



Articolo 15, lettera c),
della direttiva
«qualifiche»
(2011/95/UE)

Un'analisi giuridica

Gennaio 2015

EASO curriculum for members of courts and tribunals



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Il presente documento è stato redatto da un gruppo di lavoro costituito dai giudici Mihai Andrei Balan (Romania), John Barnes, in pensione, (Regno Unito), Bernard Dawson (Regno Unito), Michael Hoppe (Germania), Florence Malvasio (coordinatore del gruppo di lavoro, Francia), Marie-Cécile Moulin-Zys (Francia), Julian Phillips (Regno Unito), Hugo Storey (coordinatore del gruppo di lavoro, Regno Unito), Karin Winter (Austria), da Carole Aubin (Francia) e Vera Pazderova (Repubblica ceca), collaboratrici giuridiche presso il tribunale, nonché da Roland Bank, consigliere giuridico, (Alto commissariato delle Nazioni Unite per i rifugiati, UNHCR).

Sono stati invitati a tale scopo dall'Ufficio europeo di sostegno per l'asilo (EASO) conformemente alla metodologia di cui all'allegato B. Il sistema di assunzione dei membri del gruppo di lavoro è stato discusso nel corso di varie riunioni svoltesi nel 2013 tra l'EASO e i due organismi con i quali ha uno scambio di lettere formale, ossia l'Associazione internazionale dei giudici del diritto del rifugiato (IARLJ) e l'Associazione dei giudici amministrativi europei (AEAJ), nonché le associazioni giudiziarie nazionali di ciascuno Stato membro collegate attraverso la rete degli organi giudiziari dell'EASO.

Il gruppo di lavoro si è riunito in tre occasioni a Malta in aprile, giugno e settembre 2014. Osservazioni sul progetto di discussione sono state espresse da singoli membri della rete di giudici dell'EASO, vale a dire i giudici Johan Berg (Norvegia), Uwe Berlit (Germania), Jakub Camrda (Repubblica ceca), Jacek Chlebny (Polonia), Harald Dörig (Germania), Hesther Gorter (Paesi Bassi), Andrew Grubb (Regno Unito), Fedora Lovricevic-Stojanovi (Croazia), John McCarthy (Regno Unito), Walter Muls (Belgio), John Nicholson (Regno Unito), Juha Rautiainen (Finlandia), Marlies Stapels-Wolfrath (Paesi Bassi) e Boštjan Zalar (Slovenia). Sono state presentate osservazioni anche dai membri del forum consultivo dell'EASO, in particolare il Consiglio europeo per i rifugiati e gli esuli e il Forum Réfugiés-Cosi. Inoltre, hanno espresso il loro parere sul testo il Global Migration Centre (Centro per la migrazione mondiale — Istituto di alti studi internazionali e dello sviluppo di Ginevra), il National Centre for Competence in Research — On the Move (Centro nazionale di competenze nella ricerca sulle migrazioni — Università di Friburgo) e la rivista Refugee Survey Quarterly (Oxford University Press). Tutte queste osservazioni sono state considerate nella riunione tenutasi il 18 e 19 settembre 2014. Il gruppo di lavoro è grato a tutti coloro che hanno fornito osservazioni le quali si sono rivelate molto utili per completare il capitolo.

Il presente capitolo sarà regolarmente aggiornato conformemente alla metodologia di cui all'allegato B.

Sul sito Internet dell'EASO all'indirizzo www.easo.europa.eu (disponibile unicamente in inglese) è reperibile una raccolta della principale giurisprudenza pertinente degli organi giudiziari europei e nazionali relativa alle questioni individuate nell'analisi giuridica. Il gruppo di lavoro ringrazia per la preziosa assistenza fornita nella raccolta di tale giurisprudenza attraverso la banca dati europea del diritto di asilo (EDAL), la Newsletter on European Asylum Issues (NEAIS) dell'Università Radboud di Nijmegen e i membri della rete degli organi giudiziari dell'EASO.

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Elenco delle abbreviazioni

AEAJ	Association of European Administrative Judges (Associazione dei giudici amministrativi europei)
CEDU	Convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali
CGUE	Corte di giustizia dell'Unione europea
CNDA	Cour nationale du droit d'asile (Corte nazionale per il diritto d'asilo)
Corte EDU	Corte europea dei diritti dell'uomo
EASO	Ufficio europeo di sostegno per l'asilo
IARLJ	International Association of Refugee Law Judges (Associazione internazionale dei giudici del diritto del rifugiato)
ICTY	International Criminal Tribunal for the former Yugoslavia (Tribunale penale internazionale per l'ex Jugoslavia)
IHL	Diritto umanitario internazionale
UE	Unione europea
UKAIT	United Kingdom Asylum and Immigration Tribunal (Tribunale per l'asilo e l'immigrazione del Regno Unito)
UKUT	United Kingdom Upper Tribunal (Tribunale superiore del Regno Unito)
UNHCR	Alto commissariato delle Nazioni Unite per i rifugiati

Prefazione

Lo scopo della presente analisi giuridica è mettere a disposizione degli organi giudiziari che trattano casi di protezione internazionale uno strumento utile per comprendere le questioni inerenti alla protezione, come quella presentata in questo capitolo in riferimento all'articolo 15, lettera c), della direttiva «qualifiche»⁽¹⁾. L'applicazione di tale disposizione, che per sua natura può influire sull'esito di molti casi riguardanti le domande di protezione internazionale, non si è rivelata semplice per i giudici. Da alcuni studi emergono divergenze d'interpretazione nei vari Stati membri⁽²⁾. Le seguenti considerazioni sono intese ad aiutare il lettore a comprendere la direttiva «qualifiche» attraverso la giurisprudenza della Corte di giustizia dell'Unione europea (CGUE) e della Corte europea dei diritti dell'uomo (Corte EDU) e le pertinenti decisioni degli organi giudiziari degli Stati membri. La giurisprudenza nazionale menzionata non è esaustiva, ma intende illustrare il modo in cui la direttiva «qualifiche» è stata recepita e interpretata. Il capitolo riflette la conoscenza dello stato attuale del diritto da parte del gruppo di lavoro. Si deve rammentare che l'articolo 15, lettera c) potrebbe essere oggetto di ulteriori sentenze della CGUE e si rammenta al lettore l'importanza di tenersi aggiornato al riguardo.

Si presume che il lettore conosca la struttura generale della normativa dell'Unione europea (UE) in materia di asilo quale risulta dall'*acquis* dell'UE relativo all'asilo; il capitolo ha lo scopo di fornire assistenza non solo a coloro che hanno scarsa o nessuna esperienza della sua applicazione al processo decisionale giudiziario, ma anche ai più esperti.

La presente analisi prende in esame solo una parte dell'articolo 15, che contiene tre categorie di persone che necessitano di protezione sussidiaria che altrimenti non hanno diritto alla protezione prevista dalla convenzione sui rifugiati. Al momento opportuno saranno realizzati altri capitoli che esamineranno le altre categorie che in sostanza devono essere protette da rischi comparabili a quelli che violano gli articoli 2 e 3 della convenzione europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali (CEDU).

Il capitolo è suddiviso in due parti. La prima parte analizza gli elementi costitutivi dell'articolo 15, lettera c). La seconda parte esamina in quale modo detto articolo deve essere applicato nella pratica. L'allegato A contiene uno «schema decisionale» che riporta le domande che gli organi giudiziari devono porre al momento di applicare l'articolo 15, lettera c).

La CGUE ha sottolineato che l'articolo 15, lettera c) deve essere considerato nel contesto della direttiva «qualifiche» nel suo insieme. Inoltre, la presente analisi non esamina tutti gli elementi giuridici, come l'esclusione, che sono indispensabili per una valutazione della protezione sussidiaria. Tali aspetti saranno oggetto di futuri capitoli. La direttiva «qualifiche» prevede norme minime che gli Stati membri devono adottare; gli Stati membri hanno facoltà di ampliare le categorie e la natura della protezione fornita.

Le parti della direttiva «qualifiche» pertinenti per la presente analisi sono le seguenti:

Considerando

- Considerando 6 — Le conclusioni di Tampere precisano [...] che lo status di rifugiato dovrebbe essere completato da misure relative a forme sussidiarie di protezione che offrano uno status adeguato a chiunque abbia bisogno di protezione internazionale.

⁽¹⁾ Direttiva 2011/95/UE del Parlamento europeo e del Consiglio, del 13 dicembre 2011, recante norme sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di beneficiario di protezione internazionale, su uno status uniforme per i rifugiati o per le persone aventi titolo a beneficiare della protezione sussidiaria, nonché sul contenuto della protezione riconosciuta (GU L 337 del 20.12.2011, pag. 9, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:IT:PDF>). Come specificato nei considerando 50 e 51, la Danimarca, l'Irlanda e il Regno Unito non sono vincolati dalla direttiva «qualifiche» rifiuta, poiché non hanno partecipato alla sua adozione. L'Irlanda e il Regno Unito restano vincolati dalla direttiva 2004/83/CE del Consiglio, del 29 aprile 2004, recante norme minime sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta (GU L 304 del 30.9.2004, pag. 12, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:IT:HTML>). Agli Stati membri vincolati dalla direttiva «qualifiche» rifiuta è stato richiesto di mettere in vigore la legislazione nazionale necessaria per conformarsi a tale direttiva entro il 21 dicembre 2013. La direttiva «qualifiche» rifiuta introduce varie modifiche sostanziali della direttiva 2004/83/CE, mantenendo tuttavia la stessa formulazione dell'articolo 15, lettera c) e del considerando corrispondente, sebbene quest'ultimo abbia attualmente una numerazione diversa (considerando 35, ex considerando 26).

⁽²⁾ Cfr., ad esempio, *Safe at Last? Law and Practice in Selected Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, UNHCR, luglio 2011, <http://www.unhcr.org/4e2d7f029.pdf>. Il considerando 8 della direttiva «qualifiche» rifiuta rileva che «sussistono forti divergenze fra gli Stati membri per quanto riguarda la concessione della protezione».

- Considerando 12 — Lo scopo principale della presente direttiva è quello, da una parte, di assicurare che gli Stati membri applichino criteri comuni per identificare le persone che hanno effettivamente bisogno di protezione internazionale e, dall'altra, di assicurare che un livello minimo di prestazioni sia disponibile per tali persone in tutti gli Stati membri.
- Considerando 33 — Inoltre è opportuno stabilire i criteri per la definizione e gli elementi essenziali della protezione sussidiaria. La protezione sussidiaria dovrebbe avere un carattere complementare e supplementare rispetto alla protezione dei rifugiati sancito dalla convenzione di Ginevra.
- Considerando 34 — È necessario introdurre criteri comuni per l'attribuzione, alle persone richiedenti protezione internazionale, della qualifica di beneficiari della protezione sussidiaria. Tali criteri dovrebbero essere elaborati sulla base degli obblighi internazionali derivanti da atti internazionali in materia di diritti dell'uomo e sulla base della prassi esistente negli Stati membri.
- Considerando (35) — I rischi a cui è esposta in generale la popolazione o una parte della popolazione di un paese di norma non costituiscono di per sé una minaccia individuale da definirsi come danno grave.

Articolo 2, lettera f)

«Persona avente titolo a beneficiare della protezione sussidiaria»: cittadino di un paese terzo o apolide che non possiede i requisiti per essere riconosciuto come rifugiato ma nei cui confronti sussistono fondati motivi di ritenere che, se ritornasse nel paese di origine, o, nel caso di un apolide, se ritornasse nel paese nel quale aveva precedentemente la dimora abituale, correrebbe un rischio effettivo di subire un grave danno come definito all'articolo 15, e al quale non si applica l'articolo 17, paragrafi 1 e 2, e il quale non può o, a causa di tale rischio, non vuole avvalersi della protezione di detto paese.

Articolo 15

Sono considerati «danni gravi»: a) la condanna o l'esecuzione della pena di morte; o b) la tortura o altra forma di pena o trattamento inumano o degradante ai danni del richiedente nel suo paese di origine; o c) la minaccia grave e individuale alla vita o alla persona di un civile derivante dalla violenza indiscriminata in situazioni di conflitto armato interno o internazionale.

Le altre parti di detta direttiva, ove a esse si faccia riferimento nella presente analisi, sono illustrate nelle sezioni pertinenti.

L'articolo 78 del trattato sul funzionamento dell'Unione europea stabilisce che l'Unione sviluppa una politica comune in materia di asilo, di protezione sussidiaria e di protezione temporanea, volta a offrire uno status appropriato a qualsiasi cittadino di un paese terzo che necessita di protezione internazionale. Detta politica deve essere conforme alla convenzione di Ginevra del 28 luglio 1951 e al protocollo del 31 gennaio 1967 relativi allo status dei rifugiati, e agli «altri trattati pertinenti».

Nella sua proposta del 2011 relativa alla direttiva «qualifiche», la Commissione europea ha espresso l'obiettivo generale della direttiva:

«la Carta dei diritti fondamentali dell'Unione europea ha ribadito il diritto di asilo all'articolo 18. Conformemente, la presente proposta si basa sul presupposto che il regime in materia di asilo dovrebbe essere fondato sull'applicazione piena ed integrale della convenzione di Ginevra, integrata da misure che offrano protezione sussidiaria a coloro che non rientrano nel campo di applicazione della convenzione, ma che necessitano altrimenti di protezione internazionale»⁽³⁾.

Nell'ottobre 2009 la Commissione europea ha presentato la sua proposta di rifusione della direttiva sulla qualifica e sullo status delle persone bisognose di protezione internazionale⁽⁴⁾.

La Commissione europea ha proposto, tra l'altro, di chiarire concetti importanti, quali «soggetti che offrono protezione», «protezione all'interno del paese d'origine» o «appartenenza a un determinato gruppo sociale» al fine

⁽³⁾ Commissione europea, Proposta di direttiva del Consiglio recante norme sull'attribuzione, a cittadini di paesi terzi ed apolidi, della qualifica di rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto dello status di protezione, COM(2011) 510 del 12.9.2011 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0510:FIN:IT:PDF>).

⁽⁴⁾ Cfr. il comunicato stampa IP/09/1552, http://europa.eu/rapid/press-release_IP-09-1552_it.htm

di consentire alle autorità nazionali di applicare i criteri con più sicurezza e di identificare più rapidamente le persone che hanno effettivamente bisogno di protezione.

La Commissione non ha proposto di modificare l'articolo 15, lettera c), dal momento che la CGUE aveva fornito indicazioni interpretative nella causa *Elgafaji* ⁽⁵⁾ e aveva stabilito che, sebbene avesse un ambito di applicazione più ampio rispetto all'articolo 3 della CEDU, le sue disposizioni erano pienamente compatibili con la CEDU ⁽⁶⁾.

Il riferimento ad «articolo» nel presente capitolo è da intendersi come riferimento alle disposizioni della direttiva «qualifiche», salvo diversamente indicato.

⁽⁵⁾ Sentenza della Corte del 17 febbraio 2009, causa C-465/07, *Meki Elgafaji e Noor Elgafaji/Staatssecretaris van Justitie*.

⁽⁶⁾ Commissione europea, Proposta di direttiva del Parlamento europeo e del Consiglio recante norme minime sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di beneficiario di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta, COM(2009) 551 del 21.10.2009, pag. 6 (<http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:52009PC0551&from=IT>).

Approccio riguardo all'interpretazione

Tenuto conto del fatto che la CGUE non si è ancora pronunciata su vari elementi fondamentali dell'articolo 15, lettera c), è indispensabile che i giudici nazionali incaricati di interpretarli tengano presente e applichino gli orientamenti dell'UE per quanto riguarda l'interpretazione della normativa dell'UE. Come ha stabilito la CGUE al punto 27 della sentenza *Diakité* ⁽⁷⁾, il significato e la portata di elementi fondamentali devono essere stabiliti «sulla base del loro significato abituale nel linguaggio corrente, prendendo in considerazione il contesto nel quale sono utilizzati e gli obiettivi perseguiti dalla normativa in cui sono richiamati (sentenze del 22 dicembre 2008, *Wallentin-Hermann*, C-549/07, Racc. pag. I-11061, punto 17, e del 22 novembre 2012, *Probst*, C-119/12, punto 20)».

L'approccio della CGUE è stato descritto come sistemico o «meta-teleologico», che si concentra non solo sull'oggetto e lo scopo delle disposizioni pertinenti, ma anche su quelli del regime dell'Unione europea nel complesso, basandosi sulle norme di tutela dei diritti umani contenute nella Carta dei diritti fondamentali dell'Unione europea (Carta) e sui valori fondanti dell'organizzazione ⁽⁸⁾.

Approccio olistico

Dall'adozione dell'approccio summenzionato si deduce che gli elementi fondamentali dell'articolo 15, lettera c), al momento di interpretarli, devono essere intesi come interconnessi e non devono essere letti indipendentemente gli uni dagli altri. In questo modo si garantisce la coerenza con l'approccio adottato in merito agli elementi fondamentali della definizione di rifugiato. Occorre rammentare che il diritto dell'Unione europea prevale sul diritto nazionale.

Contesto dell'articolo 15, lettera c) nelle decisioni sulle domande di protezione internazionale

Nella sentenza dell'8 maggio 2014 pronunciata nella causa C-604/12, *HN/Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, la CGUE ha confermato che:

«29. Si deve rilevare in proposito che il dettato dell'articolo 2, lettera e), della direttiva 2004/83 definisce la persona ammissibile alla protezione sussidiaria come il cittadino di un paese terzo o apolide che non possiede i requisiti per essere riconosciuto come rifugiato.

30. L'uso del termine «sussidiaria» nonché il dettato di tale articolo indicano che lo status di protezione sussidiaria si rivolge ai cittadini di paesi terzi che non soddisfano le condizioni richieste per beneficiare dello status di rifugiato.

31. Del resto, emerge dai considerando 5, 6 e 24 della direttiva 2004/83 che i criteri minimi per il riconoscimento della protezione sussidiaria devono consentire di completare la protezione dei rifugiati sancita dalla convenzione di Ginevra, identificando le persone che hanno effettivamente bisogno di protezione internazionale e offrendo loro uno status appropriato (sentenza *Diakité*, C-285/12, EU:C:2014:39, punto 33).

32. Da tali elementi si desume che la protezione sussidiaria prevista dalla direttiva 2004/83 costituisce un complemento alla protezione dei rifugiati sancita dalla convenzione di Ginevra».

Pertanto, quando decidono in merito a casi di protezione internazionale, gli organi giudiziari devono in primo luogo esaminare se una persona è ammissibile alla protezione dei rifugiati. Se la risposta è negativa, è necessario

⁽⁷⁾ Sentenza della Corte del 30 gennaio 2014, causa C-285/12, *Aboubacar Diakité/Commissaire général aux réfugiés et aux apatrides*.

⁽⁸⁾ Ad esempio di Violeta Moreno Lax, *Of Autonomy, Autarky, Purposiveness and Fragmentation: The Relationship between EU Asylum Law and International Humanitarian Law*, in D. Cantor e J.-F. Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law*, pag. 298.

valutare se tale persona è ammissibile alla protezione sussidiaria ai sensi dell'articolo 15, lettere a), b) ⁽⁹⁾ o c). Il fatto di concentrarsi sull'articolo 15, lettera c) non deve distogliere l'attenzione dal quadro più ampio della protezione.

Se una persona non è ammissibile alla protezione internazionale, ad esempio in seguito ad esclusione, può essere necessario anche considerare l'articolo 3 della CEDU e, ove opportuno, l'articolo 4 e l'articolo 19, paragrafo 2, della Carta (cfr. il considerando 16 della direttiva «qualifiche»).

I ruoli della CGUE e della Corte EDU

La CGUE ha il compito di garantire un'interpretazione e un'applicazione uniformi del diritto dell'Unione europea. Ai sensi dell'articolo 267 del trattato sul funzionamento dell'Unione europea, la CGUE è competente a rispondere alle domande dei tribunali nazionali in materia di diritto dell'Unione europea (il procedimento di rinvio pregiudiziale) e quindi fornisce sentenze interpretative.

In base al procedimento di cui all'articolo 267, in realtà la CGUE non si pronuncia sul merito del caso in esame. Dopo che la CGUE ha fornito la sua interpretazione, il caso viene rinviato al tribunale nazionale affinché si pronunci sulla base di tale interpretazione. Le decisioni della CGUE sono vincolanti per gli Stati membri ⁽¹⁰⁾.

La Corte EDU esamina le domande di singole persone e le richieste di pronuncia in via pregiudiziale degli Stati membri in cui si denunciano casi di presunta violazione di un diritto ai sensi della CEDU da parte di uno dei 47 Stati aderenti alla convenzione. A differenza della CGUE, la Corte EDU statuisce nelle cause a essa sottoposte e, se necessario, ciò riguarda anche l'accertamento dei fatti. Le sue sentenze sono vincolanti per le parti interessate alla domanda presentata. Altrimenti le sentenze della Corte hanno efficacia persuasiva qualora fatti o questioni simili siano stati sottoposti agli organi giudiziari.

⁽⁹⁾ L'ambito di applicazione dell'articolo 15, lettera b) è più limitato rispetto a quello dell'articolo 3 della CEDU, cfr. le conclusioni dell'avvocato generale del 17 luglio 2014 nella causa C-542/13, *M'Bodj/Conseil des Ministres*.

⁽¹⁰⁾ Per un utile guida sulle modalità dei rinvii alla CGUE, si vedano le raccomandazioni all'attenzione dei giudici nazionali relative alla presentazione di domande di pronuncia pregiudiziale (2012/C 338/01), pubblicate nella GU C 338 del 6.11.2012 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:IT:PDF>). Cfr. anche la guida per le pronunce in via pregiudiziale pubblicata dall'International Association of Refugee Law Judges (IARLJ, Associazione internazionale dei giudici del diritto del rifugiato) sul suo sito Internet nel maggio 2014 (www.iarlj.org).

Prima parte — Gli elementi

1.1. Rischio effettivo di grave danno

L'articolo 2, lettera f) fa riferimento a un «rischio effettivo di subire un grave danno come definito all'articolo 15».

La protezione sussidiaria riguarda i cittadini di un paese terzo che non possiedono i requisiti per ottenere l'asilo, ma nei cui confronti sussistono fondati motivi di ritenere che, se ritornassero nel paese di origine, correrebbero un «rischio effettivo di subire un grave danno» [cfr. l'articolo 2, lettera f), in precedenza articolo 2, lettera e)]. Per quanto riguarda la necessità di dimostrare la sussistenza di fondati motivi, gli Stati membri possono ritenere che il richiedente sia tenuto a produrre quanto prima tutti gli elementi necessari a motivare la domanda di protezione internazionale. D'altro canto, lo Stato membro è tenuto, in cooperazione con il richiedente, a esaminare tutti gli elementi significativi della domanda (articolo 4, paragrafo 1). L'avvocato generale Sharpston ha sottolineato nelle sue conclusioni nelle cause riunite A, B e C ⁽¹¹⁾ che:

«[i]l procedimento di cooperazione ai sensi dell'articolo 4, paragrafo 1, della direttiva “qualifiche” non è un processo. Piuttosto, si tratta di un'opportunità per il richiedente di esporre i fatti e di presentare le sue prove e per le autorità competenti di raccogliere informazioni, di vedere e ascoltare il richiedente, di valutare il suo atteggiamento e di mettere in questione la plausibilità e la coerenza di tali fatti esposti. La parola “cooperazione” presuppone una collaborazione tra le due parti in vista di un obiettivo comune. È vero che tale disposizione consente agli Stati membri di imporre al richiedente di produrre gli elementi necessari a fondare la sua domanda. Da ciò non consegue, tuttavia, che sia conforme all'articolo 4 della direttiva “qualifiche” imporre requisiti probatori che abbiano l'effetto di rendere praticamente impossibile o eccessivamente difficile (ad esempio, un livello di prova elevato, quale quello oltre ogni ragionevole dubbio o un livello di prova quale quello richiesto nei procedimenti penali o aventi carattere quasi penale) per un richiedente produrre gli elementi necessari a fondare la sua richiesta ai sensi della direttiva “qualifiche”. [...] Tuttavia, quando vengono date informazioni in relazione alle quali vi sono forti ragioni di dubitare la veridicità delle produzioni di un richiedente l'asilo, l'individuo deve fornire una spiegazione soddisfacente alle presunte discrepanze».

L'elemento di «rischio effettivo» determina il grado di prova richiesto per l'ammissibilità alla protezione sussidiaria ⁽¹²⁾. In altre parole, denota il grado di probabilità che la situazione di violenza indiscriminata sia tale da causare un grave danno.

Finora la CGUE non ha fornito un'interpretazione precisa della nozione di «rischio effettivo». Tuttavia, la Corte ha confermato che in relazione all'articolo 15, lettera c), un rischio legato solo alla situazione generale di un paese non è sufficiente in linea di principio ⁽¹³⁾. Tuttavia, possono esistere situazioni eccezionali in cui il grado di violenza indiscriminata raggiunge un livello così elevato che una persona, per la sua sola presenza, correrebbe un rischio effettivo ⁽¹⁴⁾. Inoltre, si può ritenere che il grado di «rischio effettivo» escluda i rischi che sono al livello di mera possibilità o così remoti da essere inverosimili ⁽¹⁵⁾. Il grado di rischio richiesto in base a tale articolo è descritto in modo più dettagliato nella sezione 1.3 «Violenza indiscriminata» e nella sezione 1.6 «Minaccia grave e individuale».

⁽¹¹⁾ Conclusioni dell'avvocato generale, cause riunite C-148/13, C-149/13 e C-150/13, A, B e C, 17 luglio 2014, punti 73 e 74.

⁽¹²⁾ Cfr. l'articolo 2, lettera d), della direttiva «qualifiche» che per l'ammissibilità allo status di rifugiato richiede un «timore fondato» di persecuzione.

⁽¹³⁾ Sentenza *Elgafaji*, cit. alla nota 5, punto 37.

⁽¹⁴⁾ *Ibidem*, punti 35 e 43. Al punto 36 la CGUE afferma inoltre che l'articolo 15, lettera c) ha una propria «sfera di applicazione», e ciò implica necessariamente che essa è estesa ai danni gravi di cui alle lettere a) e b). Tuttavia, in riferimento alla causa *Elgafaji*, al punto 226 della sentenza emessa il 28 giugno 2011 nella causa *Sufi e Elmi/Regno Unito*, cause n. 8319/07 e n. 11449/07, la Corte EDU ha specificato di non essere convinta che l'articolo 3 della convenzione, come interpretata nella causa N.A. contro Regno Unito (causa n. 25904/07, 17 luglio 2008) non offra una protezione comparabile a quella garantita in base alla direttiva «qualifiche». In particolare, rileva che la soglia fissata da entrambi gli articoli può, in circostanze eccezionali, essere raggiunta in seguito a una situazione di violenza generale d'intensità tale che qualsiasi persona che ritorni nella regione in questione correrebbe un rischio per la sua sola presenza in detta regione. Non è certo quindi che l'articolo 15, lettera c), nella sua versione attuale, vada oltre l'articolo 3 secondo l'interpretazione data dalla Corte EDU nella causa *Sufi e Elmi*.

⁽¹⁵⁾ Corte EDU, sentenza del 7 luglio 1989, *Soering/Regno Unito*, causa n. 14308/88, punto 88.

L'elemento di «rischio effettivo» caratterizza la natura e l'intensità dell'ingerenza nei diritti di una persona; per essere seria tale ingerenza deve essere sufficientemente grave. L'articolo 15 definisce tre tipi specifici di danni che costituiscono le condizioni che devono essere soddisfatte affinché una persona possa essere considerata ammissibile alla protezione sussidiaria. Inoltre, la protezione sussidiaria non può essere concessa per qualsiasi tipo di danno, discriminazione o violazione dei diritti nei confronti di una persona, ma solo per uno di questi tre tipi di danni che soddisfano i criteri di cui all'articolo 15, lettere a), b) o c).

Tenendo presente lo scopo del presente documento, il testo che segue è incentrato principalmente sui danni gravi di cui all'articolo 15, lettera c), in base al quale si considera un danno grave «la minaccia grave e individuale alla vita o alla persona di un civile derivante dalla violenza indiscriminata in situazioni di conflitto armato interno o internazionale».

Nella sentenza *Elgafaji*, la CGUE, pur non escludendo una sovrapposizione, ha ribadito che l'articolo 15, lettera c) riguarda il rischio di un danno più generale rispetto all'articolo 15, lettere a) e b) ⁽¹⁶⁾. Secondo la sentenza, per ottenere la protezione è necessario che vi sia una «minaccia [...] alla vita o alla persona di un civile», piuttosto che specifici atti di violenza. Inoltre, se il livello di violenza indiscriminata è sufficientemente elevato, tale minaccia è inerente a una situazione generale di «conflitto armato interno o internazionale». Infine, la violenza in questione all'origine di detta minaccia viene qualificata come «indiscriminata», termine che implica che essa possa estendersi ad alcune persone a prescindere dalla loro situazione personale ⁽¹⁷⁾. I singoli elementi di tale definizione sono trattati in maniera approfondita nelle parti successive del presente documento.

Inoltre, i tipi di danni cui si fa riferimento nelle categorie dell'articolo 15 possono coincidere, in una certa misura e da un punto di vista fattuale, non solo tra loro, ma anche con gli atti di persecuzione come definiti dall'articolo 9 ⁽¹⁸⁾. In questo caso, è necessario tenere presente la priorità di concedere lo status di rifugiato purché siano soddisfatte le altre condizioni di cui all'articolo 2, lettera d). La CGUE ha stabilito che l'articolo 15, lettera b) corrisponde sostanzialmente all'articolo 3 della CEDU ⁽¹⁹⁾.

1.2. Conflitto armato

La frase utilizzata nell'articolo 15, lettera c) è «conflitto armato interno o internazionale».

1.2.1. Conflitto armato interno

Il significato di tale espressione è stato chiarito dalla CGUE nella sentenza *Diakité*. Al punto 35 la CGUE ha ribadito che:

«[...] l'articolo 15, lettera c), della direttiva 2004/83 deve essere interpretato nel senso che si deve ammettere l'esistenza di un conflitto armato interno, ai fini dell'applicazione di tale disposizione, quando le forze governative di uno Stato si scontrano con uno o più gruppi armati o quando due o più gruppi armati si scontrano tra loro, senza che sia necessario che tale conflitto possa essere qualificato come conflitto armato che non presenta un carattere internazionale ai sensi del diritto internazionale umanitario e senza che l'intensità degli scontri armati, il livello di organizzazione delle forze armate presenti o la durata del conflitto siano oggetto di una valutazione distinta da quella relativa al livello di violenza che imperversa nel territorio in questione».

Tale interpretazione presenta due aspetti.

⁽¹⁶⁾ Sentenza *Elgafaji*, cit. alla nota 5, punto 33.

⁽¹⁷⁾ *Ibidem*, punto 34.

⁽¹⁸⁾ Cfr. l'articolo 9, paragrafo 2, della direttiva «qualifiche» che include un elenco non esaustivo dei tipi di danni che possono essere considerati atti di persecuzione. Cfr. la causa C-472/13, pendente dinanzi alla CGUE, *Andre Lawrence Shepherd/Repubblica federale di Germania*.

⁽¹⁹⁾ Sentenza *Elgafaji*, cit. alla nota 5, punto 28. Cfr. anche la causa C-562/13, pendente dinanzi alla CGUE, *Centre public d'action sociale d'Ottignies-Louvain-La-Neuve/Moussa Abdida*, conclusioni dell'avvocato generale del 4 settembre 2014.

Breve definizione — Fornisce una breve definizione di conflitto armato interno (che esiste quando «le forze governative di uno Stato si scontrano con uno o più gruppi armati o quando due o più gruppi armati si scontrano tra loro»⁽²⁰⁾).

Rifiuto di orientamenti come quelli basati sul diritto umanitario internazionale — Respinge esplicitamente due approcci alternativi riguardo alla definizione di conflitto armato interno, che sono descritti come un approccio basato sul diritto umanitario internazionale e un approccio secondo cui un conflitto armato interno può essere qualificato come tale solo se ha una determinata intensità, coinvolge forze armate con un livello di organizzazione o ha una determinata durata. Poiché quest'ultimo è essenzialmente un approccio basato sul diritto umanitario internazionale, è ragionevole presumere che la CGUE respinga questo tipo di orientamenti⁽²¹⁾.

1.2.1.1. Differenziazione tra definizione di conflitto armato interno e determinazione del livello di violenza

Nella sentenza *Diakité*, la CGUE ha ritenuto particolarmente importante che gli organi giudiziari tenessero separate:

- la valutazione dell'esistenza di un conflitto armato, e
- la valutazione del livello di violenza.

L'esistenza di un conflitto armato è una condizione necessaria ma non sufficiente per l'applicazione dell'articolo 15, lettera c). In relazione al rischio generale per i civili⁽²²⁾, l'articolo 15, lettera c) si applica se, dalla valutazione del livello di violenza, emerge che il conflitto armato è caratterizzato da una violenza indiscriminata che raggiunge un livello talmente elevato che i civili in quanto tali corrono un rischio effettivo di subire un danno grave. Pertanto, al punto 30 della sentenza *Diakité*, la CGUE ha osservato:

«Inoltre, occorre rammentare che l'esistenza di un conflitto armato interno potrà portare alla concessione della protezione sussidiaria solamente nella misura in cui si ritenga eccezionalmente che gli scontri tra le forze governative di uno Stato e uno o più gruppi armati o tra due o più gruppi armati siano all'origine di una minaccia grave e individuale alla vita o alla persona del richiedente la protezione sussidiaria, ai sensi dell'articolo 15, lettera c), della direttiva, a motivo del fatto che il grado di violenza indiscriminata che li caratterizza raggiunge un livello talmente elevato da far sussistere fondati motivi per ritenere che un civile rinvitato nel paese in questione o, se del caso, nella regione in questione correrebbe, per la sua sola presenza sul territorio di questi ultimi, un rischio effettivo di subire la detta minaccia (cfr., in questo senso, sentenza *Elgafaji*, cit., punto 43)».

1.2.1.2. Basi di definizione

La CGUE specifica che la sua definizione di conflitto armato è basata sul «significato abituale [di tali termini] nel linguaggio corrente, prendendo in considerazione il contesto nel quale sono utilizzati e gli obiettivi perseguiti dalla normativa in cui sono richiamati» (sentenza *Diakité*, punto 27). Abbiamo già osservato che in questo modo la Corte chiarisce che deve essere adottato uno specifico approccio dell'Unione europea in relazione all'interpretazione dell'articolo 15, lettera c).

È chiaro che la CGUE intende sottolineare che gli organi giudiziari non devono negare la protezione di cui all'articolo 15, lettera c) sulla base del fatto che gli scontri armati che si verificano non soddisfano la soglia prevista dal diritto umanitario internazionale o da qualsiasi corpus di norme estrinseco comparabile.

Al punto 17 della sentenza *Diakité* la CGUE ha affermato che la prima questione alla quale doveva rispondere era costituita da due parti: i) se l'esistenza di un conflitto armato deve essere valutata sulla base dei criteri stabiliti dal diritto internazionale umanitario e ii) «in caso di risposta negativa, quali criteri debbano essere utilizzati per valutare l'esistenza di un tale conflitto [...]».

⁽²⁰⁾ Sentenza *Diakité*, cit. alla nota 7, punto 28.

⁽²¹⁾ *Ibidem*, punto 21.

⁽²²⁾ Cfr. tuttavia anche la sezione 1.6.1 relativa al rischio specifico e la sezione 1.6.2 relativa alla nozione di «progressività».

1.2.1.3. Applicazione della definizione della CGUE

La CGUE esprime una chiara risposta negativa al punto i), ma riguardo al punto ii) si limita a offrire la sua definizione molto breve del linguaggio corrente. Pertanto, nella pratica gli organi giudiziari sono lasciati liberi di elaborare e/o applicare tale definizione. La definizione della CGUE è chiaramente più ampia di quella del diritto umanitario internazionale e potrebbe includere, ad esempio, gli scontri armati derivanti dalle guerre per la droga in alcuni paesi dell'America latina ⁽²³⁾. Pertanto, a seconda della situazione del paese, in talune circostanze può comunque essere necessario per gli organi giudiziari decidere se esiste uno scontro armato nel senso descritto dalla Corte. Ad esempio, non sembrerebbe che le sommosse e le insurrezioni in cui manca interamente o prevalentemente l'uso di armi possano essere definite scontro armato. Il solo uso di armi potrebbe non essere sufficiente salvo che tale uso avvenga tra gruppi armati o da parte di detti gruppi. La sola esistenza di gruppi armati potrebbe non essere sufficiente, ad esempio, se nella pratica tali gruppi non usano armi. Dovrebbe anche essere dimostrata l'esistenza di uno scontro (ossia di una lotta) tra di essi o tra un gruppo armato e le forze di uno Stato.

1.2.1.4. Devono essere presenti due o più gruppi armati

La definizione della CGUE sembrerebbe escludere una situazione in cui un solo gruppo armato si scontra con la popolazione in generale, sebbene l'avvocato generale Mengozzi nelle sue conclusioni nella causa Diakité — analogamente alla Corte d'appello inglese nella causa QD (Iraq) ⁽²⁴⁾ — abbia sostenuto che occorre prendere in considerazione anche tale situazione, sebbene possa essere relativamente rara.

1.2.2. Conflitto armato internazionale

Nella sentenza Diakité la CGUE non ha cercato di fornire una definizione di «conflitto armato internazionale» ma, coerentemente con la sua tesi riguardo alla nozione di «conflitto armato interno», sembra che anche a tali termini debba essere attribuito il loro significato abituale nel linguaggio corrente e che quindi essi non debbano imporre la soglia prevista dal diritto umanitario internazionale. Tuttavia, è probabile (come nel diritto umanitario internazionale) che si verifichino situazioni in cui un paese è contemporaneamente in uno stato di conflitto armato interno e internazionale.

1.3. Violenza indiscriminata

Con l'espressione «violenza indiscriminata» si fa riferimento alla fonte del tipo specifico di danni gravi di cui all'articolo 15, lettera c). Poiché detto articolo ha lo scopo di offrire protezione (sussidiaria) ai civili che subiscono le conseguenze di un conflitto armato, il significato di «violenza indiscriminata» deve essere interpretato in senso ampio.

Le esigenze di protezione di una specifica popolazione civile in un paese o in una delle sue regioni non dovrebbero essere stabilite sulla base di una definizione restrittiva dei termini «indiscriminata» o «violenza», ma tramite una valutazione attenta e olistica dei fatti accompagnata da un'analisi approfondita e precisa del livello di violenza, per quanto riguarda la natura della violenza e la sua portata.

1.3.1. Definizione di violenza indiscriminata della CGUE

Nella sentenza emessa nella causa Elgafaji, la CGUE ha ritenuto che il termine «indiscriminata» implichi che la violenza «possa estendersi ad alcune persone a prescindere dalla loro situazione personale» ⁽²⁵⁾.

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

⁽²⁴⁾ Corte d'appello (Regno Unito), QD (Iraq)/Secretary of State for the Home Department [2009] EWCA Civ. 620, punto 35.

⁽²⁵⁾ Sentenza Elgafaji, cit. alla nota 5, punto 34.

La CGUE ha evidenziato la «situazione eccezionale» necessaria per l'applicazione dell'articolo 15, lettera c) ai civili in generale. Al punto 37 della sentenza Elgafaji la Corte ha chiarito che, al riguardo, occorre che:

«[...] il grado di violenza indiscriminata che caratterizza il conflitto armato in corso [...] raggiunga un livello così elevato che sussistono fondati motivi di ritenere che un civile rientrato nel paese in questione o, se del caso, nella regione in questione correrebbe, per la sua sola presenza sul territorio di questi ultimi, un rischio effettivo di subire la minaccia grave di cui all'art. 15, lettera c), della direttiva».

1.3.2. Giurisprudenza nazionale

Dopo la sentenza Elgafaji, gli organi giudiziari, anziché cercare di definire ulteriormente il concetto, si sono proposti di individuare gli indicatori della sua natura e portata (cfr. la seconda parte, sezione 2.2). Il Tribunale superiore del Regno Unito (UKUT) ha stabilito che i bombardamenti e le sparatorie:

«si possano considerare propriamente indiscriminati nel senso che, sebbene possano avere obiettivi generali o specifici, inevitabilmente espongono il semplice civile che si trovi, anche occasionalmente, sulla scena a ciò che nelle argomentazioni è descritto come danno collaterale. I mezzi adottati possono essere bombe, che possono colpire altri oltre al bersaglio, o sparatorie, che costituiscono un rischio minore, ma comunque effettivo, di danno collaterale»⁽²⁶⁾.

Riguardo agli obiettivi generali, l'UKUT ha fornito l'esempio delle esplosioni di bombe in luoghi affollati come i mercati o i luoghi in cui si svolgono processioni religiose o assembramenti⁽²⁷⁾. Interpretando la sentenza Elgafaji, il Tribunale amministrativo federale tedesco è giunto alla conclusione che non è necessario stabilire se gli atti di violenza costituiscano una violazione del diritto umanitario internazionale, data l'ampiezza della nozione di violenza utilizzata nella direttiva «qualifiche»⁽²⁸⁾. Nella giurisprudenza nazionale si è molto discusso della misura in cui si deve tenere conto degli effetti indiretti della violenza indiscriminata.

Il Consiglio di Stato francese ha fatto riferimento agli attacchi e agli abusi contro la popolazione civile e ai trasferimenti forzati quali possibili caratteristiche della violenza indiscriminata⁽²⁹⁾. Tali caratteristiche sono state accertate nel caso di un richiedente che aveva dovuto viaggiare attraverso regioni dell'Afghanistan interessate da tale violenza⁽³⁰⁾; la valutazione non ha richiesto un'analisi della situazione generale a livello nazionale, ma delle regioni interessate⁽³¹⁾.

In due sentenze, il Tribunale amministrativo della Repubblica di Slovenia ha proposto di tenere conto dei seguenti fattori nella valutazione del livello di violenza: i morti e i feriti in battaglia tra la popolazione civile, nonché le possibili dinamiche temporali del numero di morti e feriti, il numero degli sfollati interni, le condizioni umanitarie di base nei centri per gli sfollati, ivi compresi la situazione alimentare e igienica, la sicurezza e il grado di «incapacità dello Stato» di garantire le infrastrutture materiali di base, l'ordine, l'assistenza sanitaria, l'approvvigionamento di prodotti alimentari e l'acqua potabile. Il Tribunale amministrativo ha sottolineato che il valore protetto in relazione all'articolo 15, lettera c) non è la mera «sopravvivenza» dei richiedenti asilo, ma anche il divieto di trattamento disumano⁽³²⁾. La Corte suprema slovena ha stabilito che tali fattori sono «giuridicamente rilevanti»⁽³³⁾.

⁽²⁶⁾ Tribunale superiore, Camera per l'asilo e l'immigrazione (Regno Unito), sentenza del 13 novembre 2012, HM e altri [articolo 15, lettera c)] Iraq CG/Secretary of State for the Home Department, [2012] UKUT 00409(IAC), punto 42.

⁽²⁷⁾ *Ibidem*.

⁽²⁸⁾ Bundesverwaltungsgericht (Germania), sentenza del 27 aprile 2010, 10 C 4.09, ECLI:DE:BVerwG:2010:270410U10C4.09.0, punto 34.

⁽²⁹⁾ Conseil d'État (Francia), sentenza del 3 luglio 2009, n. 320295, Office français de protection des réfugiés et apatrides/Baskarathas, n. 320295.

⁽³⁰⁾ CNDA (Francia), sentenza dell'11 gennaio 2012, Samadi, n. 11011903 C.

⁽³¹⁾ CNDA (Francia), sentenza del 28 marzo 2013, Mohamed Adan, n. 12017575 C.

⁽³²⁾ Tribunale amministrativo della Slovenia, sentenze del 25 settembre 2013, I U 498/2012-17 e 29 gennaio 2014 I U 1327/2013-10.

⁽³³⁾ Corte suprema della Repubblica di Slovenia, sentenza del 10 aprile 2014, I Up 117/2014.

1.3.3. UNHCR

Analogamente, l'UNHCR ritiene che il termine «indiscriminata» comprenda sia gli atti di violenza non diretti a un oggetto o una persona in particolare, sia gli atti di violenza che sono diretti a un oggetto o una persona in particolare, ma i cui effetti possono danneggiare altre persone ⁽³⁴⁾.

1.3.4. Tipiche forme di violenza indiscriminata nei conflitti armati

La natura della violenza può essere un fattore importante quando si tratta di stabilire se la violenza sembra essere indiscriminata. Tra gli esempi di violenza indiscriminata possono essere inclusi atti quali i bombardamenti massicci mirati, i bombardamenti aerei, gli attacchi di guerriglia, i danni collaterali negli attacchi diretti o casuali in quartieri urbani, gli assedi, la tattica della terra bruciata, i franchi tiratori, le squadre della morte, gli attacchi in luoghi pubblici, i saccheggi, l'uso di dispositivi esplosivi improvvisati ecc.

1.3.5. Il ruolo della violenza mirata

Più la valutazione della natura della violenza indica che la persona interessata è stata o potrebbe essere vittima di un'aggressione mirata, più gli organi giudiziari dovrebbero verificare con attenzione l'effettiva ammissibilità di una persona alla protezione dei rifugiati, non alla protezione sussidiaria. In ogni caso, non esiste alcun motivo per escludere la violenza mirata dall'analisi del livello di violenza indiscriminata nella zona o nella regione pertinenti del paese. La violenza mirata comprende azioni mirate generiche e specifiche: alcune forme di violenza, sebbene mirate, possono colpire un numero significativo di civili ⁽³⁵⁾.

Nella seconda parte (sezioni 2.2 e 2.3) è riportata un'ulteriore analisi del modo in cui è possibile valutare il livello di violenza indiscriminata.

1.4. Derivante dalla

La protezione sussidiaria di cui all'articolo 15, lettera c) è concessa a qualsiasi persona nei cui confronti sussistono fondati motivi di ritenere che, se ritornasse nel paese di origine, la persona interessata correrebbe un rischio effettivo di una minaccia grave e individuale alla sua vita o persona *derivante dalla* violenza indiscriminata. Un elemento fondamentale nella valutazione della causalità è il livello di tale violenza ⁽³⁶⁾. Tenuto conto della definizione lata di violenza indiscriminata, il requisito di un nesso causale non dovrebbe essere applicato in modo restrittivo. Gli effetti della violenza indiscriminata possono essere indiretti e diretti. È necessario tenere conto in una certa misura anche degli effetti indiretti degli atti di violenza, quale il completo deterioramento dell'ordine pubblico derivante dai conflitti.

Gli atti criminali derivanti da un deterioramento dell'ordine pubblico e altri effetti indiretti della violenza indiscriminata dovrebbero essere considerati una violenza indiscriminata ai sensi dell'articolo 15, lettera c)?

Nel 2008 il Tribunale amministrativo federale tedesco ha stabilito che la violenza criminale, non commessa da una delle parti in conflitto, dovrebbe essere presa in considerazione solo al momento di valutare la natura della minaccia grave e individuale alla vita o alla persona ⁽³⁷⁾. Secondo il tribunale, le minacce generali alla vita che sono una mera conseguenza di un conflitto armato, ad esempio in seguito al deterioramento delle condizioni di approvvigionamento, non possono essere incluse nella valutazione dell'intensità del pericolo ⁽³⁸⁾ e pertanto non costituiscono una minaccia ai sensi dell'articolo 15, lettera c). Nel 2010 il Tribunale superiore del Regno Unito ha riconosciuto che la criminalità generale che causa danni aventi il grado di gravità necessario potrebbe essere una conseguenza di un conflitto armato, in cui il normale ordine pubblico è compromesso. Un grave deteriora-

⁽³⁴⁾ UNHCR, *Safe at last?*, cit. alla nota 2, pag. 103.

⁽³⁵⁾ Sentenza HM e altri, cit. alla nota 26, punto 292.

⁽³⁶⁾ Cfr. H. Lambert, «Causation in International Protection from Armed Conflict», in D. Cantor e J.-F. Durieux (eds), cit., pag. 65.

⁽³⁷⁾ Bundesverwaltungsgericht (Germania), sentenza del 17 novembre 2011, 10 C 13.10, ECLI: DE: BVerwG 2011:171111U10C13.10.0, punto 23.

⁽³⁸⁾ Bundesverwaltungsgericht (Germania), sentenza del 24 giugno 2008, 10 C 43.07, ECLI DE: BVerwG 2008:240608U10C43.07.0, punto 35.

mento dell'ordine pubblico che consenta che l'anarchia e la criminalità causino i danni gravi di cui all'articolo 15, lettera c) può avere come effetto, anche se non necessariamente come scopo, una violenza indiscriminata⁽³⁹⁾. Deve esistere un nesso causale sufficiente tra la violenza e il conflitto, tuttavia non è necessario che la violenza indiscriminata che colpisce i civili sia causata direttamente dai combattenti che partecipano al conflitto⁽⁴⁰⁾. Allo stesso modo, il Consiglio di Stato francese⁽⁴¹⁾ e il Consiglio di Stato olandese⁽⁴²⁾ hanno ritenuto necessario prendere in considerazione gli effetti indiretti dei conflitti armati.

Analogamente, l'UNHCR evidenzia a questo proposito che occorre tenere conto del deterioramento dell'ordine pubblico in seguito a una violenza indiscriminata o un conflitto armato. In particolare, la fonte da cui emana la violenza indiscriminata è immateriale⁽⁴³⁾.

Non è ancora possibile prevedere se il nuovo e ampio orientamento adottato dalla CGUE riguardo alla nozione di conflitto armato nella sentenza *Diakité* comporterà anche una più ampia accettazione del fatto che gli effetti indiretti della violenza indiscriminata possano costituire una violenza indiscriminata ai sensi dell'articolo 15, lettera c).

1.5. Civili

1.5.1. Ambito di applicazione personale dell'articolo 15, lettera c): confinato ai civili

Da un punto di vista logico, essere un civile è una condizione preliminare necessaria per poter beneficiare della protezione ai sensi dell'articolo 15, lettera c)⁽⁴⁴⁾. Se un richiedente non è un civile e quindi esula dall'ambito di applicazione dell'articolo 15, lettera c), è necessario verificare se l'ammissibilità allo status di rifugiato o la protezione dei rifugiati di cui all'articolo 15, lettere a) e b) sono state considerate o dovrebbero essere considerate, salvo che il richiedente rientri nell'ambito di applicazione della clausola di esclusione (articoli 12 e 17). Possono essere pertinenti anche gli articoli 2 e 3 della CEDU (che non sono soggetti a clausole di esclusione).

1.5.2. Orientamento riguardo alla definizione che potrebbe respingere la definizione basata sul diritto umanitario internazionale

Tenuto conto dell'ampiezza delle argomentazioni formulate dalla CGUE nella sentenza *Diakité* per respingere il ricorso ai criteri basati sul diritto umanitario internazionale per definire il conflitto armato, si deve presumere che una definizione di civile basata su tale diritto non sarebbe accettata⁽⁴⁵⁾. Per contro, la Corte cerca di attribuire ai termini in questione il loro significato abituale nel linguaggio corrente, prendendo in considerazione il contesto nel quale sono utilizzati e gli obiettivi perseguiti dalla normativa in cui sono richiamati (sentenza *Diakité*, punto 27). Si potrebbe dire che il fatto che anche nel diritto umanitario internazionale non emerga un'unanimità riguardo alla definizione di tali termini⁽⁴⁶⁾ rende ancora più inadeguata una definizione basata su detto diritto.

⁽³⁹⁾ Sentenza HM e altri, cit. alla nota 26, punti 79-80.

⁽⁴⁰⁾ *Ibidem*, punto 45.

⁽⁴¹⁾ Sentenza Baskarathas, cit. alla nota 29.

⁽⁴²⁾ Raad van State (Paesi Bassi), sentenza del 7 luglio 2008, 200802709/1, ECLI:NL:RVS:2008:BD7524.

⁽⁴³⁾ UNHCR, *Safe at last?*, cit. alla nota 2, pagg. 60 e 103.

⁽⁴⁴⁾ C. Bauloz, cit. alla nota 23, pag. 253: «Subsidiary protection under 15(c) is carefully limited *ratione personae* to civilian third-country nationals or civilian stateless persons not qualifying as refugees».

⁽⁴⁵⁾ Non esiste una definizione fissa basata sul diritto umanitario internazionale, tuttavia si ritiene ampiamente che quella data da G. Mettraux in *International Crimes and the ad hoc Tribunals* (OUP, 2005) rappresenti efficacemente la definizione basata sul diritto consuetudinario; i civili sono definiti come *coloro che non sono, o non sono più, membri delle forze armate o di un gruppo militare organizzato appartenente a una parte in conflitto*. Nel diritto umanitario internazionale vi è una presunzione a favore della protezione e nell'articolo 50, paragrafo 1, del protocollo aggiuntivo I si stabilisce che *nel caso in cui si nutrano dubbi sul fatto che una persona sia un civile, detta persona è considerata civile*. Cfr. anche E. Wilmshurst e S. Breau, *Perspective on the ICRC Study on Customary International Humanitarian Law*, pagg. 10-11, 111-112, 406.

⁽⁴⁶⁾ Benché sia fondamentale per il principio di distinzione del diritto umanitario internazionale, lo studio del Comitato internazionale della Croce Rossa sul diritto umanitario internazionale consuetudinario stabilisce alla regola 1 che *le parti in conflitto devono sempre distinguere i civili dai combattenti* (J. Henckaerts e L. Doswald-Beck, *Customary International Humanitarian Law*).

Le definizioni che si trovano nei vocabolari, data la loro notevole variabilità, sono poco utili e in ogni caso non forniscono un significato conforme all'oggetto e alle finalità della direttiva «qualifiche». Nell'ambito del linguaggio corrente si potrebbero definire come civili coloro che non sono combattenti o le persone che non combattono, tuttavia tale definizione è così breve da non aggiungere nulla di sostanziale.

1.5.3. Differenziazione tra militari e non militari

Nella sentenza Diakité la CGUE contempla chiaramente che potrebbe verificarsi un conflitto armato anche senza il coinvolgimento dello Stato o senza che lo Stato sia una delle parti in conflitto (o nel quale «due o più gruppi armati si scontrano tra loro»); da ciò si può desumere che tali termini sono utilizzati prevalentemente per distinguere il personale non militare da quello militare. Il personale militare può comprendere i membri delle forze armate o di polizia di uno Stato e i membri dei gruppi di ribelli o d'insorti (talvolta definiti «combattenti irregolari»).

1.5.4. Civili = tutti non combattenti?

Se si facesse ricorso al significato del termine «civile» stabilito nel diritto internazionale in materia di diritti umani⁽⁴⁷⁾, che riconosce sempre più la complementarità di tale diritto e del diritto umanitario internazionale, potrebbe essere necessario accordare al termine lo stesso significato attribuitogli nell'articolo 3, comune alle quattro convenzioni di Ginevra del 1949: «le persone che non partecipano direttamente alle ostilità, compresi i membri delle forze armate che abbiano deposto le armi e le persone messe fuori combattimento [...]». L'ultima parte di questa dichiarazione lascia intendere che non è sufficiente non partecipare più alle ostilità; una persona deve adoperarsi per disimpegnarsi attivamente⁽⁴⁸⁾.

Varie decisioni nazionali rispecchiano tali orientamenti. Nella sentenza ZQ (soldato in servizio)⁽⁴⁹⁾ il Tribunale del Regno Unito per l'asilo e l'immigrazione (UKAIT) ha sottolineato che, nel diritto umanitario internazionale, il fatto che un soldato non sia in servizio o sia assente per malattia non implica necessariamente uno stato civile. Il tribunale ha menzionato la camera d'appello del Tribunale penale internazionale per l'ex Jugoslavia (ICTY), che al punto 114 della sentenza Pubblico ministero/Blaskic⁽⁵⁰⁾ ha osservato che «la situazione specifica della vittima al momento in cui sono commessi i crimini [crimini di guerra o crimini contro l'umanità] potrebbe non essere determinante ai fini del suo stato civile o non civile. Se è in effetti un membro di un'organizzazione armata, il fatto che non sia armato o in combattimento al momento in cui sono commessi i crimini non gli accorda lo stato civile». Nella sentenza HM e altri, il Tribunale supremo del Regno Unito ha concluso che la definizione di «civile» non dovrebbe comprendere chiunque partecipi a un conflitto armato, che include i membri delle forze armate o di polizia⁽⁵¹⁾. Il comitato internazionale della Croce Rossa interpreta i civili nei conflitti armati non internazionali come tutte le persone che non sono membri delle forze armate dello Stato o di gruppi armati organizzati di una parte in conflitto.

⁽⁴⁷⁾ Il considerando 24 della direttiva «qualifiche» stabilisce quanto segue: «È necessario introdurre criteri comuni per l'attribuzione, alle persone richiedenti protezione internazionale, della qualifica di beneficiari della protezione sussidiaria. Tali criteri dovrebbero essere elaborati sulla base degli obblighi internazionali derivanti da atti internazionali in materia di diritti dell'uomo e sulla base della prassi esistente negli Stati membri». L'avvocato generale Mengozzi ha affermato nella sentenza Diakité che dai lavori preparatori risulta chiaramente che «la nozione di protezione sussidiaria è basata principalmente sugli strumenti internazionali relativi ai diritti dell'uomo».

⁽⁴⁸⁾ Nella sentenza del 1^o luglio 1997, Kalac/Turchia, causa n. 20704/92, la Corte EDU ha stabilito che, scegliendo la carriera militare, Kalac aveva accettato spontaneamente un sistema di disciplina militare che per sua stessa natura implicava la possibilità che gli venissero imposte limitazioni di alcuni dei diritti e delle libertà dei membri delle forze armate che non potevano essere imposte ai civili; cfr. anche la sentenza della Corte EDU dell'8 giugno 1976, Engel e altri/Paesi Bassi, causa n. 5100/71 e altre, punto 57. Più in generale, il diritto internazionale in materia di diritti umani ritiene che in relazione a situazioni di conflitto armato il diritto umanitario internazionale svolga un ruolo complementare e che sia in effetti una *lex specialis*: cfr. Orna Ben-Naftali (ed.), *International Humanitarian Law and International Human Rights Law*, pagg. 3-10.

⁽⁴⁹⁾ Tribunale per l'asilo e l'immigrazione (Regno Unito) (cui è subentrato il Tribunale supremo del Regno Unito), sentenza del 2 dicembre 2009, ZQ (soldato volontario) Iraq/Secretary of State for the Home Department, CG [2009] UKAIT 00048.

⁽⁵⁰⁾ ICTY, Camera d'appello, sentenza del 29 luglio 2004, Pubblico ministero/Blaskic, causa n. IT-95-14-A.

⁽⁵¹⁾ Sentenza HM e altri, cit. alla nota 26, menzionata anche nella sentenza ZQ (soldato volontario), cit. alla nota 49.

1.5.5. Il termine «civile» esclude tutti i membri delle forze armate e di polizia?

Poiché la CGUE ritiene che in merito al significato di termini fondamentali si debba considerare il contesto nel quale sono utilizzati e gli obiettivi perseguiti dalla normativa in cui sono richiamati (sentenza Diakité, punto 27), il termine «civile» potrebbe avere un significato più ampio, in modo tale da denotare tutti coloro che non sono combattenti o non appartengono alle forze armate o tutti coloro che sono messi fuori combattimento. Pertanto, ad esempio, a differenza della posizione che emerge dal diritto umanitario internazionale, un membro delle forze armate o di polizia che corra solo il rischio effettivo di subire danni gravi mentre è fuori servizio nella sua regione o zona di origine potrebbe essere considerato un civile. In riferimento alla motivazione espressa nella sentenza Diakité, si potrebbe pensare che la Corte abbia ritenuto di dover attribuire al termine una definizione di fatto, anziché reputare che denoti uno stato giuridico preconcetto⁽⁵²⁾.

1.5.6. La mera appartenenza a un gruppo armato è sufficiente per escludere lo stato di civile?

Dalla motivazione della CGUE nella sentenza B e D⁽⁵³⁾ non sarebbe corretto cercare semplicemente di dedurre lo stato di non civile di una persona dalla sua appartenenza a un gruppo armato. Nella sentenza B e D, che riguardava l'applicazione delle clausole di esclusione dallo status di rifugiato della direttiva «qualifiche», la Corte si è rifiutata di effettuare assimilazioni automatiche basate sulle risoluzioni del Consiglio di sicurezza delle Nazioni Unite o sugli strumenti dell'Unione europea adottati nell'ambito della politica estera e di sicurezza comune. Al punto 89 della sentenza B e D, la CGUE ha affermato che non sussiste una relazione diretta tra la definizione di atti terroristici contenuta nel presente materiale e quella della direttiva «qualifiche» «quanto agli obiettivi perseguiti». Pertanto, «non è giustificato che l'autorità competente, qualora intenda escludere una persona dallo status di rifugiato [...] si fondi unicamente sulla sua appartenenza ad un'organizzazione che è presente in un elenco adottato al di fuori dell'ambito istituito dalla direttiva». L'inserimento in un elenco o in una definizione stabilita non può sostituire una valutazione individuale di fatti precisi. Neppure «la partecipazione alle attività di un'organizzazione terroristica [...] può necessariamente e automaticamente rientrare tra le cause di esclusione previste [dalla] direttiva».

1.5.7. Indicatori dello stato di civile

Partendo dal presupposto che non si adotti automaticamente una definizione dal diritto umanitario internazionale o da qualsiasi altro corpus di norme estrinseco e che invece, analogamente a quanto deciso nella sentenza B e D, la CGUE richieda un «esame completo di tutte le circostanze proprie a ciascun caso individuale», potrebbero essere utili i seguenti indicatori (non necessariamente coerenti tra loro).

- Un civile è una persona che non partecipa al conflitto e cerca semplicemente di continuare a vivere nonostante la situazione di conflitto.
- Il fatto di non essere armata può non essere sufficiente per rendere una persona un civile, che nel conflitto deve anche essere neutrale.
- È improbabile che le persone che partecipano volontariamente a gruppi armati siano considerate civili.
- La definizione di civile sembrerebbe essere intesa a escludere i partecipanti a una guerra e, pertanto, comprende le persone che non partecipano o non parteciperebbero direttamente alle ostilità.
- Occorre valutare il ruolo di un singolo nell'organizzazione e considerare se una persona abbia agito (o avrebbe agito) sotto costrizione. D'altro canto, si dovrebbe anche considerare che, ad esempio, una rappresentanza politica apparentemente civile in un'insurrezione di ribelli potrebbe essere responsabile di decisioni che comportano l'uccisione di persone.
- I singoli che lavorano per le istituzioni militari, ivi compresi gli ospedali militari, possono avere difficoltà a essere considerati civili, anche se sono costretti a seguire la catena di comando militare.

⁽⁵²⁾ C. Bauloz, cit. alla nota 23, sostiene che «si dovrebbe dare la preferenza a una definizione di fatto rispetto a categorie giuridiche fisse incentrate su stati troppo rigidi».

⁽⁵³⁾ Sentenza della Corte del 9 novembre 2010, cause riunite C-57/09 e C-101/09, Bundesrepublik Deutschland/B e D.

- Una persona che ha un compito civile nell'esercito, come un medico, può essere considerata un civile, salvo che il posto implichi un grado militare.
- Non avere un grado militare può rendere più facile per una persona far valere uno stato civile di fatto.
- L'articolo 43 sulle forze armate del protocollo aggiuntivo delle convenzioni di Ginevra, del 12 agosto 1949, relative alla protezione delle vittime di conflitti armati internazionali (protocollo 1), dell'8 giugno 1977, esclude dalla definizione di forze armate il personale medico e religioso rientrando nell'ambito di applicazione dell'articolo 33 della terza convenzione. Si può ritenere che un dottore non combattente dell'esercito in un ospedale militare svolga un compito essenzialmente umanitario, anziché militare, promuovendo il diritto alla vita protetto in base alla Carta e alla CEDU⁽⁵⁴⁾.
- La percezione visiva è uno dei criteri per riconoscere i civili e distinguerli dai combattenti. Per la determinazione dello stato è necessario esaminare solo l'incarico della persona come non civile e se la persona potrebbe essere identificata come non civile al ritorno.

1.5.8. Valutazione orientata al futuro

Si dovrebbe tenere presente che, nel valutare tutte le richieste di protezione internazionale, gli organi giudiziari considerano principalmente il rischio ipotetico al ritorno, ossia quale sarà la situazione del richiedente se rientrerà nel paese di origine. Il fatto che una persona fosse in precedenza un civile o un combattente non consente necessariamente di stabilire se al ritorno sarà (o sarà percepita come) un civile o un combattente.

1.5.9. In caso di dubbio

Qualora si adotti una valutazione basata sulle circostanze specifiche di ciascun caso al fine di stabilire se una persona è da considerarsi un civile (ossia se al suo ritorno sia considerata tale), si dovrebbe attribuire importanza al principio menzionato nell'articolo 50, paragrafo 1, del protocollo aggiuntivo I, relativo alla definizione di civile e popolazione civile, secondo cui: in caso di dubbio, detta persona sarà considerata civile.

La commissione belga per il contenzioso in materia di stranieri⁽⁵⁵⁾ ha stabilito che, riguardo a un richiedente che aveva cooperato con le autorità competenti in materia di asilo nel tentativo di accertare un diritto, il beneficio del dubbio accordato dovrebbe favorire la considerazione di tale persona come civile.

1.5.10. Ex combattenti e arruolamento forzato

Riguardo agli ex combattenti (compresi i bambini soldato) va considerato che lo scopo della direttiva «qualifiche» non era introdurre ulteriori clausole di esclusione, ma identificare le persone bisognose di protezione. Una clausola di esclusione dovrebbe essere considerata di norma solo in un momento successivo. La corte nazionale per il diritto d'asilo francese ha osservato in un caso afgano che un ex soldato, che aveva lasciato l'esercito afgano, può essere considerato un civile⁽⁵⁶⁾.

L'UNHCR ha raccomandato il seguente approccio:

«a questo proposito, il termine “civile” di cui all'articolo 15, lettera c) non dovrebbe servire a escludere gli ex combattenti che possono dimostrare di aver rinunciato alle attività militari. Il fatto che una persona fosse un combattente in passato non necessariamente la esclude dalla protezione internazionale se ha effettivamente e permanentemente rinunciato alle attività militari. I criteri per stabilire se una persona soddisfa questo criterio sono stati definiti dal comitato esecutivo dell'UNHCR»⁽⁵⁷⁾.

⁽⁵⁴⁾ Cfr. ad esempio Commissione dei diritti dell'uomo, decisione del 10 luglio 1984, Stewart/Regno Unito, causa n. 10044/82, punto 15, secondo cui «il concetto che il diritto alla vita di ogni persona è protetto dalla legge» impone allo Stato non solo di astenersi dal togliere la vita «intenzionalmente», ma anche di adottare misure adeguate per salvaguardare la vita. Questo caso riguardava l'applicazione dell'articolo 2, paragrafo 2, della CEDU.

⁽⁵⁵⁾ Conseil du contentieux des étrangers/Raad voor Vreemdelingenbetwistingen (Belgio), sentenza del 4 dicembre 2007, causa 4460.

⁽⁵⁶⁾ CNDA (Francia), sentenza del 24 gennaio 2013, Miakhail, n. 12018368 C+.

⁽⁵⁷⁾ UNHCR, «Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence», gennaio 2008, pag. 7 (<http://www.refworld.org/docid/479df742.html>).

Ciò pone in evidenza che un ex combattente, soprattutto se in precedenza apparteneva alle forze armate dello Stato, potrebbe ancora essere considerato un combattente al suo ritorno.

Il ministero degli Interni britannico ha stabilito nei suoi orientamenti in materia di protezione umanitaria per la procedura di asilo, del 15 maggio 2013, che solo i non combattenti autentici, ossia coloro che non partecipano al conflitto, possono usufruire della protezione ai sensi dell'articolo 15, lettera c): potrebbero essere inclusi gli ex combattenti che hanno effettivamente e permanentemente rinunciato all'attività armata.

In generale, un richiedente che è stato arruolato forzatamente ⁽⁵⁸⁾ come soldato/combattente non perde lo stato di civile, tuttavia, come nel caso dei bambini soldato, sembra che per decidere al riguardo si debba adottare un approccio che tenga conto degli elementi di fatto, simile a quello adottato dalla CGUE nella causa B e D: cfr. la precedente sezione 1.5.6.

1.6. Minaccia grave e individuale

L'articolo 15, lettera c) prevede che un richiedente dimostri di correre un rischio effettivo di subire una grave minaccia di danni e non necessariamente di subire specifici atti di violenza. La minaccia è intesa come insita in una situazione generale di conflitto e per questo motivo, in sostanza, detto articolo riguarda un rischio di danni più generale rispetto all'articolo 15, lettera b) o c): cfr. la sentenza Elgafaji, punti 32-34. Al punto 45 la CGUE ha stabilito quanto segue:

«Per questi motivi, la Corte (Grande Sezione) dichiara: L'art. 15, lettera c), della direttiva 2004/83/EC, in combinato disposto con l'art. 2, lettera e), della stessa direttiva, deve essere interpretato nel senso che:

- l'esistenza di una minaccia grave e individuale alla vita o alla persona del richiedente la protezione sussidiaria non è subordinata alla condizione che quest'ultimo fornisca la prova di essere specifico oggetto di minaccia a motivo di elementi peculiari della sua situazione personale;
- l'esistenza di una siffatta minaccia può essere considerata, in via eccezionale, provata qualora il grado di violenza indiscriminata che caratterizza il conflitto armato in corso, valutato dalle autorità nazionali competenti cui sia stata presentata una domanda di protezione sussidiaria o dai giudici di uno Stato membro ai quali venga deferita una decisione di rigetto di una tale domanda, raggiunga un livello così elevato che sussistono fondati motivi di ritenere che un civile rientrato nel paese in questione o, se del caso, nella regione in questione correrebbe, per la sua sola presenza sul territorio di questi ultimi, un rischio effettivo di subire la detta minaccia».

1.6.1. Rischio generale e rischio specifico

Dall'analisi della CGUE nella sentenza Elgafaji è chiaro che l'esistenza di una minaccia grave e individuale alla vita o alla persona del richiedente non è subordinata alla condizione che quest'ultimo fornisca la prova di essere specifico oggetto di minaccia a motivo di elementi peculiari della sua situazione personale. Si può ritenere che un richiedente corra il rischio generale di subire tale minaccia se, in via eccezionale, il grado di violenza indiscriminata che caratterizza il conflitto armato in corso raggiunge un livello così elevato che sussistono fondati motivi di ritenere che un civile correrebbe, per la sua sola presenza nella zona o nella regione pertinenti, un rischio effettivo di subire tale minaccia. In altre parole, l'«individualizzazione» necessaria per dimostrare che la minaccia è «individuale» può essere conseguita attraverso i fattori di «rischio specifico» che dipendono dalle caratteristiche o dalle circostanze particolari di una persona o attraverso i fattori di «rischio generale» derivanti da una situazione eccezionale di un livello di violenza molto elevato.

⁽⁵⁸⁾ Occorre distinguere le persone arruolate in base alla legge del paese di origine (che potrebbe prevedere l'obbligatorietà del servizio militare) dalle persone costrette a unirsi a un gruppo armato involontariamente; cfr. anche UNHCR, «Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees», 3 dicembre 2013, in particolare i punti 35-41.

1.6.2. Concetto di «scala progressiva»

Ai sensi dell'articolo 15, lettera c), il fatto che una persona presenti un rischio generale o specifico non dovrebbe essere considerato una dicotomia. La CGUE ha elaborato ciò che è noto come concetto di «scala progressiva», nel senso che:

«tanto più il richiedente è eventualmente in grado di dimostrare di essere colpito in modo specifico a motivo di elementi peculiari della sua situazione personale, tanto meno elevato sarà il grado di violenza indiscriminata richiesto affinché egli possa beneficiare della protezione sussidiaria» (sentenza Elgafaji, punto 39; sentenza Diakité, punto 31). Vale anche l'opposto: in via eccezionale, il livello di violenza potrebbe raggiungere un'intensità così elevata che un civile correrebbe, per la sua sola presenza sul territorio del paese o della regione interessati, un rischio effettivo di subire danni gravi (punto 43). La Corte ha ritenuto che questa interpretazione non fosse in contrasto con [l'allora] considerando 26 della direttiva, in quanto la formulazione di quest'ultimo prevedeva la possibilità di una tale situazione eccezionale ⁽⁵⁹⁾.

Mediante il concetto di «scala progressiva», la CGUE è riuscita a trovare un equilibrio tra la minaccia individuale e la violenza indiscriminata e ha chiarito come applicare l'articolo caso per caso.

Si può constatare che la nozione di «rischio generale» della CGUE è simile al riconoscimento nella giurisprudenza della Corte EDU relativa all'articolo 3 della CEDU della possibilità che si possa ritenere che una persona corra un rischio effettivo di danni gravi per il solo fatto di essere presente in una situazione caratterizzata da alti livelli di violenza. Ai punti 115 e 116 della sentenza NA/Regno Unito ⁽⁶⁰⁾ la Corte EDU ha dichiarato:

«115. Dal precedente esame della sua giurisprudenza, si desume che la Corte non ha mai escluso la possibilità che una situazione generale di violenza in un paese di destinazione abbia un livello d'intensità sufficiente per implicare che qualsiasi trasferimento in tale paese violerebbe necessariamente l'articolo 3 della convenzione. Tuttavia, la Corte adotterebbe tale approccio solo nei casi più estremi di violenza generale, in cui esista un rischio effettivo di maltrattamenti per il semplice fatto che una persona è esposta a tale violenza al rientro.

116. In via eccezionale, tuttavia, nei casi in cui un richiedente sostenga di essere membro di un gruppo sistematicamente esposto a una pratica di maltrattamento, la Corte ha ritenuto che la protezione di cui all'articolo 3 della convenzione si applica quando il richiedente stabilisce che sussistono gravi motivi di ritenere che esista la pratica in questione e che il richiedente appartenga al gruppo interessato (cfr. la sentenza Saadi/Italia, menzionata in precedenza, punto 132). In tali circostanze, la Corte non insiste che il richiedente dimostri l'esistenza di ulteriori elementi distintivi specifici se facendolo si renderebbe illusoria la protezione offerta dall'articolo 3. Ciò sarà determinato alla luce del resoconto del richiedente e delle informazioni sulla situazione nel paese di destinazione per quanto riguarda il gruppo in questione (cfr. la sentenza Salah Sheekh, menzionata in precedenza, punto 148)».

Nella sentenza Sufi e Elmi/Regno Unito, la Corte EDU ha ulteriormente chiarito che l'applicazione di tale approccio comporterebbe (quello che abbiamo definito) un criterio di «scala progressiva». La Corte EDU ha ribadito, in primo luogo, che se si accerta l'esistenza di un rischio in contrasto con l'articolo 3, il trasferimento del richiedente violerebbe necessariamente tale articolo a prescindere dal fatto che il rischio derivi da una situazione di violenza generale, una caratteristica personale del richiedente o da una combinazione di entrambe (punto 218).

Un commentatore ha osservato:

«In sostanza, il criterio di «scala progressiva» menzionato nella sentenza Elgafaji non sembra essere molto distante dalla recente giurisprudenza della Corte EDU, almeno riguardo alla questione dell'individualizzazione. Riguardo ai casi di violenza estremamente generalizzata e indiscriminata, il criterio è formulato in termini simili. La CGUE ha anche chiarito che tale situazione sarebbe «eccezionale». Qualora la violenza sia di minore intensità, entrambe le corti richiedono un certo grado di individualizzazione» ⁽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 e J.-F. Durieux (eds), cit., pag. 277.

⁽⁶⁰⁾ Corte EDU, sentenza del 17 luglio 2008, NA/Regno Unito, causa n. 25904/07.

⁽⁶¹⁾ E. Tsourdi, cit. alla nota 59, pag. 281.

Se esiste un criterio di «scala progressiva» ai sensi dell'articolo 3 della CEDU, deve esistere uno anche ai sensi dell'articolo 15, lettera b) ⁽⁶²⁾. Il problema è come affrontare tale individualizzazione nel contesto dell'articolo 15, lettera c): il secondo problema deriva dal criterio di «scala progressiva» quando si tratta di identificare i fattori particolari delle circostanze personali del richiedente nei casi in cui la violenza sia di minore intensità ⁽⁶³⁾. L'avvocato generale Maduro ha osservato che quando ha spiegato i fattori pertinenti per valutare se una persona è individualmente interessata ha fornito come esempio la loro appartenenza a un particolare gruppo sociale ⁽⁶⁴⁾. Tale appartenenza rispecchia la convenzione del 1951 sui rifugiati.

Tuttavia, se le «circostanze personali» sono l'appartenenza a un particolare gruppo sociale o uno degli altri quattro motivi previsti dalla convenzione del 1951 sui rifugiati, il quadro appropriato per esaminare la richiesta può essere quello della definizione di rifugiato ⁽⁶⁵⁾.

In ogni caso, le circostanze personali che devono essere dimostrate in questo caso non possono essere limitate ai motivi previsti dalla convenzione sui rifugiati contenuti nella definizione di rifugiato; in linea di principio sembra che comprendano fattori che esporrebbero la persona interessata a un rischio maggiore rispetto al resto della popolazione. Va rammentato che l'articolo 4, paragrafo 3, lettera c) stabilisce che la valutazione di una domanda di protezione internazionale deve tenere conto «della situazione individuale e delle circostanze personali del richiedente, in particolare l'estrazione, il sesso e l'età, al fine di valutare se, in base alle circostanze personali del richiedente, gli atti a cui è stato o potrebbe essere esposto si configurino come persecuzione o danno grave».

Sebbene quindi l'esame dell'articolo 15, lettera c) riguardi il rischio specifico e quello generale, le difficoltà incontrate dagli organi giudiziari nell'applicazione del criterio di «scala progressiva» lasciano intendere che sia utile principalmente quando si tratta di trattare le richieste basate su un rischio generale. Molto spesso le richieste basate sul rischio specifico possono essere risolte facendo ricorso alla definizione di rifugiato o (se non esiste alcuno dei motivi previsti dalla convenzione sui rifugiati) all'articolo 15, lettera b) o lettera a). Vale la pena ripetere che, quando decidono in merito a casi di protezione internazionale, gli organi giudiziari devono in primo luogo esaminare se una persona è ammissibile alla protezione dei rifugiati e quindi la «scala progressiva», ai sensi dell'articolo 15, lettera c), viene applicata solo se è stato deciso che un richiedente non ha fondati motivi di temere di essere perseguitato.

1.7. Vita o persona [di un civile]

L'articolo 15, lettera c), come dichiarato nella causa *Elgafaji* ⁽⁶⁶⁾, ha un ambito di applicazione più ampio rispetto all'articolo 3 della CEDU e pertanto deve essere interpretato indipendentemente, ma tenendo debitamente conto dei diritti fondamentali garantiti ai sensi della CEDU.

Né la direttiva «qualifiche» né la CGUE nelle sue decisioni hanno definito i termini «vita o persona»: due valori molto importanti di un civile che sono oggetto di violenza indiscriminata in situazioni di conflitto armato interno o internazionale.

Confrontando l'articolo 15, lettere a) e b), che indica un tipo particolare di danno, con l'articolo 15, lettera c), è ovvio che il danno definito da quest'ultimo riguarda il rischio di un danno più generale ⁽⁶⁷⁾.

I danni che un richiedente potrebbe subire non si limitano a quelli fisici, ma possono essere anche psicologici o mentali ⁽⁶⁸⁾. I danni potrebbero derivare anche da forme indirette di violenza, quali l'intimidazione, il ricatto, il pignoramento, i saccheggi nelle abitazioni e nelle imprese, i posti di controllo e i rapimenti ⁽⁶⁹⁾, che colpiscono la «persona» di un civile. Per questo motivo, quando esaminano il rischio in caso di rientro, gli organi giudiziari devono verificare con estrema attenzione un'ampia serie di elementi per valutare la situazione e le condizioni locali.

⁽⁶²⁾ *Ibidem*, pag. 288.

⁽⁶³⁾ *Ibidem*.

⁽⁶⁴⁾ *Ibidem*.

⁽⁶⁵⁾ *Ibidem*.

⁽⁶⁶⁾ Sentenza *Elgafaji*, cit. alla nota 5, punto 28.

⁽⁶⁷⁾ *Ibidem*, punto 33.

⁽⁶⁸⁾ UNHCR, *Safe at last?*, cit. alla nota 2, pag. 60.

⁽⁶⁹⁾ Sentenza *HM* e altri, cit. alla nota 26, punto 114.

Resta aperta la questione se la minaccia «alla vita o alla persona» sia limitata a un rischio effettivo di subire danni che viola diritti inderogabili o se si estende a importanti violazioni di diritti condizionati di un richiedente. Al punto 101 della sentenza KH (Iraq) si osserva che:

«tale disposizione, che riguarda l'obiettivo della minaccia, è stata oggetto di cinque progetti di modifica. Il dottor McAdam (cfr. al precedente punto 75) osserva che la frase originaria “vita, sicurezza o libertà”, insieme alle successive formulazioni basate sul concetto di libertà [vita o integrità fisica o libertà dalla detenzione arbitraria], alla fine è stata cancellata in quanto alcuni Stati membri temevano che avrebbe potuto ampliare indebitamente l'ambito di applicazione della direttiva» ⁽⁷⁰⁾.

L'articolo 3 comune alle convenzioni di Ginevra del 1949 utilizza la frase «contro la vita e l'integrità corporale» (non «alla vita o alla persona») e nella sentenza KH (Iraq) è stato sottolineato che questa frase non è adatta a includere tutto ciò che riguarda *obiettivi* civili. Secondo la definizione basata sul diritto umanitario internazionale, questi ultimi comprendono quanto segue: abitazioni, negozi, scuole e altri luoghi di attività non militare, luoghi di ricreazione e di culto, mezzi di trasporto, beni culturali, ospedali e strutture e unità mediche. Sebbene dalla sentenza Diakitè risulti chiaramente che i termini fondamentali dell'articolo 15, lettera c) non dovrebbero essere letti sulla base del diritto umanitario internazionale, tale differenziazione sembra necessaria riguardo a qualsiasi definizione.

Al punto 107 della sentenza KH, il Tribunale amministrativo del Regno Unito ha osservato una differenziazione nell'articolo 3, paragrafo 1 tra a) le violenze contro la vita e l'integrità corporale, da un lato, e c) «gli oltraggi alla dignità personale, specialmente i trattamenti umilianti e degradanti», dall'altro lato. Ciò ha indotto il tribunale a dubitare che l'ambito sostanziale della frase «contro la vita e l'integrità corporale» possa estendersi a minacce che costituiscono un trattamento disumano e degradante. La limitazione intrinseca del concetto di «vita o persona» nel diritto umanitario internazionale è ulteriormente indicata dal fatto che nel protocollo aggiuntivo II (nel momento in cui si ritenne di dover ampliare l'ambito sostanziale della protezione dei civili) è stato inserito testo supplementare per rendere più ampia la protezione. L'articolo 4, paragrafo 2, lettera a), della stessa convenzione proibisce «le violenze contro la vita, la salute e il benessere fisico o psichico delle persone, in particolare l'omicidio, così come i trattamenti crudeli quali la tortura, le mutilazioni o ogni genere di pene corporali». Il tribunale ha concluso che, «tenendo presente che deve essere attribuito un significato lato a “vita o persona”, si riconosce che la frase deve comprendere i mezzi di sopravvivenza di una persona». Il Tribunale amministrativo della Slovenia ha ritenuto che il valore protetto in relazione all'articolo 15, lettera c) non sia la mera «sopravvivenza» dei richiedenti asilo, ma anche il divieto di trattamento disumano ⁽⁷¹⁾.

1.8. Ambito geografico: paese/area/regione

Per la considerazione della protezione di cui all'articolo 15, lettera c) deve essere valutata la situazione prevalente nel paese di ritorno ⁽⁷²⁾. Tuttavia, non è necessario decidere se il conflitto armato è a livello nazionale; l'attenzione deve essere concentrata sulla regione in cui il richiedente vive (o l'area di destinazione) e sulla necessità di stabilire se la persona interessata è a rischio in tale area o il percorso per raggiungerla. L'articolo 8 riconosce inoltre che se un richiedente può dimostrare l'esistenza di un rischio effettivo di subire i danni gravi di cui all'articolo 15, lettera c) nell'area di origine, l'ammissibilità alla protezione sussidiaria può essere stabilita solo se un richiedente non può ottenere la protezione interna in un'altra parte del paese. La prima questione pertanto è se un richiedente corre un rischio effettivo di danni gravi nell'area di origine (o lungo il percorso verso tale area). Se la risposta è affermativa, la seconda questione è se i danni gravi possono essere evitati ottenendo la protezione interna in un'altra parte del paese.

⁽⁷⁰⁾ Tribunale per l'asilo e l'immigrazione (Regno Unito), sentenza del 25 marzo 2008, KH [Article 15(c) Qualification Directive] Iraq CG [2008] UKAIT 00023.

⁽⁷¹⁾ Tribunale amministrativo della Slovenia, sentenze del 25 settembre 2013, I U 498/2012-17 e del 29 gennaio 2014 I U 1327/2013-10.

⁽⁷²⁾ «The added value of Article 15(c) is its ability to provide protection from serious risks which are situational, rather than individually targeted» [Il valore aggiunto dell'articolo 15, lettera c) è la sua capacità di garantire una protezione dai gravi rischi che dipendono dalla situazione, anziché essere mirati alle singole persone]. Dichiarazione dell'UNHCR sulla protezione sussidiaria, cit. alla nota 57.

1.8.1. Identificazione dell'area di origine

Nel decidere l'ubicazione dell'area di origine del richiedente come destinazione di ritorno, è necessario esaminare i fatti tenendo conto di aspetti quali l'area dell'ultimo luogo di residenza e l'area di residenza abituale ⁽⁷³⁾.

1.8.2. Area di origine come area di destinazione

Quando si considera il rischio nell'area di origine di un richiedente, si deve quindi tenere conto anche se è possibile raggiungere tale destinazione. Se non è possibile a causa di un conflitto armato che interessa le strade che potrebbero ragionevolmente essere percorse, si deve ritenere che tale richiedente abbia dimostrato l'esistenza del rischio di cui all'articolo 15, lettera c) nella sua area di destinazione.

La Corte EDU ha preso in considerazione la natura geografica del conflitto nel contesto della violenza generalizzata nella sentenza Sufi e Elmi ⁽⁷⁴⁾. Nella giurisprudenza nazionale relativa all'articolo 15, lettera c), il Tribunale amministrativo federale tedesco e la Corte nazionale per il diritto d'asilo francese hanno ritenuto che la valutazione non richiede un'analisi della situazione generale a livello nazionale, ma della regione interessata ⁽⁷⁵⁾ nonché delle strade da percorrere dal punto di ritorno all'area di origine ⁽⁷⁶⁾. Si tratta anche della posizione costantemente adottata dagli organi giudiziari britannici ⁽⁷⁷⁾.

1.8.3. Protezione contro danni gravi nell'area di destinazione

Va sottolineato che quando si considera se esiste un rischio di cui all'articolo 15, lettera c) nell'area di origine di una persona, tale rischio è dimostrato solo se non è prevista una protezione adeguata contro di esso. L'articolo 7 ⁽⁷⁸⁾ specifica che la protezione contro danni gravi deve essere effettiva e non temporanea. Tale protezione è in generale fornita se i soggetti di cui all'articolo 7, paragrafo 1, lettere a) e b), adottano adeguate misure per impedire che possano essere inflitti danni gravi, avvalendosi tra l'altro di un sistema giuridico effettivo che permetta di prevenire, di individuare, di perseguire penalmente e di punire gli atti che costituiscono persecuzione o danno grave e se un richiedente ha accesso a tale protezione.

1.8.4. Protezione all'interno del paese d'origine

Se esiste un rischio di cui all'articolo 15, lettera c) nell'area di origine del richiedente (come in precedenza), la questione è se esiste una parte del paese non interessata dal conflitto in cui la persona potrebbe ragionevolmente prevedere di trasferirsi. Si tratta dell'alternativa della protezione interna (o dell'alternativa di fuga o di trasferimento interno).

L'articolo 8 stabilisce quanto segue:

«Protezione all'interno del paese d'origine

⁽⁷³⁾ Bundesverwaltungsgericht (Germania), sentenza del 31 gennaio 2013, 10 C 15.12, punto 14.

⁽⁷⁴⁾ Sentenza Sufi e Elmi, cit. alla nota 14, punti 210, 265-292.

⁽⁷⁵⁾ Sentenza Mohamad Adan, cit. alla nota 31.

⁽⁷⁶⁾ Bundesverwaltungsgericht (Germania), cit., punto 13f; Sentenza Mohamad Adan, cit.

⁽⁷⁷⁾ Sentenza HM e altri, cit. alla nota 26.

⁽⁷⁸⁾ Articolo 7 della direttiva «qualifiche»: Soggetti che offrono protezione

«1. La protezione contro persecuzioni o danni gravi può essere offerta esclusivamente:

a) dallo Stato; oppure

b) dai partiti o organizzazioni, comprese le organizzazioni internazionali, che controllano lo Stato o una parte consistente del suo territorio, a condizione che abbiano la volontà e la capacità di offrire protezione conformemente al paragrafo 2.

2. La protezione contro persecuzioni o danni gravi è effettiva e non temporanea. Tale protezione è in generale fornita se i soggetti di cui al paragrafo 1, lettere a) e b), adottano adeguate misure per impedire che possano essere inflitti atti persecutori o danni gravi, avvalendosi tra l'altro di un sistema giuridico effettivo che permetta di individuare, di perseguire penalmente e di punire gli atti che costituiscono persecuzione o danno grave e se il richiedente ha accesso a tale protezione.

3. Per stabilire se un'organizzazione internazionale controlli uno Stato o una parte consistente del suo territorio e se fornisca protezione come enunciato al paragrafo 2, gli Stati membri tengono conto degli eventuali orientamenti impartiti nei pertinenti atti dell'Unione».

1. Nell'ambito dell'esame della domanda di protezione internazionale, gli Stati membri possono stabilire che il richiedente non necessita di protezione internazionale se, in una parte del territorio del paese d'origine, questi:

- a) non ha fondati motivi di temere di essere perseguitato o non corre rischi effettivi di subire danni gravi; oppure
- b) ha accesso alla protezione contro persecuzioni o danni gravi di cui all'articolo 7; e può legalmente e senza pericolo recarsi ed essere ammesso in quella parte del paese e si può ragionevolmente supporre che vi si stabilisca.

2. Nel valutare se il richiedente ha fondati motivi di temere di essere perseguitato o corre rischi effettivi di subire danni gravi, oppure ha accesso alla protezione contro persecuzioni o danni gravi in una parte del territorio del paese d'origine conformemente al paragrafo 1, gli Stati membri tengono conto al momento della decisione sulla domanda delle condizioni generali vigenti in tale parte del paese, nonché delle circostanze personali del richiedente, in conformità dell'articolo 4. A tal fine gli Stati membri assicurano che informazioni precise e aggiornate pervengano da fonti pertinenti, quali l'Alto commissariato delle Nazioni Unite per i rifugiati e l'Ufficio europeo di sostegno per l'asilo».

Secondo il considerando 27:

«La protezione contro persecuzioni o danni gravi all'interno del paese d'origine dovrebbe essere effettivamente accessibile al richiedente in una parte del territorio del paese d'origine in cui questi può legalmente e senza pericolo recarsi ed essere ammesso, e in cui si può ragionevolmente supporre che si stabilisca. Qualora lo Stato o agenti dello Stato siano i responsabili della persecuzione e dei danni gravi, si dovrebbe presupporre che il richiedente non abbia la possibilità di beneficiare di una protezione efficace. Quando il richiedente è un minore non accompagnato, l'esistenza di adeguati dispositivi di assistenza e custodia che siano nell'interesse superiore del minore non accompagnato dovrebbe costituire un elemento per valutare se una protezione sia effettivamente disponibile».

La rilevanza della protezione interna è stata sancita dalla CGUE nella sentenza *Elgafaji* quando ha dichiarato che «al momento dell'esame individuale di una domanda di protezione sussidiaria [...] si può, in particolare, tenere conto [...] dell'estensione geografica della situazione di violenza indiscriminata, nonché dell'effettiva destinazione del richiedente in caso di ritorno nel paese interessato» ⁽⁷⁹⁾.

L'estensione geografica e la protezione interna sono principi collegati nel senso che possono essere considerati impliciti nella definizione più lata e che la protezione interna non solo include la protezione garantita da terzi ⁽⁸⁰⁾, ma anche l'autotutela mediante il trasferimento in una parte del paese in cui il conflitto non esiste o in cui la minaccia di violenza indiscriminata dovuta al conflitto è minore.

L'articolo 8, paragrafo 2, della direttiva «qualifiche» rifiuta (ma non della direttiva originaria, cfr. di seguito) fa specifico riferimento all'accesso alla protezione. L'articolo 7 definisce i soggetti che offrono protezione includendo non solo soggetti statuali, ma anche soggetti non statuali che controllano lo Stato o una parte consistente del suo territorio. Il principio della protezione interna è riferibile all'articolo 15 nel complesso e si può ritenere che abbia un'applicazione maggiore rispetto all'articolo 15, lettere a) e b) qualora la questione siano le minacce di cui sono oggetto le singole persone anziché l'articolo 15, lettera c). Il motivo è che una volta rilevata l'esistenza di una minaccia di violenza indiscriminata in seguito a un conflitto armato nell'area di origine, la possibilità che sia disponibile una protezione interna nell'area non può essere sostenibile in quanto in molte situazioni di conflitto armato vi sono pochi dubbi che non sia disponibile una protezione efficace. La capacità dei soggetti che offrono protezione di garantire protezione e indicatori relativi all'incapacità dello Stato sono tra gli indicatori per la valutazione del livello di violenze e di grave minaccia individuati dall'UNHCR ⁽⁸¹⁾.

La valutazione della situazione non solo nell'area di origine del richiedente, ma anche in altre parti del paese in cui potrebbe essere possibile trovare protezione interna è pertanto essenziale per l'adeguata considerazione

⁽⁷⁹⁾ Sentenza *Elgafaji*, cit. alla nota 5, punto 40.

⁽⁸⁰⁾ Tuttavia, l'articolo 7, paragrafo 1, lettera b), specifica che la protezione può essere offerta da soggetti non statuali solo se controllano lo Stato o una parte consistente del suo territorio e hanno la volontà e la capacità di offrire protezione conformemente all'articolo 7, paragrafo 2, della direttiva «qualifiche». Cfr. il Tribunale amministrativo supremo della Repubblica ceca, decisione del 27 ottobre 2011, D.K./ministero degli Interni, Azs 22/2011.

⁽⁸¹⁾ UNHCR, *Safe at last?*, cit. alla nota 2.

dell'articolo 15, lettera c). La valutazione riguardo alle circostanze generali prevalenti e alle circostanze personali del richiedente richiede un esame approfondito. La direttiva «qualifiche» stabilisce che tale valutazione sia effettuata conformemente all'articolo 4 (valutazione degli elementi) e al fine di ottenere «informazioni precise e aggiornate».

Nella seconda parte, sezioni 2.4 e 2.5, è riportata un'ulteriore analisi dell'ambito geografico e della protezione interna.

Seconda parte — Applicazione

2.1. Sintesi: approccio olistico

Nella prima parte sono stati analizzati gli elementi costitutivi dell'articolo 15, lettera c). Questa parte è incentrata sulle modalità pratiche di applicazione di detto articolo.

Come sottolineato in precedenza, la valutazione dell'articolo 15, lettera c) richiede un approccio olistico. Gli organi giudiziari devono tenere conto di vari elementi: conflitto armato, vita o persona di un civile, minaccia grave e individuale, violenza indiscriminata, soglia della violenza, espansione geografica e alternativa della protezione interna. Esiste un'interazione tra questi vari elementi.

Nell'allegato A è riportato uno schema decisionale che serve a individuare l'ordine logico delle domande che gli organi giudiziari devono porre quando valutano l'ammissibilità alla protezione sussidiaria ai sensi dell'articolo 15, lettera c). L'oggetto principale della presente sezione è costituito dagli aspetti principali della domanda che richiedono ulteriori chiarimenti.

2.2. Valutazione del livello di violenza: approccio pratico

Gli orientamenti forniti dalla CGUE nelle sentenze Elgafaji ⁽⁸²⁾ e Diakité ⁽⁸³⁾ sono di portata limitata ed è chiaro che lasciano in gran parte agli organi giudiziari nazionali decidere in merito alle modalità di applicazione pratica dell'articolo 15, lettera c). In particolare, non aiutano gli organi giudiziari a rispondere alla questione relativa al modo in cui dovrebbero procedere per valutare i) la situazione nell'area o regione pertinente del paese al fine di valutare il livello di violenza e ii) se tale violenza ha l'effetto di creare un rischio effettivo di subire danni gravi per i civili in generale o per le singole persone sulla base delle loro circostanze personali o una combinazione di entrambi.

La CGUE non ha ancora fornito orientamenti in merito ai criteri di valutazione del livello di violenza in un conflitto armato. Gli organi giudiziari devono adottare un approccio pratico riguardo alla valutazione delle prove fornite a sostegno della domanda. Qualsiasi criterio applicato dagli organi giudiziari nazionali richiede una prova della possibilità pratica di garantire l'effetto utile dell'articolo 15, lettera c). A livello di Stati membri, i casi di cui all'articolo 15, lettera c) sono speciali in quanto si tratta di paesi in cui almeno alcune parti sono in una situazione di violenza e di conflitto. Come spiegato nella prima parte, gli organi giudiziari devono tenere conto di vari fattori o indicatori; a questo proposito, è importante basarsi sugli insegnamenti che possono essere tratti dalla giurisprudenza della Corte EDU e degli organi giudiziari nazionali.

2.2.1. Giurisprudenza di Strasburgo

L'approccio della Corte EDU riguardo alla valutazione del livello di violenza ai fini dell'articolo 3 della CEDU, allo scopo di decidere se tutti i civili o la maggior parte di essi corrono un rischio effettivo di subire maltrattamenti, è indicato al punto 241 e seguenti della sentenza Sufi e Elmi:

«nel caso in esame i richiedenti hanno sostenuto che la violenza indiscriminata a Mogadiscio aveva un livello d'intensità sufficiente da costituire un rischio effettivo per la vita o la persona di qualsiasi civile nella capitale. Sebbene in precedenza la Corte abbia precisato che solo "nei casi più estremi" una situazione di violenza generale avrebbe avuto un'intensità sufficiente da creare tale rischio, non ha fornito ulteriori orientamenti riguardo alle modalità di valutazione dell'intensità di un conflitto. La Corte rammenta

⁽⁸²⁾ Sentenza Elgafaji, cit. alla nota 5, punto 43.

⁽⁸³⁾ Sentenza Diakité, cit. alla nota 7, punto 30.

tuttavia che il Tribunale per l'asilo e l'immigrazione doveva condurre una valutazione simile nella causa AM e AM (Somalia) ⁽⁸⁴⁾ (menzionata in precedenza), e in questo modo ha individuato i seguenti criteri: primo, se le parti in conflitto impiegavano metodi e tattiche di guerra che aumentavano il rischio di morti tra i civili o destinati direttamente ai civili; secondo, se l'uso di tali metodi e/o tattiche era diffuso tra le parti in conflitto; terzo, se i combattimenti erano localizzati o diffusi; infine, il numero di civili uccisi, feriti o sfollati in seguito ai combattimenti. Sebbene tali criteri non siano considerati un elenco esaustivo da applicare in tutti i casi futuri, nel contesto del presente caso la Corte ritiene che costituiscano un parametro adeguato con il quale valutare il livello di violenza a Mogadiscio».

2.2.2. Organi giudiziari nazionali

Vari organi giudiziari degli Stati membri hanno adottato un approccio simile nel valutare il livello di violenza dei conflitti armati ai fini dell'articolo 15, lettera c). Esistono tuttavia lievi differenze tra i metodi applicati e l'importanza attribuita ai vari indicatori.

Il Tribunale supremo del Regno Unito ha dichiarato che il nesso tra il conflitto armato generalizzato e la violenza indiscriminata che crea un rischio effettivo per la vita o la persona è soddisfatto quanto l'intensità del conflitto comporta l'uso di mezzi di combattimento (ammissibili in base alla legge di guerra oppure no) che in modo diretto o indiretto mettono a serio repentaglio i non combattenti ⁽⁸⁵⁾. Per il tribunale ciò significa che nel valutare il livello di violenza in riferimento all'articolo 15, lettera c) è di fondamentale importanza concentrarsi sulle prove relative al numero di civili uccisi o feriti ⁽⁸⁶⁾. Il tribunale ha tuttavia evidenziato la necessità di un approccio inclusivo riguardo alla valutazione del livello di violenza indiscriminata. Tale approccio richiede un'analisi del livello di violenza in termini quantitativi e qualitativi. Un'analisi quantitativa considera il numero di civili morti o feriti, il numero di incidenti di sicurezza ecc. Un'analisi qualitativa della violenza in corso deve tenere conto degli effetti delle minacce di violenza nonché della stessa violenza fisica, del comportamento delle parti coinvolte nel conflitto armato e degli effetti cumulativi a lungo termine se il conflitto dura già da molto tempo. Un approccio inclusivo quantitativo e qualitativo dovrebbe andare oltre l'accertamento del numero di vittime tra i civili (morti e feriti) e deve tenere presente che anche lo sfollamento della popolazione e il grado di fallimento dello Stato sono criteri rilevanti nella valutazione del rischio di diventare vittima di violenza indiscriminata ⁽⁸⁷⁾. Il tribunale del Regno Unito ha ritenuto che anche le uccisioni attentamente mirate che non colpiscono i civili, ma solo i combattenti, contribuiscono a creare un clima di paura e d'insicurezza e indirettamente accrescono l'intensità della violenza ⁽⁸⁸⁾. Per questo motivo, il tribunale è del parere che non è mai corretto tentare di effettuare una semplice sottrazione della violenza mirata dalla somma totale della violenza indiscriminata ⁽⁸⁹⁾.

Il Tribunale amministrativo federale tedesco ha dichiarato che un calcolo quantitativo approssimativo, da un lato, del numero totale di civili che vivono nell'area interessata e, dall'altro lato, del numero di atti di violenza indiscriminata commessi dalle parti in conflitto contro la vita o la persona dei civili nella regione è necessario quando si valuta il livello di violenza. Inoltre, è necessaria una valutazione generale del numero di vittime e della gravità dei danni (morti e feriti) tra la popolazione civile. A tale scopo, possono essere applicati di conseguenza anche i criteri che consentono di accertare l'esistenza di persecuzioni collettive definiti in base alla legge sui rifugiati dal Tribunale amministrativo federale ⁽⁹⁰⁾. Oltre al calcolo quantitativo del livello di violenza, l'approccio del Tribunale amministrativo federale richiede una valutazione generale del materiale statistico prestando attenzione al numero di vittime e alla gravità dei danni (morti e feriti) tra la popolazione civile. Tale valutazione generale includerebbe in ogni caso una valutazione dello stato dell'assistenza medica fornita nel territorio interessato, dalla cui qualità e accessibilità può dipendere la gravità delle ferite fisiche subite, prestando attenzione alle conseguenze permanenti che le ferite possono avere per le vittime ⁽⁹¹⁾.

In un caso riguardante la sicurezza a Mogadiscio, nel 2010 il Consiglio di Stato olandese ha deciso che l'identificazione di una situazione eccezionale in cui si applica l'articolo 15, lettera c) a qualsiasi persona rende necessario

⁽⁸⁴⁾ Tribunale per l'asilo e l'immigrazione (Regno Unito), AM e AM (conflitto armato: categorie di rischio) Rev. 1 Somalia CG, [2008] UKAIT 00091 27 gennaio 2009.

⁽⁸⁵⁾ Sentenza HM e altri, cit. alla nota 26, punto 45.

⁽⁸⁶⁾ *Ibidem*, punto 43.

⁽⁸⁷⁾ *Ibidem*, punti 271-274.

⁽⁸⁸⁾ *Ibidem*, punto 292.

⁽⁸⁹⁾ Tribunale superiore (Regno Unito), sentenza del 18 maggio 2012, AK [articolo 15, lettera c)] Afghanistan CG/Secretary of State for the Home Department, [2012] UKUT 00163, punto 207.

⁽⁹⁰⁾ Sentenza 10 C 4.09, cit. alla nota 28, punto 34.

⁽⁹¹⁾ Sentenza 10 C 13.10, cit. alla nota 37, punto 23.

valutare, oltre al numero di morti e di feriti nell'area in questione, altri fattori pertinenti quali lo sfollamento interno, i rifugiati che fuggono dal paese e la casualità della violenza ⁽⁹²⁾.

Secondo la corte nazionale per il diritto d'asilo francese e il Consiglio di Stato francese, l'intensità di un conflitto armato raggiunge la soglia indicata nella sentenza Elgafaji in situazioni di violenza generalizzata. Anche gli sfollamenti forzati, le violazioni del diritto umanitario internazionale e l'occupazione di territori sono elementi che servono a valutare l'intensità della violenza generalizzata ⁽⁹³⁾.

2.2.3. Posizione dell'UNHCR

Analogamente, l'UNHCR ha esortato gli organi giudiziari a tenere conto degli elementi quantitativi e qualitativi nell'ambito di una valutazione pragmatica, olistica e lungimirante che non possa ridursi a un calcolo matematico delle probabilità ⁽⁹⁴⁾. L'organismo richiama l'attenzione sulla cautela necessaria quando si tratta di statistiche tenuto conto della variabilità di metodologia e di criteri nella raccolta dei dati, sull'insufficiente segnalazione delle violenze e sull'importanza dell'ambito geografico e temporale in cui gli incidenti sono considerati ⁽⁹⁵⁾. Oltre ai vari incidenti di sicurezza e ai danni (fra cui i morti, i feriti e altre minacce alla persona), devono essere presi in considerazione il contesto di sicurezza generale nel paese, lo sfollamento della popolazione e le ripercussioni della violenza sulla situazione umanitaria complessiva ⁽⁹⁶⁾.

2.2.4. Conclusioni: elenco non esaustivo di possibili indicatori

Non vi è un consenso generale tra il Tribunale supremo del Regno Unito, il Consiglio di Stato francese, il Consiglio di Stato olandese, il Tribunale amministrativo federale tedesco e la Corte suprema slovena sul fatto che il livello di violenza debba essere valutato dal punto di vista sia quantitativo sia qualitativo. Per i tribunali tedeschi la valutazione quantitativa della violenza è un punto di partenza necessario per valutarne la qualità ⁽⁹⁷⁾. Le decisioni segnalate dagli organi giudiziari in Europa rivelano una preoccupazione simile che la valutazione tenga conto di aspetti quantitativi e qualitativi. È indubbio che una considerevole quantità di violenza è una necessità senza la quale la protezione sussidiaria non viene concessa. Tuttavia, la definizione della soglia dell'articolo 15, lettera c) non si riduce semplicemente all'analisi di dati quantitativi.

Alla luce di una giurisprudenza variabile, non sarebbe opportuno cercare di stabilire un elenco fisso di possibili indicatori; tuttavia, da un'analisi dei casi principali, fra cui Sufi ed Elmi, K.A.B ⁽⁹⁸⁾ (che riguardano l'articolo della CEDU) e secondo il Tribunale amministrativo federale tedesco, il Consiglio di Stato olandese, il Tribunale supremo del Regno Unito, la Corte nazionale per il diritto d'asilo francese, la Corte suprema slovena (per citarne solo alcuni) e in riferimento agli orientamenti dell'UNHCR in materia di ammissibilità riguardo a paesi come l'Iraq, la Somalia e l'Afghanistan, tre principi dovrebbero disciplinare la valutazione:

- a) primo, l'approccio deve essere olistico e inclusivo. Gli organi giudiziari devono tenere conto di un'ampia serie di variabili pertinenti;
- b) secondo, gli organi giudiziari non dovrebbero limitarsi a una mera analisi quantitativa dei dati sui morti e i feriti tra i civili ecc. L'approccio deve essere qualitativo e quantitativo. Quando valutano la quantità e la qualità, gli organi giudiziari dovrebbero tenere presente la probabilità di incidenti non segnalati e altre incertezze;
- c) terzo, basandosi sulla giurisprudenza, che a sua volta si avvale delle indicazioni contenute negli studi accademici, gli organi giudiziari dovrebbero esaminare ciò che le prove rivelano riguardo agli indicatori di situazioni di violenza e di conflitto (quello che segue è un elenco non esaustivo):

- i «criteri Sufi e Elmi» della CEDU:

⁽⁹²⁾ Raad van State (Paesi Bassi), sentenza del 26 gennaio 2010, 200905017/1/V2, ECLI:NL:RVS:2010:BL1483.

⁽⁹³⁾ Sentenza Baskarathas, cit. alla nota 29; cfr. anche CNDA, sentenza del 18 ottobre 2011, n. 10003854.

⁽⁹⁴⁾ UNHCR, *Safe at Last?*, cit. alla nota 2, pag. 104.

⁽⁹⁵⁾ *Ibidem*, punti 46-47.

⁽⁹⁶⁾ *Ibidem*, punto 104.

⁽⁹⁷⁾ H. Lambert, «The Next Frontier: Expanding protection in Europe for victims of Armed Conflict and Indiscriminate Violence», JRL 2013, 224.

⁽⁹⁸⁾ Corte EDU, sentenza del 5 settembre 2013, K.A.B/Svezia, causa n. 886/11.

- le parti in conflitto e i loro rispettivi punti di forza militari;
- i metodi e le tattiche di guerra applicati (rischio di morti tra i civili);
- il tipo di armi usato;
- l'ambito geografico dei combattimenti (localizzati o diffusi);
- il numero di civili morti, feriti e sfollati a causa dei combattimenti;
- la capacità o l'incapacità dello Stato di proteggere i cittadini contro la violenza (ove fattibile, contribuisce a organizzare i vari soggetti che possono offrire protezione e a definirne il loro ruolo effettivo)/il grado di fallimento dello Stato;
- le condizioni socioeconomiche (che dovrebbero includere la valutazione dell'assistenza economica e di altre forme di assistenza da parte di organizzazioni internazionali e organizzazioni non governative);
- gli effetti cumulativi dei conflitti armati di lunga durata

In linea di principio, questi indicatori non esaustivi si applicano quando deve essere valutato un rischio generale o specifico per un richiedente. Poiché ogni singolo conflitto armato può avere un andamento molto diverso, è della massima importanza rammentare che un elenco d'indicatori come quello sopra riportato non può mai essere esaustivo. Le caratteristiche di un conflitto armato e delle relative vittime tra i civili possono implicare altri indicatori di cui è necessario tenere conto.

2.3. Applicazione della valutazione basata su una «scala progressiva»

Il concetto di «scala progressiva», derivante dalla sentenza *Elgafaji* (sebbene non sia specificamente descritta in quanto tale), fornisce un quadro per valutare il significato relativo delle nozioni di rischio generale (in cui la violenza indiscriminata raggiunge un livello così elevato che una persona è a rischio per il solo fatto di essere un civile) e di rischio specifico (in cui la minaccia è individualizzata). In questo modo è possibile dare attuazione e contestualizzare il considerando 35 (ex 26) del preambolo della direttiva «qualifiche» secondo cui l'esistenza di un minaccia grave e individuale ai civili può essere considerata in generale, in via eccezionale, provata qualora il grado di violenza indiscriminata che caratterizza il conflitto armato in corso raggiunga un livello elevato: si tratta della dimensione del rischio generale dell'articolo 15, lettera c). Se esiste un rischio generale, la questione della credibilità non è rilevante; più precisamente, la credibilità è limitata a una verifica della provenienza del richiedente da un paese o una regione particolari.

Può essere tuttavia efficace ai sensi dell'articolo 15, lettera c) anche qualora il livello di violenza indiscriminata sia inferiore, se un richiedente è in grado di dimostrare di essere colpito in modo specifico a motivo di elementi peculiari della sua situazione personale: si tratta della dimensione del rischio specifico dell'articolo 15, lettera c). La «scala progressiva» indica in quale modo debba essere valutato un rischio specifico: «tanto più il richiedente è eventualmente in grado di dimostrare di essere colpito in modo specifico a motivo di elementi peculiari della sua situazione personale, tanto meno elevato sarà il grado di violenza indiscriminata richiesto affinché egli possa beneficiare della protezione sussidiaria» (sentenza *Elgafaji*, punto 39, sentenza *Diakitè*, punto 31). In questo caso la valutazione della credibilità è importante.

Gli elementi di cui tenere conto nella valutazione del livello di violenza indiscriminata sono stati menzionati in precedenza (cfr. la sezione 1.3 «Violenza indiscriminata»).

È chiaro che la valutazione del rischio specifico ai sensi dell'articolo 15, lettera c) deve procedere in modo simile alla valutazione delle richieste di protezione internazionale basate sull'articolo 15, lettere a) e b), come si desume dall'insistenza della CGUE secondo cui «tale disposizione [articolo 15, lettera c)] deve formare oggetto di un'interpretazione sistematica rispetto alle altre due situazioni ricomprese nel detto articolo 15 della direttiva e deve essere interpretata quindi in stretta relazione con tale individualizzazione»⁽⁹⁹⁾. Finora la sfida per i giudici nella giurisprudenza nazionale (cfr. la seconda parte, sezione 2.31) è che quando si tratta di applicare l'articolo 15, lettera c) alle situazioni in cui il livello di violenza indiscriminata non è sufficientemente elevato da creare un rischio per i civili in generale, spesso è difficile capire il motivo per cui un richiedente in grado di dimostrare l'esistenza di circostanze personali che aumentano il rischio debba essere considerato ai sensi dell'articolo 15, lettera c). Come sottolineato in precedenza, possono essere ammissibili alla protezione dei rifugiati o alla protezione sussidiaria ai

⁽⁹⁹⁾ Sentenza *Elgafaji*, cit. alla nota 5, punto 38.

sensi dell'articolo 15, lettera b) ⁽¹⁰⁰⁾ o a). Pertanto, forse la principale utilità dell'articolo 15, lettera c) sarà nei casi in cui si tratta di stabilire se esista un rischio generale per tutti i civili.

Giurisprudenza nazionale

In seguito alla sentenza Elgafaji, il Consiglio di Stato francese ha dichiarato nella sentenza Baskarathas ⁽¹⁰¹⁾ che non è necessario che un richiedente dimostri di essere specifico oggetto di minaccia a motivo della sua situazione personale quando il grado di violenza indiscriminata raggiunge un livello tale che sussistono gravi e provati motivi di ritenere che un civile correrebbe, per la sua sola presenza nel territorio, un rischio, come avvenuto secondo la Corte nello Sri Lanka nell'estate del 2009.

La Corte nazionale per il diritto d'asilo francese ha tenuto conto della giovane età del richiedente asilo come singolo elemento nella valutazione del suo rischio effettivo di subire danni gravi in vari casi afgani. Secondo la Corte, si tratta di un elemento individuale che aumenta il rischio da valutare quando il livello di violenza è inferiore. Pertanto, è stata concessa la protezione sussidiaria. La Corte ha tenuto conto anche di elementi relativi alla giovane età, come la morte dei genitori, la mancanza di legami familiari, l'esposizione alla violenza e all'arruolamento forzato in una delle forze armate ⁽¹⁰²⁾. Un altro elemento individuale che la Corte ha riconosciuto come elemento che aumenta il rischio è emerso nel caso di un uomo del Kivu settentrionale (Repubblica democratica del Congo), in cui la Corte ha ritenuto che i professionisti che dovevano viaggiare da e verso l'Angola sarebbero stati esposti ad atti violenti commessi da gruppi armati ⁽¹⁰³⁾. Un aspetto rilevante in questo caso è se la professione particolare del richiedente sia fondamentale per la sua identità al punto che non sarebbe ragionevole aspettarsi che la cambi per evitare di subire possibili danni.

Il Tribunale amministrativo federale tedesco ha fornito esempi di circostanze individuali che aumentano la minaccia derivante dalla violenza indiscriminata: ad esempio, se per la sua professione un richiedente è costretto a essere vicini agli atti di violenza, come nel caso dei medici o dei giornalisti. Possono essere prese in considerazione anche circostanze personali quali la religione o l'etnia, se non comportano il riconoscimento dello status di rifugiato. Il Tribunale amministrativo federale ha anche richiesto in caso di tali circostanze personali un livello elevato di violenza indiscriminata o una minaccia elevata alla popolazione civile nell'area. Gli indicatori al riguardo possono essere il numero di atti di violenza indiscriminata, le vittime e la gravità dei danni subiti dai civili ⁽¹⁰⁴⁾.

L'Alta corte amministrativa della Baviera non ha ritenuto che l'appartenenza del richiedente alla minoranza hazara (Afghanistan) costituisca una circostanza individuale «che aumenta il rischio». Secondo le informazioni di cui la Corte dispone, la situazione generale degli hazara, che tradizionalmente sono stati discriminati, è migliorata, anche se le tensioni tradizionali persistono e riemergono di tanto in tanto. Gli hazara hanno sempre vissuto nelle province di Parwar e Kabul e, secondo le informazioni provenienti dall'UNHCR, molti hazara sono ritornati in tale regione. Neppure l'appartenenza di un richiedente al gruppo religioso degli sciiti costituisce una circostanza individuale che «aumenta il rischio» in quanto il 15 % della popolazione afgana è sciita ⁽¹⁰⁵⁾.

L'Alta corte amministrativa della Renania settentrionale-Vestfalia ha dichiarato che doveva essere soddisfatto il requisito di una minaccia grave e individuale. Ciò valeva solo se i rischi generali accumulati in modo tale che tutti gli abitanti della regione erano colpiti gravemente e personalmente o se alcuni erano particolarmente colpiti a motivo di circostanze individuali che aumentavano il rischio. Tali circostanze individuali potrebbero derivare anche dall'appartenenza a un gruppo ⁽¹⁰⁶⁾.

Nella sentenza HM e altri, il Tribunale superiore del Regno Unito ha spiegato il suo parere sulla motivazione della CGUE nella sentenza Elgafaji:

«si constata che la CGUE ha ritenuto in tale caso che a una persona che corre un rischio effettivo di essere un obiettivo specifico o più generale di violenza indiscriminata possa essere accordata la protezione

⁽¹⁰⁰⁾ Cfr. le conclusioni dell'avvocato generale nella causa M'Bodj, cit. alla nota 9, riguardo all'ambito di applicazione dell'articolo 15, lettera b).

⁽¹⁰¹⁾ Sentenza Baskarathas, cit. alla nota 29.

⁽¹⁰²⁾ CNDA (Francia), sentenze del 21 marzo 2013, Youma Khan, n. 12025577 C; 2 luglio 2012, Ahmad Zai, n. 12006088 C; 18 ottobre 2011, Hosseini, n. 10003854 C+; 3 giugno 2011, Khogyanai, n. 09001675 C; 20 dicembre 2010, Haidari, n. 10016190 C+; 1^o settembre 2010, Habibi, n. 09016933 C+.

⁽¹⁰³⁾ CNDA (Francia), sentenza del 5 settembre 2013, Muela, n. 13001980 C.

⁽¹⁰⁴⁾ Bundesverwaltungsgericht (Germania), sentenza del 20 febbraio 2013, BVerwG 10 C 23.12, punto 33.

⁽¹⁰⁵⁾ Alta corte amministrativa della Baviera (Germania), sentenza del 3 febbraio 2011, 13a B 10.30394.

⁽¹⁰⁶⁾ Alta corte amministrativa della Renania settentrionale-Vestfalia (Germania), sentenza del 29 ottobre 2010, 9 A 3642/06.A.

qualora il livello generale di violenza non sia sufficiente per accertare l'esistenza del rischio necessario per chi non possa dimostrare la sussistenza di un motivo specifico per essere colpito dalla violenza salvo che raggiunga un livello elevato»⁽¹⁰⁷⁾.

Il tribunale ha valutato se in riferimento alla «scala progressiva» si potesse parlare di un rischio maggiore per i civili che in Iraq erano sunniti, sciiti, curdi o ex baathisti. Ha concluso che in generale non si poteva. Al punto 297 il tribunale ha dichiarato:

«nella nostra sentenza, dalle altre prove relative ai sunniti e agli sciiti emerge un quadro simile. Tuttavia, sebbene per i suddetti motivi riteniamo le prove nel complesso insufficienti per stabilire che l'identità sunnita o sciita sia di per sé una "categoria più a rischio" ai sensi dell'articolo 15, lettera c), riconosciamo che, date le circostanze individuali, e in particolare il fatto che debbano ritornare in un'area in cui i confratelli sunniti o sciiti sono in minoranza, una persona possa essere in grado di dimostrare l'esistenza di un rischio effettivo ai sensi dell'articolo 15, lettera c). (È ovvio che possono anche essere in grado di dimostrare l'esistenza di un rischio effettivo di persecuzione ai sensi della convenzione sui rifugiati o di un trattamento in contrasto con l'articolo 3 della CEDU)».

2.4. Ambito geografico: paese/area/regione

Gli organi giudiziari che hanno ricevuto prove dell'esistenza di un conflitto armato nel paese di origine devono accertare l'ambito geografico di tale conflitto. Se la violenza indiscriminata in tutto il paese è a un livello così elevato che le persone corrono il rischio di cui all'articolo 15 lettera c) per il solo fatto di essere civili, il richiedente ha diritto alla protezione sussidiaria. Tuttavia, se l'area del paese interessata da tale livello elevato di violenza indiscriminata è limitata come ambito geografico solo a una parte o parti del paese di origine, (salvo che lo Stato membro in questione non applichi l'articolo 8) la possibilità per un richiedente di dimostrare l'esistenza di un rischio effettivo di danni gravi nell'area di origine ai sensi dell'articolo 15, lettera c) per il solo motivo di essere un civile dipende dal fatto che quella di origine sia un'area in cui esiste un tale livello elevato di violenza. Devono essere valutate anche le possibilità pratiche di recarsi, soggiornare o stabilirsi in quella parte del paese in modo da poter stabilire se è ragionevole prevedere che un richiedente vi si trasferisca. Tra i fattori di cui tenere conto possono essere compresi la sicurezza attorno all'aeroporto/alla città di ritorno, nonché la sicurezza della strada che è necessario percorrere per recarsi nell'area in cui non esiste il conflitto. In un paese in cui la libertà di circolazione interna è limitata, può essere necessario accertare la legalità dell'insediamento nell'area. Come indicato in precedenza, se una persona non può raggiungere in condizioni di sicurezza l'area di destinazione a causa della situazione di conflitto armato nel paese, si ritiene che sia stata accertata l'esistenza di un rischio di cui all'articolo 15, lettera c) nell'area di origine.

2.5. Protezione all'interno del paese d'origine

Le disposizioni specifiche dell'articolo 8, paragrafo 2 sulla protezione interna fanno riferimento a «una parte del territorio del paese d'origine». Inutile dire che qualora sia stato accertato che esiste un rischio di danni gravi dovuto a una violenza indiscriminata in contrasto con l'articolo 15, lettera c) (salvo che lo Stato membro interessato non applichi l'articolo 8), gli organi giudiziari devono aver concluso che la protezione interna non è disponibile.

Non si può dire che un richiedente abbia una possibile alternativa di protezione interna se anche la parte o le parti alternative del paese i) presentano un rischio effettivo di subire danni gravi (contro il quale non esiste alcuna protezione efficace) o ii) non sarebbe ragionevole aspettarsi che il richiedente vi si stabilisca o iii) il richiedente potrebbe non avere accesso pratico a tale parte o tali parti⁽¹⁰⁸⁾. Nel considerare se esiste una protezione contro i danni gravi in un'altra parte o in altre parti del paese, è necessario esaminare la natura di tale protezione e a tale scopo, si deve prestare attenzione alla fonte della protezione, la sua efficacia e la sua sostenibilità ai sensi dell'articolo 7.

⁽¹⁰⁷⁾ Sentenza HM e altri, cit. alla nota 26, punto 40.

⁽¹⁰⁸⁾ Talvolta i) è definito il ramo «sicurezza», ii) il ramo «ragionevolezza» e iii) il ramo «accesso».

L'articolo 8, paragrafo 2 stabilisce che gli Stati membri tengono conto delle condizioni generali vigenti nel paese di origine al momento della decisione sulla domanda. Il Tribunale superiore del Regno Unito ha ritenuto che ciò non crei un onere giuridico per lo Stato per dimostrare che esiste una parte del paese in cui è ragionevole attendersi che un richiedente, che ha un timore fondato nella sua area di origine, vada a vivere. Il richiedente si assume l'onere giuridico, tuttavia nella pratica la questione del trasferimento interno deve essere sollevata dallo Stato e quindi spetta al richiedente respingere l'asserzione secondo cui non sarebbe ragionevole trasferirsi in quella parte ⁽¹⁰⁹⁾.

2.5.1. Articolo 8 (direttiva «qualifiche» originale e rifiuta)

Tra l'articolo 8 della direttiva originale e quello della direttiva rifiuta vi sono differenze che finora non sono state esaminate dalla CGUE, ma che possono avere implicazioni pratiche. L'articolo 8 nella sua forma originale ⁽¹¹⁰⁾ ha riconosciuto che la minaccia potrebbe non esistere in tutto il paese d'origine e quindi che un richiedente non necessiterebbe di protezione internazionale se potesse ragionevolmente aspettarsi di stabilirsi in un'altra parte del paese nonostante gli ostacoli tecnici al ritorno. La direttiva «qualifiche» (cfr. il precedente paragrafo 1.8) modifica tale articolo stabilendo non solo che sia ragionevole attendere dal richiedente che si stabilisca in quella parte del paese, ma anche che il richiedente possa legalmente e senza pericolo recarsi ed essere ammesso in quella parte del paese e si possa ragionevolmente supporre che vi si stabilisca. Non vi è più alcun riferimento agli «ostacoli tecnici» la cui interpretazione aveva causato difficoltà. Potrebbe essere pienamente giustificato ritenere che la formulazione di tali aspetti dell'articolo nella direttiva rifiuta sia intesa a chiarire ciò che era implicito nell'originale.

La parola «*settle*» ⁽¹¹¹⁾ utilizzata nella direttiva «qualifiche» rifiuta è distinta da «*stay*» nella direttiva originale ed è probabile che sia prevista una situazione di maggiore stabilità.

L'articolo 8, paragrafo 2, della direttiva «qualifiche» rifiuta impone agli Stati membri il compito specifico di ottenere, quando decidono se un richiedente ha una possibile alternativa di protezione interna, informazioni precise e aggiornate da fonti pertinenti sulle condizioni vigenti nella parte o nelle parti alternative del paese:

«[...] gli Stati membri tengono conto al momento della decisione sulla domanda delle condizioni generali vigenti in tale parte del paese, nonché delle circostanze personali del richiedente, in conformità dell'articolo 4. A tal fine gli Stati membri assicurano che informazioni precise e aggiornate pervengano da fonti pertinenti, quali l'Alto commissariato delle Nazioni Unite per i rifugiati e l'Ufficio europeo di sostegno per l'asilo».

⁽¹⁰⁹⁾ Tribunale superiore (Regno Unito), sentenza del 25 novembre 2011, AMM e altri (conflitto; crisi umanitaria; rimpatriati; FGM) Somalia/Secretary of State for the Home Department, CG [2011] UKUT 00445 (IAC). Per l'ultima decisione sulla situazione a Mogadiscio, cfr. la decisione del Tribunale superiore nella causa MOJ e altri (rientro a Mogadiscio) Rev1, CG [2014] UKUT 442 (IAC).

⁽¹¹⁰⁾ L'articolo 8 originale (ancora applicabile all'Irlanda e al Regno Unito (cfr. nota 1) stabilisce quanto segue:

«Protezione all'interno del paese d'origine

1. Nell'ambito dell'esame della domanda di protezione internazionale, gli Stati membri possono stabilire che il richiedente non necessita di protezione internazionale se in una parte del territorio del paese d'origine egli non abbia fondati motivi di temere di essere perseguitato o non corra rischi effettivi di subire danni gravi e se è ragionevole attendere dal richiedente che si stabilisca in quella parte del paese.

2. Nel valutare se una parte del territorio del paese d'origine è conforme al paragrafo 1, gli Stati membri tengono conto delle condizioni generali vigenti in tale parte del paese nonché delle circostanze personali del richiedente all'epoca della decisione sulla domanda.

3. Il paragrafo 1 si può applicare nonostante ostacoli tecnici al ritorno al paese d'origine».

⁽¹¹¹⁾ Termine applicato anche dalla Corte EDU: cfr., ad esempio, la sentenza dell'11 gennaio 2007, Salah Skeeckh/Paesi Bassi, causa n. 1948/04 [2007] ECHR 36, punto 141: la Corte ritiene che, quale condizione preliminare per avvalersi dell'alternativa di fuga interna, devono essere previste talune garanzie: la persona da espellere deve potersi recare nell'area interessata, accedervi e stabilirvisi, altrimenti può sorgere un problema ai sensi dell'articolo 3, a maggior ragione se in mancanza di dette garanzie è possibile che la persona espulsa finisca in una zona del paese d'origine in cui può essere oggetto di maltrattamenti.

Allegato A — Schema decisionale

A. La protezione dei rifugiati è stata negata?

La protezione sussidiaria può essere concessa solo alle persone che non possiedono i requisiti per essere riconosciute come rifugiato [articolo 2, lettera f)].

B. La situazione nell'area di origine determina il rischio di cui all'articolo 15, lettera c)?

1. La situazione nell'area di origine del richiedente è quella di un conflitto armato?
2. In caso di risposta affermativa, è caratterizzata da violenza indiscriminata a un livello così elevato che le persone presenti corrono un rischio effettivo di subire danni gravi per il solo fatto di essere civili? (*Questione del «rischio generale»*)?
3. Anche se la risposta alla seconda domanda è negativa, un richiedente può comunque dimostrare l'esistenza di un rischio effettivo di subire danni gravi in seguito a minacce specifiche subite in conseguenza delle circostanze personali unite al contesto di (un livello minore) di violenza indiscriminata? Più un richiedente può dimostrare di essere specificamente colpito, minore deve essere il livello di violenza indiscriminata (*Questione del «rischio specifico»*).

Per dare una risposta affermativa a entrambe le domande, gli organi giudiziari devono accertarsi che non esista una protezione effettiva contro i danni gravi conformemente all'articolo 7 (*Questione della protezione*).

Poiché si presume che l'area di origine di un richiedente sia il luogo di destinazione, può essere necessario chiedere se tale area è raggiungibile in condizioni di sicurezza. In caso contrario, si deve presumere che il richiedente abbia dimostrato l'esistenza di un rischio effettivo di subire danni gravi nel tragitto verso l'area di destinazione e che ciò è sufficiente per soddisfare il requisito B.

C. Nessuna possibilità di protezione interna?

Se la risposta alla domanda 2 o 3 è affermativa, è comunque necessario chiedere (salvo che lo Stato membro interessato non applichi l'articolo 8) se, conformemente all'articolo 8, un richiedente può evitare danni gravi stabilendosi in un'altra parte del paese di origine.

Alla luce di questa indagine (che deve essere basata su informazioni precise e aggiornate provenienti da fonti pertinenti) occorre domandare se un richiedente:

- è al riparo da danni gravi in quella parte del paese;
- può legalmente e senza pericolo recarsi ed essere ammesso in quella parte del paese;
- si può ragionevolmente supporre che vi si stabilisca.

Per essere certi che una parte alternativa del paese sia sicura, è necessario chiedere se è quella in cui non esiste alcun rischio effettivo che il richiedente subisca danni gravi (contro i quali non vi è alcuna protezione efficace).

Per essere certi che una parte alternativa del paese sia accessibile, un richiedente deve potersi recare in quella parte/raggiungerla ed esservi ammesso senza che gli sia impedito di farlo da ostacoli giuridici o pratici (ad esempio, il requisito di avere un tipo particolare di documento d'identità, il fatto che tutte le strade verso quella parte non sono percorribili o la mancanza di sicurezza lungo il tragitto).

Per ritenere ragionevole per un richiedente stabilirsi in una parte alternativa del paese, è necessario chiedere se farlo può comportare un onere indebito.

Per essere sicuri che un richiedente possa stabilirsi in quella parte, è necessario accertarsi che sia possibile restarvi in modo non temporaneo e non contingente.

D. Ammissibilità alla protezione sussidiaria

Se la risposta individuata nelle sezioni B e C è positiva, il richiedente soddisfa i requisiti di cui all'articolo 15, lettera c) e (se non vi sono problemi di esclusione o di cessazione) ha accertato l'ammissibilità alla protezione sussidiaria.

Allegato B — Metodologia

Metodologia per le attività di sviluppo professionale disponibili per i membri degli organi giudiziari

Contesto e introduzione

L'articolo 6 del regolamento che istituisce l'EASO⁽¹¹²⁾ (di seguito «il regolamento») specifica che l'Agenzia organizza e sviluppa la formazione destinata ai membri di tutte le amministrazioni e di tutti gli organismi giurisdizionali negli Stati membri. A tale scopo, l'EASO si avvale della competenza di istituzioni accademiche e di altre organizzazioni pertinenti e tiene conto della cooperazione dell'Unione esistente in tale settore nel pieno rispetto dell'indipendenza degli organi giudiziari nazionali.

Allo scopo di favorire il rafforzamento delle norme di qualità e l'armonizzazione delle decisioni in tutta l'Unione europea, e in linea con il suo mandato giuridico, l'EASO fornisce un duplice sostegno formativo che comprende lo sviluppo e la pubblicazione di materiali di sviluppo professionale e l'organizzazione di attività di sviluppo professionale. Con l'adozione della presente metodologia, l'EASO si propone di delineare le procedure che saranno seguite per l'attuazione delle sue attività di sviluppo professionale.

Nello svolgimento di tali compiti, l'EASO si impegna a seguire l'approccio e i principi indicati nel campo della cooperazione dell'EASO con gli organi giudiziari adottati nel 2013⁽¹¹³⁾.

Programma di sviluppo professionale

Contenuto e ambito di applicazione — In linea con il mandato giuridico previsto dal regolamento e in collaborazione con gli organi giudiziari, l'EASO adotterà un programma di sviluppo professionale inteso a fornire ai membri degli organi giudiziari un quadro completo del sistema europeo comune di asilo (di seguito il «CEAS»). Tenendo in considerazione le esigenze comunicate dalla rete dell'EASO, degli sviluppi giurisprudenziali a livello europeo e nazionale, del livello di divergenza nell'interpretazione delle disposizioni pertinenti e degli sviluppi nel settore, saranno sviluppati materiali in linea con la seguente struttura, ma non limitati ad essa (senza un ordine particolare).

1. Presentazione del CEAS e del ruolo e delle responsabilità degli organi giudiziari nel campo della protezione internazionale.
2. Accesso alle procedure che disciplinano la protezione internazionale e il principio di non respingimento.
3. Criteri d'inclusione e di protezione sussidiaria alla luce della direttiva dell'Unione europea relativa alle qualifiche⁽¹¹⁴⁾.
4. Valutazione delle prove e credibilità.
5. Elusione e fine della protezione alla luce della direttiva dell'Unione europea relativa alle qualifiche.
6. Protezione internazionale in situazioni di conflitto:
7. protezione dei rifugiati in situazioni di conflitto;
8. applicazione dell'articolo 15, lettera c), della direttiva dell'Unione europea relativa alle qualifiche.
9. Accoglienza nel contesto della direttiva dell'Unione europea relativa alle condizioni di accoglienza⁽¹¹⁵⁾.

⁽¹¹²⁾ Regolamento (UE) n. 439/2010 del Parlamento europeo e del Consiglio, del 19 maggio 2010, che istituisce l'Ufficio europeo di sostegno per l'asilo (GU L 132 del 29.05.2010, pag. 11, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:IT:PDF>).

⁽¹¹³⁾ Nota sulla cooperazione dell'EASO con gli organi giudiziari degli Stati membri, 21 agosto 2013.

⁽¹¹⁴⁾ Direttiva 2011/95/UE del Parlamento europeo e del Consiglio, del 13 dicembre 2014, recante norme sull'attribuzione, a cittadini di paesi terzi o apolidi, della qualifica di beneficiario di protezione internazionale, su uno status uniforme per i rifugiati o per le persone aventi titolo a beneficiare della protezione sussidiaria, nonché sul contenuto della protezione riconosciuta (GU L 337 del 20.12.2011, pag. 9, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:IT:PDF>).

⁽¹¹⁵⁾ Direttiva 2013/33/UE del Parlamento europeo e del Consiglio, del 26 giugno 2013, recante norme relative all'accoglienza dei richiedenti protezione internazionale (GU L 180 del 29.6.2013, pag. 96, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:IT:PDF>).

10. Trattamento alla luce del regolamento Dublino III ⁽¹¹⁶⁾.
11. Aspetti procedurali alla luce della direttiva dell'Unione europea relativa alle procedure di asilo ⁽¹¹⁷⁾.
12. Accesso ai diritti conferiti nel quadro giuridico dell'Unione europea in seguito al riconoscimento dello status di protezione internazionale.
13. Procedure di rimpatrio alla luce della direttiva dell'Unione europea relativa ai rimpatri ⁽¹¹⁸⁾.
14. Valutazione e uso delle informazioni sul paese di origine.
15. Accesso a un ricorso effettivo in linea con gli strumenti giuridici del CEAS.

Il contenuto dettagliato del programma e l'ordine in cui i capitoli saranno realizzati devono essere stabiliti in seguito a una valutazione delle esigenze condotta in collaborazione con la rete di organi giudiziari dell'EASO (di seguito la «rete dell'EASO») che attualmente comprende i punti di contatto nazionali dell'EASO negli organi giudiziari degli Stati membri, la Corte di giustizia dell'Unione europea (CGUE), la Corte europea dei diritti dell'uomo (Corte EDU) e i due organi giudiziari con i quali l'EASO ha uno scambio di lettere formale: l'associazione internazionale dei giudici del diritto del rifugiato (IARLJ) e l'associazione dei giudici amministrativi europei (AEAJ). Inoltre, ove opportuno saranno consultati anche altri partner fra cui l'UNHCR, l'Agenzia dell'Unione europea per i diritti fondamentali (FRA), la rete europea di formazione giudiziaria (REFG) e l'Accademia di diritto europeo (ERA). Se ne terrà conto anche nel programma di lavoro annuale adottato dall'EASO nel quadro delle riunioni di programmazione e di coordinamento dell'EASO.

Coinvolgimento di esperti

Gruppi di redazione — Il programma sarà sviluppato dall'EASO in collaborazione con la rete dell'EASO attraverso l'istituzione di specifici gruppi di lavoro (gruppi di redazione) per la realizzazione di ciascun capitolo. I gruppi di redazione saranno composti da esperti nominati tramite la rete dell'EASO e scelti in linea con specifici criteri di selezione. In linea con il programma di lavoro dell'EASO e il piano concreto adottato nelle riunioni di programmazione e di coordinamento annuali, l'EASO emanerà un invito a presentare proposte per la realizzazione di ciascun capitolo.

L'invito sarà inviato alla rete dell'EASO specificando l'ambito del capitolo da realizzare, i tempi previsti e il numero di esperti necessari. I punti di contatto nazionali dell'EASO saranno invitati a collaborare con gli organi giudiziari per l'identificazione degli esperti che sono interessati e disponibili a contribuire alla realizzazione del capitolo.

Sulla base delle nomine ricevute, l'EASO condividerà con la rete dell'EASO una proposta d'istituzione del gruppo di redazione. La proposta sarà elaborata dall'EASO in linea con i seguenti criteri.

1. Se il numero delle nomine ricevute è pari o inferiore al numero di esperti richiesto, tutti gli esperti nominati saranno automaticamente invitati a far parte del gruppo di redazione.
2. Se le nomine ricevute superano il numero di esperti richiesto, l'EASO effettuerà una preselezione motivata degli esperti. La preselezione sarà eseguita come segue:
 - l'EASO sceglierà in via prioritari gli esperti che sono disponibili a partecipare a tutto il processo, partecipando anche a tutte le riunioni di esperti;
 - se vi sono più esperti nominati dallo stesso Stato membro, l'EASO contatterà il punto focale chiedendo ad esso di scegliere un esperto. In questo modo si consentirà una più ampia rappresentanza degli Stati membri nel gruppo;
 - l'EASO proporrà quindi di attribuire la priorità agli organi giudiziari rispetto agli assistenti o ai relatori giuridici;
 - se le nomine continuano a essere superiori al numero di esperti richiesto, l'EASO presenterà una proposta motivata di selezione che tenga conto della data in cui le nomine sono state ricevute (sarà attribuita la priorità alle prime) e dell'interesse dell'EASO a garantire un'ampia rappresentanza regionale.

⁽¹¹⁶⁾ Regolamento (UE) n. 604/2013 del Parlamento europeo e del Consiglio, del 26 giugno 2013, che stabilisce i criteri e i meccanismi di determinazione dello Stato membro competente per l'esame di una domanda di protezione internazionale presentata in uno degli Stati membri da un cittadino di un paese terzo o da un apolide (GU L 180 del 29.6.2013, pag. 31, <http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32013R0604&from=it>).

⁽¹¹⁷⁾ Direttiva 2013/32/UE del Parlamento europeo e del Consiglio, del 26 giugno 2013, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale (GU L 180 del 29.6.2013, pag. 60, <http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32013L0032&from=it>).

⁽¹¹⁸⁾ Direttiva 2008/115/CE del Parlamento europeo e del Consiglio, del 16 dicembre 2008, recante norme e procedure comuni applicabili negli Stati membri al rimpatrio di cittadini di paesi terzi il cui soggiorno è irregolare (GU L 348 del 24.12.2008, pag. 98, <http://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32008L0115&from=IT>).

L'EASO inviterà inoltre l'UNHCR a nominare un rappresentante che entri a far parte del gruppo di redazione.

La rete dell'EASO sarà invitata a esprimere i propri pareri e/o a presentare suggerimenti sulla selezione di esperti proposta entro un periodo massimo di dieci giorni. La selezione finale terrà conto dei pareri della rete dell'EASO e confermerà la composizione del gruppo di redazione.

Processo di consultazione — In linea con il regolamento, l'EASO avvierà un processo di consultazione riguardo allo sviluppo dei materiali. Ai fini dell'attuazione del processo di consultazione, l'EASO emanerà un invito a esprimere interesse rivolto ai membri del forum consultivo dell'EASO, che comprende rappresentanti degli Stati membri, delle organizzazioni della società civile, di altre organizzazioni pertinenti, del mondo accademico, nonché altri esperti o accademici raccomandati dalla rete di organi giudiziari dell'EASO.

Tenendo conto della competenza e della conoscenza del campo giudiziario di coloro che rispondono all'invito, nonché dei criteri di selezione del forum consultivo dell'EASO, l'EASO presenterà una proposta motivata alla rete dell'EASO che in definitiva confermerà l'identità di coloro che devono essere coinvolti nel processo di consultazione. Successivamente si può chiedere che i contributi al processo di consultazione riguardino tutti gli sviluppi o si concentrino su settori legati alla loro particolare sfera di competenza.

L'Agenzia dell'Unione europea per i diritti fondamentali (FRA) sarà invitata a partecipare al processo di consultazione.

Elaborazione del programma

Fase preparatoria — Prima dell'avvio del processo di redazione, l'EASO preparerà una serie di materiali, compresi ma non limitati a:

1. una bibliografia delle risorse pertinenti e dei materiali disponibili sull'argomento;
2. un elenco della giurisprudenza europea e nazionale sull'argomento.

I partecipanti al processo di consultazione, insieme alla rete dell'EASO⁽¹¹⁹⁾, svolgeranno un ruolo importante nella fase preparatoria. A tale scopo, l'EASO informerà i partecipanti al processo di consultazione e la rete dell'EASO sull'ambito di ciascun capitolo e condividerà un progetto dei materiali preparatori insieme a un invito a fornire ulteriori informazioni ritenute rilevanti per lo sviluppo. Di tali informazioni si terrà conto nei materiali che saranno condivisi con il rispettivo gruppo di redazione.

Processo di redazione — L'EASO organizzerà almeno due riunioni di lavoro per l'elaborazione di ciascun capitolo. Nel corso della prima riunione, il gruppo di redazione:

- nominerà un coordinatore o più coordinatori per il processo di redazione;
- svilupperà la struttura del capitolo e adotterà la metodologia di lavoro;
- distribuirà i compiti per il processo di redazione;
- svilupperà gli elementi di base del contenuto del capitolo.

Sotto la supervisione del coordinatore del gruppo, e in stretta collaborazione con l'EASO, il gruppo svilupperà un progetto preliminare del rispettivo capitolo.

Nel corso della seconda riunione, il gruppo:

- esaminerà il progetto preliminare e concorderà il contenuto;
- garantirà la coerenza di tutte le parti e di tutti i contributi al progetto;
- esaminerà il progetto da un punto di vista didattico.

Sulla base delle necessità, il gruppo può proporre all'EASO l'organizzazione di ulteriori riunioni per l'ulteriore elaborazione del progetto. Una volta completato, il progetto sarà condiviso con l'EASO.

⁽¹¹⁹⁾ Sarà consultato anche l'UNHCR.

Controllo della qualità — L'EASO condividerà il primo progetto completato dal gruppo di redazione con la rete dell'EASO, l'UNHCR e i partecipanti al processo di consultazione che saranno invitati a esaminare i materiali allo scopo di aiutare il gruppo di lavoro a migliorare la qualità del progetto definitivo.

Tutti i suggerimenti ricevuti saranno condivisi con il coordinatore del gruppo di redazione che coordinerà con il gruppo di redazione la valutazione dei suggerimenti presentati e la preparazione di un progetto definitivo. In alternativa, il coordinatore può suggerire l'organizzazione di un'altra riunione per valutare i suggerimenti qualora siano particolarmente rilevanti o possano influire sulla struttura e il contenuto del capitolo.

Per conto del gruppo di redazione, il coordinatore condividerà il capitolo con l'EASO.

Processo di aggiornamento — Nel contesto delle riunioni di programmazione e di coordinamento annuali, l'EASO inviterà la rete dell'EASO a condividere le loro opinioni riguardo alla necessità di aggiornare i capitoli del programma.

Sulla base di tale scambio, l'EASO può:

- effettuare aggiornamenti minimi per migliorare la qualità dei capitoli includendo anche gli sviluppi giurisprudenziali rilevanti. In questo caso, l'EASO preparerà direttamente una prima proposta di aggiornamento, la cui adozione sarà effettuata dalla rete dell'EASO;
- richiedere l'istituzione di un gruppo di redazione per aggiornare uno o più capitoli del programma. In questo caso, l'aggiornamento seguirà la stessa procedura descritta per lo sviluppo del programma.

Attuazione del programma

In collaborazione con i membri della rete dell'EASO e i partner pertinenti (ad esempio, REFG, ERA ecc.) l'EASO sosterrà l'uso del programma di formazione da parte degli istituti di formazione nazionali. Il sostegno dell'EASO a questo proposito consisterà in quanto segue.

Nota orientativa per i facilitatori — Seguendo la stessa procedura descritta per l'elaborazione dei vari capitoli che compongono il programma, l'EASO istituirà un gruppo di redazione per elaborare una nota orientativa per i facilitatori. La nota servirà come strumento di riferimento pratico per i facilitatori e fornirà indicazioni per l'organizzazione e la facilitazione di seminari pratici sul programma di sviluppo professionale.

Seminari per i facilitatori — Inoltre, in seguito all'elaborazione di ciascun capitolo del programma, l'EASO organizzerà un seminario per i facilitatori che fornirà un quadro approfondito del capitolo e la metodologia proposta per l'organizzazione di seminari a livello nazionale.

- **Nomina dei facilitatori e preparazione del seminario** — L'EASO cercherà di ottenere il supporto di almeno due membri del gruppo di redazione per favorire la preparazione e facilitare il seminario. Qualora nessun membro del gruppo di redazione fosse disponibile a tale scopo, l'EASO emanerà uno specifico invito a presentare candidature per la costituzione di elenchi di facilitatori esperi tramite la rete dell'EASO.
- **Selezione dei partecipanti** — L'EASO invierà quindi un invito alla rete dell'EASO per l'identificazione di vari facilitatori potenziali con competenze specifiche nel settore, che siano interessati e disponibili a organizzare seminari sul programma di sviluppo professionale a livello nazionale. Se le nomine supereranno il numero specificato nell'invito, l'EASO effettuerà una selezione attribuendo la priorità a un'ampia rappresentanza geografica nonché alla selezione dei facilitatori che con maggiore probabilità faciliteranno l'attuazione del programma a livello nazionale. Sulla base delle necessità e in linea con il programma di lavoro e il piano di lavoro annuale, adottati nel quadro delle riunioni di programmazione e di coordinamento dell'EASO, l'EASO potrebbe valutare la possibilità di organizzare altri seminari per i facilitatori.

Seminari nazionali — In stretta collaborazione con la rete dell'EASO, l'EASO stabilirà contatti con gli istituti di formazione giudiziaria pertinenti a livello nazionale per promuovere l'organizzazione dei seminari a livello nazionale. Nel farlo, l'EASO sosterrà anche il coinvolgimento dei membri degli organi giudiziari che hanno contribuito all'elaborazione del programma o hanno partecipato a seminari per i facilitatori dell'EASO.

Seminari avanzati dell'EASO

L'EASO svolgerà inoltre un seminario avanzato annuale su determinati aspetti del CEAS allo scopo di promuovere una cooperazione pratica e un dialogo ad alto livello tra membri degli organi giudiziari.

Identificazioni dei settori pertinenti — I seminari avanzati dell'EASO verteranno su settori con un elevato livello di divergenza nell'interpretazione nazionale o su settori in cui lo sviluppo giurisprudenziale è ritenuto importante per la rete dell'EASO. Nel contesto delle riunioni di programmazione e di coordinamento annuali, l'EASO inviterà la rete dell'EASO nonché l'UNHCR e i membri del gruppo consultivo a presentare suggerimenti per possibili settori di interesse. In base a tali suggerimenti, l'EASO presenterà una proposta alla rete dell'EASO che adotterà una decisione sul settore da prendere in considerazione per il seminario successivo. Ove opportuno, i seminari comporteranno l'elaborazione di un capitolo su uno specifico argomento d'interesse nell'ambito del programma.

Metodologia — Ai fini della preparazione dei seminari, l'EASO cercherà di ottenere il supporto della rete dell'EASO, che contribuirà alla definizione della metodologia di lavoro (ad esempio discussioni di casi, sedute «fittizie» ecc.) e alla preparazione dei materiali. La metodologia seguita determinerà il numero massimo di partecipanti per ciascun seminario.

Partecipazione ai seminari dell'EASO — Sulla base della metodologia, e in consultazione con le associazioni giudiziarie, l'EASO stabilirà il numero massimo di partecipanti a ciascun seminario. Il seminario sarà aperto ai membri degli organi giudiziari europei e nazionali e alla rete di organi giudiziari dell'EASO, fra cui REFG, FRA, ERA e UNHCR.

Prima dell'organizzazione di ciascun seminario, l'EASO emanerà un invito aperto alla rete di organi giudiziari dell'EASO e agli organismi menzionati in precedenza specificando l'oggetto del seminario, la metodologia, il numero massimo di partecipanti e il termine per la registrazione. L'elenco dei partecipanti garantirà una buona rappresentanza dei membri degli organi giudiziari e attribuirà la priorità alla prima richiesta di partecipazione pervenuta da ciascuno Stato membro.

Controllo e valutazione

Nello svolgimento delle sue attività, l'EASO promuoverà un dialogo aperto e trasparente con la rete dell'EASO, singoli membri degli organi giudiziari, l'UNHCR, persone coinvolte nel processo di consultazione e partecipanti alle attività dell'EASO, che saranno invitati a condividere con l'EASO qualsiasi opinione o suggerimento che possano migliorare potenzialmente la qualità delle sue attività.

Inoltre, l'EASO preparerà questionari di valutazione che saranno distribuiti nel corso delle sue attività di sviluppo professionale. I suggerimenti di minore rilevanza per miglioramenti saranno direttamente incorporati dall'EASO, che informerà la rete dell'EASO della valutazione generale delle sue attività nel contesto della sua riunione di programmazione e di coordinamento annuale.

Su base annuale, l'EASO fornirà anche alla rete dell'EASO un quadro delle sue attività nonché i suggerimenti rilevanti ricevuti per quanto riguarda gli ulteriori sviluppi che saranno discussi nelle riunioni di programmazione e di coordinamento annuali.

Principi di attuazione

- Nello svolgimento delle sue attività di sviluppo professionale, l'EASO terrà debito conto della responsabilità pubblica dell'EASO e dei principi applicabili alla spesa pubblica.
- L'EASO e gli organi giudiziari europei e nazionali condivideranno la responsabilità per il programma di sviluppo professionale. Tutti i partner si adopereranno per concordare il contenuto di ciascun capitolo in modo tale da assicurare gli «auspici degli organi giudiziari» del prodotto definitivo.

- Il programma risultante farà parte del programma di sviluppo professionale dell'EASO, ivi compresi i relativi diritti. In quanto tale, l'EASO lo aggiornerà ove necessario, coinvolgendo pienamente nel processo gli organi giudiziari europei e nazionali.
- Tutte le decisioni riguardanti l'attuazione del programma e la selezione degli esperti saranno adottate con l'approvazione di tutti i partner.
- Il programma di sviluppo professionale sarà elaborato, adottato e attuato in conformità della metodologia per le attività di sviluppo professionale disponibile ai membri degli organi giudiziari.

Porto Grande, La Valletta, 11 dicembre 2014

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

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

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

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

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

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

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

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

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The sole question in an expulsion case was whether, in all the circumstances of the case, substantial grounds had been shown for believing that the applicant would, if returned, face a real risk of treatment contrary to Article 3*.1 If the existence of such a risk was established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanated from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. However, not every situation of general violence would give rise to such a risk. On the contrary, a general situation of violence would only be of sufficient intensity to create such a risk "in the most extreme cases". The following criteria** were relevant (but not exhaustive) for the purposes of identifying a conflict's level of intensity: whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; whether the use of such methods and/or tactics was widespread among the parties to the conflict; whether the fighting was localised or widespread; and finally, the number of civilians killed, injured and displaced as a result of the fighting. Turning to the situation in Somalia, Mogadishu, the proposed point of return, was subjected to indiscriminate bombardments and military offensives, and unpredictable and widespread violence. It had substantial numbers of civilian casualties and displaced persons. While a well-connected individual might be able to obtain protection there, only connections at the highest level would be able to assure such protection and anyone who had not been in Somalia for some time was unlikely to have such connections. In conclusion, the violence was of such a level of intensity that anyone in the city, except possibly those who were exceptionally well-connected to "powerful actors", would be at real risk of proscribed treatment. As to the possibility of relocating to a safer region, Article 3 did not preclude the Contracting States from placing reliance on the internal flight alternative provided that the returnee could travel to, gain admittance to and settle in the area in question without being exposed to a real risk of ill-treatment. The Court was prepared to accept that it might be possible for returnees to travel from Mogadishu International Airport to another part of southern and central Somalia. However, returnees with no recent experience of living in Somalia would be at real risk of ill-treatment if their home area was in – or if they were required to travel through – an area controlled by al-Shabaab, as they would not be familiar with the strict Islamic codes imposed there and could therefore be subjected to punishments such as stoning, amputation, flogging and corporal punishment. It was reasonably likely that returnees who either had no close family connections or could not safely travel to an area where they had such connections would have to seek refuge in an Internally Displaced Persons (IDP) or refugee camp. The Court therefore had to consider the conditions in these camps, which had been described as dire. In that connection, it indicated that where a crisis was predominantly due to the direct and indirect actions of parties to a conflict – as opposed to poverty or to the State's lack of resources to deal with a naturally occurring phenomenon, such as a drought – the preferred approach for assessing whether dire humanitarian conditions had reached the Article 3 threshold was that adopted in <i>M.S.S. v. Belgium and Greece***</i>, which required the Court to have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time frame. Conditions in the main centres – the Afgooye Corridor in Somalia and the Dadaab camps in Kenya – were sufficiently dire to amount to treatment reaching the Article 3 threshold. IDPs in the Afgooye Corridor had very limited access to food and water, and shelter appeared to be an emerging problem as landlords sought to exploit their predicament for profit. Although humanitarian assistance was available in the Dadaab camps, due to extreme overcrowding, access to shelter, water and sanitation facilities was extremely limited. The inhabitants of both camps were vulnerable to violent crime, exploitation, abuse and forcible recruitment and had very little prospect of their situation improving within a reasonable time frame. Moreover, the refugees living in – or, indeed, trying to get to – the Dadaab camps were also at real risk of 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), Ninewah, Salah Al-Din, was at such a high level that substantial grounds were shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat. Nor did the evidence establish that there was a real risk of serious harm under Article 15(c) QD for civilians who were Sunni or Shi'a or Kurds or had former Ba'ath Party connections: these characteristics did not in themselves amount to 'enhanced risk categories' under Article 15(c)'s 'sliding scale' (see [39] of <i>Elgafaji</i>).
EASO27	Armed conflict, subsidiary protection	No RG 10952/2011	Italy	Italian	Rome Court	14.9.12	Pakistan	The concept of a local conflict as referred to in Article 14 of Legislative Decree 251/2007 (c) and which is a sufficient reason for granting subsidiary protection, should not be understood as applying only to civil war. It should cover all circumstances where conflicts or outbreaks of violence, whatever their origins, between opposing groups or various factions appear to have become permanent and ongoing and widespread, not under the control of the state apparatus or actually benefiting from cultural and political ties with this apparatus.
EASO28	Internal protection, indiscriminate violence, individual threat, internal armed conflict, subsidiary protection	M.A., No 11026101	France	French	CNDA (National Asylum Court)	30.8.12	Somalia	The situation in Somalia, in particular in the south and central regions , should be regarded as a situation of generalised violence resulting from an internal armed conflict.
EASO29	Armed conflict, burden of proof, standard of proof, vulnerable person, serious harm	5114/2012	Spain	Spanish	Supreme Court. Chamber for Contentious Administrative Proceedings, third section	12.7.12	Colombia	The Court held that there was no armed conflict in Colombia.

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

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

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

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

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

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

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

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

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The evidence did not alter the position as described in HK and Others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG [2010] UKUT 378 (IAC), namely that when considering the question of whether children were disproportionately affected by the consequences of the armed conflict in Afghanistan, a distinction had to be drawn between children who were living with a family and those who were not. That distinction was reinforced by the additional material before the Tribunal. Whilst it was recognised that there were some risks to which children who had the protection of the family were nevertheless subject, in particular the risk of landmines and the risks of being trafficked, they were not of such a level as to lead to the conclusion that all children would qualify for international protection. In arriving at this conclusion, account was taken of the necessity to have regard to the best interests of children.</p>	<p>AD Lee v SSHD [2011] EWCA Civ 348 DS (Afghanistan) [2011] EWCA Civ 305 FA (Iraq) (FC) (Respondent) v SSHD (Appellant) [2011] UKSC 22 ZH (Tanzania) v SSHD [2011] UKSC 4 FA (Iraq) v SSHD [2010] EWCA Civ 696 HK and Others (minors-indiscriminate violence-forced recruitment by Taliban-contact with family members) Afghanistan CG [2010] UKUT 378 (IAC) HM (Article 15(c)) (Iraq) v Secretary of State for the Home Department [2010] UKUT 331 (IAC) Elgafaji (Case C-465/07); [2009] 1WLR 2100 GS (Article 15(c): Indiscriminate Violence) Afghanistan CG [2009] UKAIT 0044 GS (Existence of internal armed conflict) Afghanistan [2009] UKAIT 00010 RQ (Afghan National Army, Hizb-i-Islami, risk) Afghanistan CG [2008] UKAIT 00013 HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 R (Mlloja) v SSHD [2005] EWHC 283 (Admin) R (Q & Others) v SSHD [2003] EWCA Civ 364, R (on the application of Howard League for Penal Reform) v Secretary of State for the Home Department & Anor [2002] EWHC 2497 (Admin)</p>
<p>Subsidiary protection was granted regardless of any personal reason.</p>	<p>ECHR 28 June 2011, Sufi et Elmi c/ UK No 8319/07 and No 11449/07</p>
<p>The Court quashed a country guidance decision on the application of Article 15(c) QD in Iraq because the Tribunal had not considered what was necessary to ensure that it heard proper argument in a case designed to give binding guidance for other applicants.</p>	<p>UK - Court of Appeal, 24 June 2009, QD & AH (Iraq) v Secretary of State for the Home Department with the United Nations High Commissioner for Refugees Intervening [2009] EWCA Civ 620 UK - Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd [1921] 2AC 438 UK - OM (Zimbabwe) v. Secretary of State for the Home Department, CG [2006] UKAIT 00077 UK - KH (Iraq) CG [2008] UKIAT 00023 UK - HM and Others (Iraq) v. Secretary of State for the Home Department, CG [2010] UKUT 331 (IAC) UK - In re F [1990] 2 AC UK - Clarke v Fennoscandia Ltd [2007] UKHL 56</p>
<p>The Tribunal considered the 'significance' of <i>Sufi and Elmi</i> and the rulings of the ECtHR in general. It observed that more extensive evidence was available to it than was considered by the ECtHR and so it was entitled to attribute weight and make its own findings of fact in these cases, which otherwise would have been disposed of by reference to <i>Sufi and Elmi</i>. 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, S.N. v Ministry of Interior, 5 Azs 66/2008-70 Czech Republic - Supreme Administrative Court, 28 July 2009, L.O. v Ministry of Interior, 5 Azs 40/2009 Czech Republic - Supreme Administrative Court, 16 September 2008, N.U. v Ministry of Interior, 3 Azs 48/2008-57 Czech Republic - Supreme Administrative Court, 24 January 2008, E.M. v Ministry of Interior, 4 Azs 99/2007-93 Czech Republic - Supreme Administrative Court, 25 November 2011, D.A. v Ministry of Interior, 2 Azs 100/2007-64</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
The Court noted that because of his young age and lack of family links the appellant would be particularly exposed to the threats encompassed in Article L.712-1 c) CESEDA. Subsidiary protection was granted.	
Subsidiary protection was granted regardless of any personal reason.	
Claim was rejected both on Geneva Convention and subsidiary protection grounds. This assessment of the situation in the Nangarhar province has evolved very quickly: see EASO 31.	(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07
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.	(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07
Claim was rejected both on Geneva Convention and subsidiary protection grounds.	
The High Administrative Court upheld its position according to which the applicant was eligible for subsidiary protection under Article 15(c) of the Qualification Directive. At the time of its first decision (January 2010), the Court found that an internal armed conflict took place in the applicant's home region, the province of Logar, in the form of civil war-like clashes and guerrilla fighting. The situation had worsened to such an extent that the armed conflict reached a high level of indiscriminate violence which involved a high 'density of danger' for the civilian population. It could be established that virtually the whole population of the province of Logar was subject to 'acts of arbitrary, indiscriminate violence' by the parties to the conflict. The Court found that the applicant was facing an even higher risk due to his Tajik ethnicity, his Shiite religion, his previous membership of the youth organization of the PDPA, which had become known in the meantime, and due to the fact that his family (formerly) owned real estate in his hometown. These circumstances had to be taken into consideration in the existing context as they suggested that the applicant was not only affected more severely than others by the general indiscriminate violence, but since they exposed him additionally to the risk of target-oriented acts of violence. It was precisely such target-oriented assaults which could be expected to intensify in the province of Logar which, to a great extent, was dominated by insurgents.	(CJEU) <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
The asylum judge commits an error of law if he denies subsidiary protection on the sole basis of a negative assessment of personal circumstances without any reference to the level of indiscriminate violence possibly existing in the country of origin.	

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

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

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

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

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

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

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

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

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

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The country of origin information confirmed that in Ghazni province, Afghanistan, indiscriminate violence reached the threshold to be considered an armed conflict. Attacks in Ghazni were mostly committed by explosive devices and suicide bombers. These methods of fighting qualify as acts of indiscriminate violence per se. The credibility of the applicant was not a precondition to be granted subsidiary protection.</p>	<p>(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 Case No 24.K.33.913/2008 of the Metropolitan Court Case No 17.K.33.301/2008/15 of the Metropolitan Court</p>
<p>A petition for judicial review of a decision of the Secretary of State refusing to treat further submissions from a Somali national as a fresh claim for asylum should be refused where it could not be concluded that he would be at risk on his return to Somalia.</p>	<p>FO (Nigeria) v Secretary of State for the Home Department [2010] 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 Januzi [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) Elgafaji v Staatssecretaris van Justitie C-465/07 1 WLR 2100 Krotov [2004] EWCA Civ 69 Prosecutor v Blaskic (Judgement) Appeals Chamber, Case No IT-95-14-A, 29 July 2004 Fadli [2000] EWCA Civ 297 Horvath [2000] UKHL 37 Sepet and Bulbul [2003] UKHL 15</p>
<p>The Tribunal assessed evidence which examined the number of civilian fatalities directly caused by both sides to the conflict, the ease of access on the road between Kabul and Jalalabad, the option of internal relocation and enhanced risk categories. This decision was replaced as current country guidance on the applicability of Article 15(c) of the Qualification Directive to the on-going armed conflict in Afghanistan by <i>AK</i> (Article 15(c)) <i>Afghanistan CG</i> [2012] <i>UKUT</i> 163 .</p>	<p>(CJEU) Elgafaji v Staatssecretaris van Justitie C-465/07 (UK) PM and Others (Kabul-Hizbi-i-Islami Afghanistan CG [2007] UKIAT 00089 HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022 HJ (Homosexuality: reasonably tolerating living discreetly) Iran [2008] UKIAT 00044 KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKIAT 00023 J v Secretary of the State for the Home Department [2006] EWCA Civ 1238 RQ (Afghan National army-Hizbi-i-Islami-risk) Afghanistan CG [2008] UKIAT 00013 GS (Existence of armed conflict) Afghanistan CG [2009] UKIAT 00010 AH (Sudan) v Home Secretary [2008] 1 AC 678 Batayav v Secretary of State for the Home Department 2003] EWCA Civ 1489 Januzi v SSHD [2006] UKHL 5 AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091 QD and AH (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620</p>
<p>The Court held that, although the applicant was able to stay in Somalia from 2006 until 2008, the decision of the asylum authority could not be regarded as lawful given that: 'the authority could not identify a specific territory where the internal protection alternative would be possible.' The asylum authority therefore breached its obligation by failing to collect all of the relevant facts and evidence before making its decision. The Court stated that the asylum authority has to indicate whether the internal protection alternative is available and if so, in which specific territory of Somalia. The court did not address the question whether the applicant's hiding in the forest without any sort of protection constituted internal protection.</p>	

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

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>• The Migration Court of Appeal noted that the <i>Elgafaji</i> decision stated that it is not an absolute requirement that threats must be specifically directed against the applicant based on personal circumstances. In situations of indiscriminate violence a person can, by his mere presence, run a risk of being exposed to serious threats. Regarding internal armed conflict the Court noted that there is no clear definition of the concept in international humanitarian law. Neither the 1949 Geneva Conventions' common Article 3, nor the Additional Protocol (1977), contains a definition of the concept. However, the Protocol does state which non-international conflicts it applies to. These are conflicts that take place on the territory of a party to the convention between its own forces and rebellious armed groups or other organised groups who are under responsible leadership and who have control over part of its territory and can organise cohesive and coordinated military operations as well as implement the protocol. The protocol thus presumes that government forces participate in the conflict and also that the rebels have some territorial control. The International Red Cross drew conclusions in its paper "How is the term 'armed conflict' defined in International Humanitarian Law?" March 2008, that it is an extended armed conflict between armed government forces and one or more armed groups or between such armed groups which occurs on the territory of a state. There must be a minimum level of intensity and the parties concerned must exhibit a minimum level of organisation. Further guidance can be sought in the International Criminal Court (ICC) Yugoslav Tribunal case concerning ICTFY, <i>Prosecutor v Dusko Tadic</i>. From article 8:2 of the ICC it is clear that non-international conflicts are in focus and not situations that have arisen because of internal disturbances or tensions such as riots, individual or sporadic acts of violence or other such acts.</p> <p>The Migration Court of Appeal concluded that an internal armed conflict cannot be precluded in a state solely on the grounds that the requirement in the protocol from 1977 for territorial control is not met. Nor can it be required that government forces are involved in the conflict since this would mean that persons from a failed state would not enjoy the same possibilities as others to seek international protection.</p> <p>The Court concluded that an internal armed conflict within the meaning of the Swedish Aliens Act exists if certain conditions (which they listed) are fulfilled. The Court then addressed the question: Can an internal armed conflict be declared in only a part of a country?</p> <p>• The Tribunal concluded that the presence of an armed conflict depended mainly on the assessment of the actual circumstances at hand. The Tribunal also made a distinction between the area where the conflict took place and the question of within which area international humanitarian law was applicable (the wider area surrounding Mogadishu and the then TFG base in Baidoa). The UK decision was considered relevant as it is a legal authority in another country which is bound by the same international legal obligations as Sweden and for whom the same Community provisions apply. The UK decision held that it is possible and pertinent in legal terms to limit a geographical area for an internal armed conflict to the town of Mogadishu.</p> <p>• For the Migration Court of Appeal the population of Mogadishu, and not least its significant strategic role based on the most recent country of origin information, and the sharp decline in respect for human rights further support this conclusion.</p> <p>• Regarding internal protection the Court noted that it is the responsibility of the first instance Migration Board to prove that there is an alternative. This has not been established by the Board and it is the opinion of the Court that no such alternative exists.</p>	<p>(CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07 (ICTY) <i>Prosecutor v Tadic</i> (IT-94-1-AR72) ICTY (UK) <i>HH & others</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</i> (Fregenet) [2008] UKHL 31 <i>Saadi v United Kingdom</i> (13229/03) (2008) 47 EHRR 17 <i>Sheekh v Netherlands</i> (1948/04) (2007) 45 EHRR 50 <i>Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland</i> (45036/98) (2006) 42 EHRR 1 <i>K v Secretary of State for the Home Department</i> [2006] UKHL 46 <i>Muslim v Turkey</i> (53566/99) (2006) 42 EHRR 16; <i>Batayav v Secretary of State for the Home Department (No 2)</i> [2005] EWCA Civ 366 <i>R (on the application of Razgar) v Secretary of State for the Home Department (No 2)</i> [2004] UKHL 27 <i>R (on the application of Ullah) v Special Adjudicator</i> [2004] UKHL 26 <i>Criminal Proceedings against Lyckeskog</i> (C99/00) [2003] 1 WLR 9 <i>Pretty v United Kingdom</i> (2346/02) [2002] 2 FLR 45 <i>Aspichi Dehwari v Netherlands</i> (37014/97) (2000) 29 EHRR CD74 <i>Kurt v Turkey</i> (24276/94) (1999) 27 EHRR 373 <i>Osman v United Kingdom</i> (23452/94) [1999] 1 FLR 193 <i>HLR v France</i> (24573/94) (1998) 26 EHRR 29 <i>Chahal v United Kingdom</i> (22414/93) (1997) 23 EHRR 413 <i>D v United Kingdom</i> (30240/96) (1997) 24 EHRR 423 <i>Chiron Corp v Organon Teknika Ltd (No 3)</i> [1996] RPC 535 <i>Vilvarajah v United Kingdom</i> (13163/87) (1992) 14 EHRR 248 <i>Soering v United Kingdom</i> (A/161) (1989) 11 EHRR 439</p>
<p>The Court examined the situation which prevailed in Somalia at that time and its deterioration due to the violent fighting between the Federal Transitional Government and several clans and Islamic militia and considered that, in some geographical areas, in particular in and around Mogadishu, the fighting was at the time characterised by a climate of generalised violence which included the perpetration of acts of violence, slaughters, murders and mutilations targeted at civilians in these areas. The Court therefore considered that this situation must be seen as a situation of generalised violence resulting from a situation of internal armed conflict. Finally, the Court considered that the situation of generalised violence, due to its intensity in the applicant's region of origin, was sufficient to find that he currently faced, a serious, direct and individual threat to his life or person, without being able to avail himself of any protection.</p>	
<p>Subsidiary protection was granted regardless of any personal reason.</p>	
<p>The Council of State concluded that it follows from the <i>Elgafaji</i> judgment (C 465/07) that Article 15(c), read in conjunction with Article 2(e) of the Qualification Directive, is designed to provide protection in the exceptional situation where the degree of indiscriminate violence characterising the armed conflict reaches such a high level that substantial grounds are shown for believing that a civilian, if returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat referred to. The Court of Justice in <i>Elgafaji</i> held that the interpretation of Article 15(c) of the Qualification Directive should be carried out independently. Nonetheless, it can be inferred from the decision in <i>Elgafaji</i> and the jurisprudence of the ECtHR regarding Article 3 of ECHR, that Article 15(c) of the Qualification Directive refers to a situation where Article 29 (1)(b) of the Aliens Act is also applicable.</p>	<p>(ECtHR) <i>NA v United Kingdom</i> (Application No 25904/07) (CJEU) <i>Elgafaji v Staatssecretaris van Justitie</i> C-465/07</p>
<p>Even when there is an armed conflict going on in a given country, subsidiary protection can only be granted if the prospective risk is not linked to a conventional reason.</p>	
<p>Claim was rejected both on Geneva Convention and subsidiary protection grounds.</p>	

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

The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
<p>The assumption of group persecution, meaning persecution of every single member of the group, requires a certain 'density of persecution', justifying a legal presumption of persecution of every group member. These principles, initially developed in the context of direct and indirect State persecution, are also applicable in the context of private persecution by non-State actors under Article 60(1) sentence (4)(c) of the Residence Act (in compliance with Article 6(c) of the Qualification Directive), which now governs explicitly private persecution by non-State actors. Under the Qualification Directive, the principles developed in German asylum law in the context of group persecution are still applicable. The concept of group persecution is by its very nature a facilitated standard of proof and in this respect compatible with basic principles of the 1951 Refugee Convention and the Qualification Directive. Article 9.1 of the Qualification Directive defines the relevant acts of persecution, whereas Article 10 of the Qualification Directive defines the 'characteristics relevant to asylum' as 'reasons for persecution'.</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>(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.

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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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