La Valette, le 11 décembre 2014

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

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

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>“on a proper construction of Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as ‘armed conflict not of an international character’ under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict”.</p>	
<p>The actors of protection referred to in Article 7(1)(b) of Directive 2004/83 may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.</p>	
<p>The fundamental right guaranteed under Article 3 of the European Convention on Human Rights forms part of the general principles of Community law, observance of which is ensured by the Court. In addition, the case-law of the European Court of Human Rights is taken into consideration in interpreting the scope of that right in the Community legal order. However, it is Article 15(b) of Directive 2004/83 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, which corresponds, in essence, to Article 3 of the ECHR. By contrast, Article 15(c) of that directive is a provision, the content of which is different from that of Article 3 of the ECHR, and the interpretation of which must, therefore, be carried out independently, although with due regard for fundamental rights as they are guaranteed under the ECHR. 2. Article 15(c) of Directive 2004/83 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof, must be interpreted as meaning that:</p> <ul style="list-style-type: none"> – the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances; – the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat. <p>That interpretation is fully compatible with the European Convention on Human Rights (ECHR), including the case-law of the European Court of Human Rights relating to Article 3 of the ECHR.</p>	<p>Referenced cases concern main principles of EU law and not asylum law (CJEU , C-106/89, Marleasing SA v La Comercial Internacional de Alimentacion SA ; CJEU, C-188/07 Commune de Mesquer v Total France SA and Total International Ltd.) ECtHR - NA v UK, Application No 25904/07</p>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The evidence did not alter the position as described in HK and Others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC), namely that when considering the question of whether children were disproportionately affected by the consequences of the armed conflict in Afghanistan, a distinction had to be drawn between children who were living with a family and those who were not. That distinction was reinforced by the additional material before the Tribunal. Whilst it was recognised that there were some risks to which children who had the protection of the family were nevertheless subject, in particular the risk of landmines and the risks of being trafficked, they were not of such a level as to lead to the conclusion that all children would qualify for international protection. In arriving at this conclusion, account was taken of the necessity to have regard to the best interests of children.</p>	<p>AD Lee v SSHD [2011] EWCA Civ 348 DS (Afghanistan) [2011] EWCA Civ 305 FA (Iraq) (FC) (Respondent) v SSHD (Appellant) [2011] UKSC 22 ZH (Tanzania) v SSHD [2011] UKSC 4 FA (Iraq) v SSHD [2010] EWCA Civ 696 HK and Others (minors-indiscriminate violence-forced recruitment by Taliban-contact with family members) Afghanistan CG [2010] UKUT 378 (IAC) HM (Article 15(c)) (Iraq) v Secretary of State for the Home Department [2010] UKUT 331 (IAC) Elgafaji (Case C-465/07); [2009] 1WLR 2100 GS (Article 15(c): Indiscriminate Violence) Afghanistan CG [2009] UKAIT 0044 GS (Existence of internal armed conflict) Afghanistan [2009] UKAIT 00010 RQ (Afghan National Army, Hizb-i-Islami, risk) Afghanistan CG [2008] UKAIT 00013 HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 R (Mlloja) v SSHD [2005] EWHC 283 (Admin) R (Q & Others) v SSHD [2003] EWCA Civ 364, R (on the application of Howard League for Penal Reform) v Secretary of State for the Home Department & Anor [2002] EWHC 2497 (Admin)</p>
<p>Subsidiary protection was granted regardless of any personal reason.</p>	<p>ECHR 28 June 2011, Sufi et Elmi c/ UK No 8319/07 and No 11449/07</p>
<p>The Court quashed a country guidance decision on the application of Article 15(c) QD in Iraq because the Tribunal had not considered what was necessary to ensure that it heard proper argument in a case designed to give binding guidance for other applicants.</p>	<p>UK - Court of Appeal, 24 June 2009, QD & AH (Iraq) v Secretary of State for the Home Department with the United Nations High Commissioner for Refugees Intervening [2009] EWCA Civ 620 UK - Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd [1921] 2AC 438 UK - OM (Zimbabwe) v. Secretary of State for the Home Department, CG [2006] UKAIT 00077 UK - KH (Iraq) CG [2008] UKIAT 00023 UK - HM and Others (Iraq) v. Secretary of State for the Home Department, CG [2010] UKUT 331 (IAC) UK - In re F [1990] 2 AC UK - Clarke v Fennoscandia Ltd [2007] UKHL 56</p>
<p>The Tribunal considered the 'significance' of <i>Sufi and Elmi</i> and the rulings of the ECtHR in general. It observed that more extensive evidence was available to it than was considered by the ECtHR and so it was entitled to attribute weight and make its own findings of fact in these cases, which otherwise would have been disposed of by reference to <i>Sufi and Elmi</i>. 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 <i>Sufi and Elmi</i>. Given the general findings on risk of persecution (Article 2 of the Qualification Directive) and serious harm (Article 15) there was a similar finding that internal flight to Mogadishu or to any other area would not be reasonable. From Mogadishu international airport to the city, notwithstanding the risk of improvised explosive devices, was considered safe under TFG/AMISOM control. There may be safe air routes, but overland travel by road was not safe if it entailed going into an area controlled by Al Shabab. Safety and reasonableness would also be gauged by reference to the current famine. Individuals may be able to show increased risk e.g. women who were not accompanied by a protecting male.</p>	<p>(ECtHR): Aktas v France (2009) (Application No 43568/08); D v The United Kingdom (Application No 30240/96); Kokkinakis v Greece (1994) (Application No 14307/88); Moldova v Romania (Application No 41138/98 and 64320/01); MSS v Belgium and Greece (Application No 30696/09); N v United Kingdom (Application No 26565/05); NA v United Kingdom (Application No 25904/07); Salah Sheekh v The Netherlands (Application No 1948/04); Sufi and Elmi v United Kingdom (Application Nos 8319/07 and 11449/07); CJEU: Elgafaji v Staatssecretaris van Justitie C-465/07; UK and other national: R v Horseferry Road Magistrates Court ex-parte Bennett [1993] UKHL 10; Adan [1998] UKHL 15; Shah and Islam v Secretary of State for the Home Department [1999] UKHL 20 Omoruyi v Secretary of State for the Home Department [2001] Imm AR 175 Sepet & Anor, R (on the application of) v Secretary of State for the Home Department [2003] UKHL 15 R (Alconbury Developments Ltd) v Environment Secretary [2003] 2 AC 395 (...) See the judgment for more related cases</p>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>A person might have succeeded in a claim to protection based on poor socio-economic or dire humanitarian living conditions under the Refugee Convention or Article 15 of the Qualification Directive or Article 3, although to succeed on this basis alone the circumstances would have to be extremely unusual. In the context of Article 15(c) the serious and individual threat involved did not have to be a direct effect of the indiscriminate violence; it was sufficient if the latter was an operative cause. Assessment of the extent to which internally displaced persons faced greater or lesser hardships, at least outside Mogadishu, varied significantly depending on a number of factors. Note: This case was considered in 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.</p>	<p>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</p>
<p>The term 'internal armed conflict' has to be interpreted in line with the case law of the Federal Administrative Court in the light of the Geneva Conventions of 1949 including their Additional Protocols. If a conflict is not typical of a civil war situation or of guerrilla warfare, especially as concerns the degree of organisation of the parties to the conflict, they must be marked by a certain degree of durability and intensity in order to establish protection from deportation under Article 15(c) of the Qualification Directive. However, the conflict does not necessarily have to affect the whole territory of the state. This is clearly evident from the fact that subsidiary protection is not granted if an internal protection alternative exists.</p> <p>The requirements for subsidiary protection are met for the applicant as an internal armed conflict takes place in his home province Paktia which takes the form of a civil war-like conflict and of guerrilla warfare with the Afghan government forces, ISAF and NATO units on one side and the Taliban on the other. This conflict results in risks for a high number of civilians, which would be concentrated in the applicant's person in a manner that he would face a serious and individual threat upon return which could take the form of punishment and/or forced recruitment. As a result of what happened to the applicant before he left Afghanistan, and in any case because he is a male Pashtun who could be recruited for armed service, there is a sufficient degree of individualisation of a risk of punishment and/or forced recruitment which might even make the granting of refugee status applicable. Therefore, it is not necessary to clarify in this decision other open questions in this context, which might have to be clarified by a European Court in any case. This includes the exact requirements of individualisation of risk which generally affect the civilian population. This would include a more concrete definition of the term 'indiscriminate violence', which is part of Article 15(c) of the Qualification Directive but has not been included in Section 60 (7) (2) of the Residence Act. It also has not been clarified whether it is necessary in the context of Article 15(c) of the Qualification Directive to identify a certain 'density of danger' (as in the concept of group persecution) or whether it is sufficient to establish a close connection in time and space to an armed conflict.</p> <p>The applicant cannot avail of internal protection in other parts of Afghanistan. This is because the issue of whether he can be reasonably expected to stay in another part of his country of origin does not only involve risks related to persecution. It must also be taken into account whether he could safeguard at least a minimum standard of means of existence (minimum subsistence level). As a result of the poor security and humanitarian situation this is not the case in Afghanistan in general, and Kabul in particular. In contrast to its former judgment (decision of 7 February 2008, 8 UE 1913/06) the Court is now convinced that Kabul does not provide an internal protection alternative even to young single male returnees, unless they are well educated, have assets or may rely on their families. In this context it has to be considered as questionable that the concept of internal protection is not applied only in cases of extreme risk such as starvation or severe malnutrition. Furthermore, the applicant is able to work in a limited way only due to his epilepsy and he would not be able to secure the necessary medication.</p>	<p>(Germany) Administrative Court Stuttgart, 21.05.2007, 4 K 2563/07 Federal Administrative Court, 7 February 2008, 10 C 33.07 Federal Administrative Court, 29 May 2008, 10 C 11.07 Federal Administrative Court, 24 June 2008, 10 C 43.07 High Administrative Court Hessen, 10 February 2005, 8 UE 280/02.A High Administrative Court Hessen, 26 June 2007, 8 UZ 452/06.A High Administrative Court Hessen, 7 February 2008, 8 UE 1913/06</p>

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

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

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

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

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

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

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

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

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

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

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