European Asylum Support Office

Član 15(c) Direktive o kvalifikaciji (2011/95/EU)

Sudska analiza

Januar 2015.

SUPPORT IS OUR MISSION

EASO-va serija za profesionalni razvoj članova sudova i tribunala

FRONTEX
EUROPEAN BORDER AND COAST GUARD AGENCY

IOM International Organization for Migration

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UNHCR
The UN Refugee Agency

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Saradnici

Materijal je pripremila radna grupa čiji su članovi sudija Mihai Andrei Balan, Rumunija; Džon Barns (John Barnes), sudija u penziji, Ujedinjeno Kraljevstvo, UK; Bernard Doson (Bernard Dawson), UK; Majkl Hope (Michael Hoppe), Nemačka; Florens Malvasio (Florence Malvasio), koordinator radne grupe, Francuska; Mari-Sesil Mulin-Zis (Marie- Cécile Moulin-Zys), Francuska; Džulijan Filips (Julian Phillips), UK; Hugo Stori (Hugo Storey), koordinator radne grupe, UK; Karin Vinter (Karin Winter), Austrija; sudski savetnici Karol Aubin (Carole Aubin), Francuska; Vera Pazderova, Češka Republika; kao i Roland Bank, pravni referent,Visoki komesarijat za izbeglice Ujedinjenih nacija, UNHCR.

Tim povodom ih je pozvala Evropska kancelarija za podršku azilu (EASO) u skladu s metodologijom u Prilogu B. Plan angažovanja članova radne grupe razmatran je na nekoliko sastanaka tokom 2013. između Evropske kancelarije za podršku azilu i dvaju organa s kojima ima formalnu razmenu pisama, Međunarodne asocijacije sudija u izbegličkom pravu (IARLJ) i Udruženje sudija evropskih upravnih sudova (AEAJ), kao i nacionalnih udruženja sudija svake države članice Evropske unije, povezanih putem EASO-ve mreže sudova i tribunala.

Radna grupa se sastala 3 puta, u aprilu, junu i septembru 2014. god. na Malti. Komentare na nacrt za javnu raspravu dali su pojedini članovi EASO-ve mreže sudija, naime sudije Johan Berg Norveška; Uve Berlit (Uwe Berlit), Nemačka; Jakub Čamrda (Jakub Camrda), Češka Republika; Jacek Člebni (Jacek Chlebny), Poljska; Harald Durig (Harald Dörig), Nemačka; Hesther Gorter, Holandija; Endru Grab (Andrew Grubb), UK; Fedora Lovričević-Stojanović, Hrvatska; Džon Makarti (John McCarthy), UK; Volter Muls (Walter Muls), Belgija; Džon Nikolson (John Nicholson), UK; Juha Rautiainen, Finska; Marlies Stapels-Volfrat (Marlies Stapels-Wolfrath), Holandija; i Boštjan Zalar (Slovenija). Komentare su dali i članovi savetodavnog foruma Evropske kancelarije za podršku azilu, naime Evropski savet izbeglica i prognanih lica i Forum za izbeglice – Cosi. Globalni centar za migracije (Institut za međunarodne i razvojne studije, Ženeva), Nacionalni centar kompetencija u istraživanju – U pokretu (Univerzitet u Frajburgu) i akademski časopis Kvartalna anketa o izbeglicama (Oxford University Press) takođe su dali svoje mišljenje o tekstu. Svi ti komentari su razmotreni na sastanku 18. i 19. septembra 2014. god. Radna grupa se zahvaljuje svima koji su svojim komentarima pomogli da se uobliči konačna verzija poglavlja.

Ova sudska analiza će biti redovno ažurirana u skladu s metodologijom navedenom u Prilogu B.

Sadržaj

Spisak skraćenica

AEAJ	Udruženje sudija evropskih upravnih sudova
CJEU	Sud pravde Evropske unije
CNDA	Nacionalni sud za pravo azila
EASO	Evropska kancelarija za podršku azilu
ECHR	Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda
ECtHR	Evropski sud za ljudska prava
EU	Evropska unija
FAC	Savezni upravni sud
IARLJ	Međunarodna asocijacija sudija u izbegličkom pravu
ICRC	Međunarodni komitet Crvenog krsta
ICTY	Međunarodni krivični sud za bivšu Jugoslaviju
IHL	Međunarodno humanitarno pravo
IHRL	Međunarodno pravo ljudskih prava
MPSG	Pripadnost određenoj društvenoj grupi
QD	Direktiva o kvalifikaciji
TFEU	Ugovor o funkcionisanju Evropske unije
UK	Ujedinjeno Kraljevstvo
UKAIT	Tribunal za azil i imigraciju Ujedinjenog Kraljevstva
UKUT	Visoki sud Ujedinjenog kraljevstva
UNHCR	Visoki komesarijat za izbeglice Ujedinjenih nacija

Uvod

Cilj ove sudske analize jeste da se u ovo poglavlje, član 15(c) Direktive o kvalifikaciji (QD) ([1]), sudovima i sudskim većima koja se bave slučajevima međunarodne zaštite stavi na raspolaganje jedan koristan alat za razumevanje pitanja u vezi sa zaštitom. Pokazalo se da sudijama primena ove odredbe, koja zbog svoje prirode može imati uticaja na ishod mnogih slučajeva koji se bave međunarodnom zaštitom, nije jednostavna. Studije pokazuju da se u različitim državama članicama Evropske unije tumačenja razlikuju ([2]). Komentari treba da pomognu čitaocu da razume Direktivu o kvalifikaciji kroz sudsku praksu Suda pravde Evropske unije (CJEU) i Evropskog suda za ljudska prava (ECtHR), kao i relevantne odluke sudova i tribunala država članica Evropske unije. Pozivanje na nacionalnu sudsku praksu nije iscrpno, već je namera da se ilustruje kako je Direktiva o kvalifikaciji preneta i kako se tumači. Ovo poglavlje odslikava shvatanje radne grupe trenutnog stanja u ovoj pravnoj oblasti. Mora se imati na umu da će Sud pravde Evropske unije na osnovu člana 15(c) i dalje donositi presude, pa se čitaocu napominje da je važno biti u toku s razvojem u toj oblasti.

Pretpostavlja se da čitalac poznaje opštu strukturu zakona Evropske unije (EU) o azilu, kako je to opisano u pravnim tekovinama koje se odnose na azil; ovo poglavlje ima za cilj da pomogne ne samo onima koji nemaju nikakvog ili nemaju dovoljno iskustva s njegovom primenom prilikom donošenja sudskih odluka, već i onima koji su stručniji.

Ova analiza se bavi samo jednim delom člana 15 koji govori o tri kategorije lica kojima je potrebna supsidijarna zaštita, a koja inače nemaju pravo na zaštitu po osnovu Konvencije o statusu izbeglica. Blagovremeno će biti napisana dalja poglavlja sa analizom ostalih kategorija koje se, ukratko, tiču zaštite od rizika uporedivih s onima koji krše članove 2 i 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda (EHCR).

Sudska analiza je podeljena na dva dela. U prvom delu analiziraju se sastavni elementi člana 15(c). U drugom delu razmatra se primena odredbe u praksi. U Prilogu A nalazi se „stablo odlučivanja" sa navedenim pitanjima, koja sudovi i tribunali treba da postave kada primenjuju član 15(c).

Sud Evropske unije je naglasio da se članu 15(c) mora pristupiti u kontekstu Direktive o kvalifikaciji u celini. Osim toga, ova analiza se ne bavi svim pravnim elementima, poput izuzeća, koji su neophodni pri proceni potrebe za supsidijarnom zaštitom. Oni će takođe biti predmet budućih poglavlja. Direktiva o kvalifikaciji uspostavlja minimalne standarde koje treba da usvoje države članice; na njima je da prošire kategorije i vrstu pružene zaštite.

Delovi Direktive o kvalifikaciji relevantni za ovu analizu, uključujući i uvodne izjave, jesu sledeći:

Uvodne izjave

- Uvodna izjava (6) - Zaključci iz Tamperea […] određuju da pravila u vezi sa statusom izbeglica treba dopuniti merama o supsidijarnim oblicima zaštite, nudeći odgovarajući status svakom licu kome je potrebna takva zaštita.
- Uvodna izjava (12) - Glavni cilj ove Direktive je, s jedne strane, osigurati da države članice Evropske unije primenjuju zajedničke kriterijume za utvrđivanje lica kojima je zaista potrebna međunarodna zaštita i, s druge

([1]) Direktiva 2011/95/EU Evropskog parlamenta i Saveta od 13. decembra 2011. o standardima za kvalifikaciju državljana trećih zemalja ili lica bez državljanstva za ostvarivanje međunarodne zaštite, za jedinstveni status izbeglica ili lica koja ispunjavaju uslove za supsidijarnu zaštitu, kao i za sadržaj odobrene zaštite (preinačena), objavljena u: *Službenom listu Evropske unije* L 337/9, 20/12/2011, str. 9-26, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF.
Kao što je objašnjeno u uvodnim izjavama ([5]0) i (51), preinačena Direktiva o kvalifikaciji nije obavezujuća za Dansku, Irsku i Ujedinjeno Kraljevstvo, zbog toga što nisu učestvovale u njenom donošenju. Irsku i Ujedinjeno Kraljevstvo i dalje obavezuje Direktiva Saveta 2004/83/EZ od 29. aprila 2004. o minimalnim standardima za kvalifikaciju i status državljana trećih zemalja ili lica bez državljanstva kao izbeglica ili lica kojima je po nekom drugom osnovu potrebna međunarodna zaštita, kao i za sadržaj odobrene zaštite, objavljena u: *Službenom listu Evropske unije* L 304/12, 30/09/2004, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML. Od država članica Evropske unije, za koje je preinačena Direktiva o kvalifikaciji obavezujuća, zatraženo je da do 21. decembra 2013. donesu potrebne zakone unutar domaćeg zakonodavstva. Preinačena Direktiva o kvalifikaciji unosi brojne suštinske promene u Direktivu 2004/83/EZ, ali zadržava identičnu formulaciju člana 15(c) i njegove odgovarajuće uvodne izjave, iako je potonja sada pod drugim brojem (uvodna izjava (35), nekadašnja uvodna izjava (26)).
([2]) Videti npr. *Najzad na sigurnom? Zakon i praksa u odabranim državama članicama Evropske unije u vezi s tražiocima azila koji beže od neselektivnog nasilja*, UNHCR, jul 2011, http://www.unhcr.org/4e2d7f029.pdf. U uvodnoj izjavi (8) preinačene Direktive o kvalifikaciji navodi se da „među državama članicama i dalje postoje značajna odstupanja u pogledu pružanja zaštite i oblika u kojima se ta zaštita pruža".

strane, osigurati da minimalni stepen pogodnosti bude dostupan tim licima u svim državama članicama Evropske unije.
- Uvodna izjava (33) - Takođe bi trebalo utvrditi standarde za definisanje statusa lica kojima je odobrena supsidijarna zaštita, kao i za utvrđivanje sadržaja takvog statusa. Supsidijarna zaštita bi trebalo da bude komplementarna i dodata na zaštitu izbeglica, sadržanu u Ženevskoj konvenciji.
- Uvodna izjava (34) - Potrebno je uvesti zajedničke kriterijume, na osnovu kojih će se tražiocima međunarodne zaštite priznavati da ispunjavaju uslove za dobijanje supsidijarne zaštite. Ti bi kriterijumi trebalo da budu utvrđeni na osnovu obaveza koje proizlaze iz međunarodnih pravnih akata o ljudskim pravima i postojeće prakse u državama članicama Evropske unije.
- Uvodna izjava (35) - Rizici kojima je uglavnom izloženo stanovništvo neke zemlje ili deo stanovništva obično ne stvaraju sami po sebi pojedinačnu pretnju koja bi se mogla okvalifikovati kao ozbiljna nepravda.

Član 2(f)

„Lice koje ispunjava uslove za supsidijarnu zaštitu" je državljanin treće zemlje ili lice bez državljanstva koje nema status izbeglice, ali za koje se opravdano veruje da bi, ako bi se vratilo u svoju zemlju porekla ili, ako se radi o licu bez državljanstva, u zemlju prethodnog uobičajenog boravišta, bilo izloženo trpljenju ozbiljne nepravde kako je definisano u članu 15, i na koje se ne primenjuje član 17, stavovi 1. i 2, a koje nije u mogućnosti ili, zbog takve opasnosti, ne želi da se stavi pod zaštitu te zemlje.

Član 15

Ozbiljnom nepravdom smatraju se: (a) smrtna kazna ili pogubljenje; ili (b) mučenje ili nečovečno ili ponižavajuće postupanje ili kažnjavanje podnosioca zahteva u zemlji porekla; ili (c) ozbiljna i individualna pretnja životu ili telesnom integritetu usled neselektivnog nasilja u situacijama međunarodnog ili unutrašnjeg oružanog sukoba.

Drugi delovi Direktive o kvalifikaciji na koje se upućuje u ovoj analizi navedeni su u relevantnim odeljcima.

U članu 78 Ugovora o funkcionisanju Evropske unije (TFEU) navodi se da Unija treba da razvija zajedničku politiku azila, supsidijarne zaštite i privremene zaštite, u cilju da se svakom državljaninu treće zemlje kome je potrebna međunarodna zaštita ponudi odgovarajući status. Ta politika mora biti u skladu sa Ženevskom konvencijom od 28. jula 1951. godine i Protokolom od 31. januara 1967. godine o statusu izbeglica, kao i sa „drugim relevantnim ugovorima".

U svom predlogu Direktive o kvalifikaciji 2001. godine, Evropska komisija je navela opšti cilj Direktive:

U članu 18 Povelje Evropske unije o osnovnim pravima ponovo je naglašeno pravo na azil. Na osnovu toga ovaj Predlog odražava činjenicu da kamen temeljac sistema treba da bude potpuna i dosledna primena Ženevske konvencije, dopunjena merama kojima se nudi supsidijarna zaštita licima neobuhvaćenim Konvencijom, ali kojima je i pored toga potrebna međunarodna zaštita ([3]).

Evropska komisija je svoj predlog za preinačenje Direktive o kvalifikaciji u vezi s kvalifikacijom i statusom lica kojima je potrebna međunarodna zaštita podnela u oktobru 2009([4]).

Predložila je, između ostalog, da se pojasne važni pojmovi kao što su „davaoci zaštite", „unutrašnja zaštita" i „pripadnost određenoj društvenoj grupi", kako bi nacionalnim vlastima omogućila da strože primenjuju kriterijume i brže identifikuju lica kojima je potrebna zaštita.

Komisija nije predložila nikakve amandmane na član 15(c), smatrajući da je Sud pravde Evropske unije dao smernice za njegovo tumačenje u slučaju *Elgafadži*([5]), a izjavila je i da su, iako ima dodatni opseg primene

([3]) Evropska komisija, predlog Saveta Direktive o minimalnim standardima za kvalifikaciju i status državljana trećih zemalja ili lica bez državljanstva kao izbeglica, ili lica kojima je po nekom drugom osnovu potrebna međunarodna zaštita, 12. septembar 2001, COM(2001) 510, konačni tekst. Dostupno na: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0510:FIN:EN:PDF.
([4]) Pogledati Saopštenje za medije IP/09/1552, na http://europa.eu/rapid/press-release_IP-09-1552_en.htm?locale=en.
([5]) Sud pravde Evropske unije (Veliko veće), presuda od 17. februara 2009, predmet C-465/07, *Meki Elgafadži i Nur Elgafadži protiv državnog sekretara za pravdu (Staatssecretaris van Justitie).*

u odnosu na član 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda, njegove odredbe opšte uzev usaglašene s Evropskom konvencijom za zaštitu ljudskih prava i osnovnih sloboda ([6]).

Ukoliko nije drugačije naznačeno, upućivanje na „član" u ovoj sudskoj analizi odnosi se na odredbe Direktive o kvalifikaciji.

([6]) Evropska komisija, predlog Evropskog parlamenta i Saveta Direktive o minimalnim standardima za kvalifikaciju i status državljana trećih zemalja ili lica bez državljanstva kao primalaca međunarodne zaštite, i o sadržaju odobrene zaštite, 21. oktobar 2009, COM(2009) 551, konačni tekst, Obrazloženje, str. 6. Dostupno na: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009PC0551&from=EN.

Pristup tumačenju

S obzirom na to da Sud pravde Evropske unije tek treba da odluči u vezi s nekoliko ključnih elemenata člana 15(c), izuzetno je važno da nacionalne sudije koje imaju zadatak da ih tumače, prilikom tumačenja zakonodavstva Evropske unije imaju na umu i primenjuju pristup koji ima Evropska unija. Kako je Sud pravde Evropske unije naveo u presudi u slučaju *Dijakite* ([7])u stavu 27, značenje i opseg primene ključnih elemenata „moraju...biti utvrđeni uzimajući u obzir [njihovo] najčešće značenje u svakodnevnom govoru, istovremeno uzimajući u obzir i kontekst u kom se javljaju, kao i svrhe pravila čiji je deo (predmet C-549/07 *Valentin-Herman* [2008] ECR I-11061, stav 17 i predmet C-119/12 [2012] ECHR, stav 20)."

Pristup Suda Evropske unije je opisan kao sistemski ili „metateleološki", koji je usredsređen ne samo na cilj i svrhu relevantnih odredaba, već i na odredbe sistema Evropske unije kao celine, oslanjajući se na standarde ljudskih prava sadržane u Povelji Evropske unije o osnovnim pravima (Povelja) i temeljnim vrednostima organizacije ([8]).

Celoviti pristup

Iz usvajanja gorenavedenog pristupa proizlazi da se prilikom tumačenja ključnih elemenata člana 15(c), oni posmatraju kao međusobno povezani, i da ih ne treba tumačiti izolovano jedne od drugih. Takav pristup osigurava usaglašenost s pristupom ključnim elementima u definiciji izbeglice. Mora se imati na umu da pravo Evropske unije ima prednost u odnosu na nacionalno pravo.

Kontekst člana 15(c) pri odlučivanju o zahtevima za dobijanje međunarodne zaštite

U svojoj presudi od 8. maja 2014. god. po predmetu C-604/12, *HN protiv Ministra pravde, ravnopravnosti i pravne reforme, Irska, državni tužilac (Minister for Justice, Equality and Law Reform, Ireland, Attorney General)*, Sud pravde Evropske unije potvrdio je sledeće:

> 29 Član 2(e) Direktive 2004/83 definiše lica koja ispunjavaju uslove za dobijanje supsidijarne zaštite kao državljane trećih zemalja ili lica bez državljanstva koja se ne kvalifikuju kao izbeglice.
>
> 30 Upotreba termina „supsidijarna" i formulacija člana 2(e) Direktive 2004/83 ukazuju da je status lica pod supsidijarnom zaštitom namenjen za državljane trećih zemalja koji se ne kvalifikuju za status izbeglice.
>
> 31 Štaviše, iz uvodnih izjava 5, 6 i 24 uvodnih napomena Direktive 2004/83, sledi da minimalni zahtevi za ostvarivanje supsidijarne zaštite moraju služiti kao dopuna i dodatak zaštiti izbeglica sadržanoj u Ženevskoj konvenciji kroz identifikaciju lica kojima je zaista potrebna međunarodna zaštita i kroz davanje odgovarajućeg statusa takvim licima (predmet C 285/12 Dijakite EU:C:2014:39, stav 33).
>
> 32 Iz gorenavedenog jasno je da je supsidijarna zaštita koju daje Direktiva 2004/83 komplementarna i dodata na zaštitu izbeglica, sadržanu u Ženevskoj konvenciji.

Sledi da, prilikom odlučivanja po predmetima međunarodne zaštite, sudovi i tribunali moraju prvo ispitati da li neko lice ispunjava uslove za zaštitu izbeglica. Ukoliko je odgovor negativan, mora se razmotriti da li to lice

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([7]) Sud pravde Evropske unije, presuda od 30. januara 2014, predmet C-285/12, *Abubakar Dijakite protiv generalnog komesara za izbeglice i lica bez državljanstva (Commissaire général aux réfugiés et aux apatrides*).

([8]) npr. Violeta Moreno Laks „O autonomiji, autarkiji, svrhovitosti i fragmentaciji: odnos između Zakona Evropske Unije o azilu i međunarodnog humanitarnog prava" u D. Kantor i J.-F. Durieux (ur.), Izbegavanje nečovečnosti? Ratne izbeglice i međunarodno humantarno (Martinus Nijhof, 2014), str. 298.

ispunjava uslove za supsidijarnu zaštitu po članu 15(a), (b)([9]) ili (c). Usredsređenost na član 15(c) ne sme dovesti do toga da sudovi i tribunali zanemare širi okvir zaštite.

Kada neko lice nema pravo na međunarodnu zaštitu, na primer zbog izuzeća, neophodno je razmotriti član 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda i, gde je primenljivo, članove 4 i 19(2) Povelje (videti uvodnu izjavu (16) Direktive o kvalifikaciji).

Uloge Suda pravde Evropske unije i Evropskog suda za ljudska prava

Sud pravde Evropske unije je odgovoran za jednoobrazno tumačenje i primenu prava Unije. Prema članu 267 Ugovora o funkcionisanju Evropske unije on je nadležan da odgovara na pitanja u vezi s pravom Evropske unije, postavljena od strane nacionalnih sudova (preliminarni referentni postupak), i Sud na taj način daje interpretativne presude.

U okviru postupka predviđenog članom 267, Sud pravde Evropske unije zapravo ne donosi odluku o meritumu. Nakon što Sud da svoje tumačenje, predmet se vraća nacionalnom sudu koji treba da donese odluku zasnovanu na datom tumačenju. Odluke Suda pravde Evropske unije su obavezujuće za države članice Evropske unije ([10]).

Evropski sud za ljudska prava raspravlja o tužbama pojedinaca i prethodnim postupcima zemalja kada postoje navodi da je neka od 47 zemalja potpisnica Konvencije prekršila pravo zagarantovano Evropskom konvencijom za zaštitu ljudskih prava i osnovnih sloboda. Za razliku od Suda pravde Evropske unije, on odlučuje o predmetu koji se pred njim nalazi i gde je to potrebno, uključujući i činjenična utvrđenja. Njegove presude su obavezujuće za strane u podnetoj tužbi. U drugim predmetima pred sudovima i tribunalima, u kojima postoje slične činjenice ili pitanja, presude Suda su uverljive.

([9]) Opseg primene člana 15 (b) je ograničen u odnosu na član 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda, videti mišljenje generalnog pravobranioca po predmetu C-542/13 *M'Bodj protiv Saveta ministara (Conseil des Ministres)*, 17. jul 2014.

([10]) Korisne smernice za referentne postupke Suda pravde Evropske unije nalaze se u Preporukama nacionalnim sudovima i tribunalima u vezi s pokretanjem preliminarnog postupka (2012/C 338/01), objavljenim u: *Službenom listu Evropske unije* C 338, 06.11.2012, dostupnom na http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:EN:PDF. Videti i Vodiču o preliminarnom postupku koji je objavilo Udruženje sudija evropskih upravnih sudova na svom veb-sajtu u maju 2014.god, dostupnom na www.iarlj.org.

Prvi deo: Elementi

1.1. Stvarni rizik od ozbiljne nepravde

Član 2(f) odnosi se na „stvarni rizik od ozbiljne nepravde, kako je definisana u članu 15".

Supsidijarna zaštita odnosi se na državljane trećih zemalja koji ne ispunjavaju uslove za dobijanje azila, ali za koje se opravdano veruje da bi bili suočeni sa „stvarnim rizikom od ozbiljne nepravde" ako bi bili vraćeni u zemlju porekla (videti član 2(f); nekadašnji član 2(e)). Kad je reč o potrebi za dokazivanjem tog stvarnog rizika, države članice Evropske unije mogu smatrati da je podnosilac zahteva dužan da u što kraćem roku podnese sve elemente potrebne za potkrepljivanje zahteva za dobijanje međunarodne zaštite. S druge strane, država članica Evropske unije je dužna da, u saradnji s podnosiocem zahteva, oceni relevantne elemente zahteva (član 4(1)). Generalni advokat Šarpston je u svom mišljenju u spojenim predmetima *A, B i C* ([11]) istakla sledeće:

> postupak saradnje po članu 4(1) Direktive o kvalifikaciji nije suđenje. To je najpre prilika da podnosilac zahteva da svoj iskaz i predoči dokaze koje ima, a da nadležni organi sakupe informacije, vide i čuju podnosioca zahteva, da procene njegovo ponašanje i ispitaju uverljivost i koherentnost iskaza. Reč „saradnja" podrazumeva da obe strane rade sa zajedničkim ciljem. Istina je da ta odredba omogućava državama članicama Evropske unije da od podnosioca zahteva traže da dostavi potrebne elemente za potkrepljivanje svog zahteva. To ne znači, međutim, da prema članu 4(1) Direktive o kvalifikaciji treba zahtevati dokaz koji praktično onemogućava podnosiocu zahteva da predoči elemente potrebne za potkrepljenje zahteva na osnovu Direktive o kvalifikaciji, ili mu to preterano otežava (na primer visok standard dokazivanja, poput van svake sumnje ili kaznenopravni ili kvazikaznenopravni standard). […] Međutim, kada se predoče informacije na osnovu kojih postoji osnovana sumnja u verodostojnost zahteva tražioca azila, to lice mora dati zadovoljavajuće objašnjenje za navedene nedoslednosti.

Element „stvarnog rizika" određuje standard dokazivanja potreban za ispunjavanje uslova za dobijanje supsidijarne zaštite ([12]). Drugim rečima, on označava stepen verovatnoće da stanje neselektivnog nasilja prouzrokuje ozbiljnu nepravdu.

Sud pravde Evropske unije do danas nije dao precizno tumačenje pojma „stvarni rizik". Bez obzira na to, Sud je potvrdio da u skladu sa članom 15(c), rizik koji je povezan samo s opštim stanjem u zemlji po pravilu nije dovoljan ([13]). Međutim, mogu se javiti izuzetne okolnosti u kojima je stepen neselektivnog nasilja toliko visok da bi se pojedinac suočio sa stvarnim rizikom samo svojim prisustvom ([14]). Pored toga, može se pretpostaviti da standard „stvarnog rizika" izuzima rizike na nivou puke mogućnosti ili toliko malo verovatni da su nerealni ([15]). Stepen rizika potreban prema ovoj odredbi detaljnije je opisan ispod u odeljku 1.3. „Neselektivno nasilje" i odeljku 1.6 „Ozbiljna i individualna pretnja".

Element „ozbiljne nepravde" opisuje prirodu i intenzitet povrede prava nekog lica; da bi ta povreda bila ozbiljna, mora biti odgovarajućeg stepena. Član 15 definiše tri konkretne vrste nepravde, na osnovu kojih se ostvaruju uslovi za dobijanje supsidijarne zaštite. Dalje, supsidijarna zaštita se ne može odobriti za svaku vrstu nepravde, diskriminacije ili kršenja prava koje neko lice doživi, već samo u slučaju neke od ove tri vrste ozbiljne nepravde u skladu sa kriterijumima člana 15(a), (b) ili (c).

([11]) Mišljenje generalnog pravobranioca, spojeni predmeti C-148/13, C-149/13 i C-150/13, *A, B i C*, 17. jul 2014, stavovi 73 i 74.
([12]) Uporediti sa članom 2(d) Direktive o kvalifikaciji koji zahteva „osnovani strah" od progona za ispunjavanje uslova za status izbeglice.
([13]) *Elgafađi*, op. cit., fn. 5, stav 37.
([14]) Ibid., stavovi 35 i 43. U stavu 36, Sud pravde Evropske unije je takođe rekao da član 15(c) ima svoje „područje primene", što znači da ima dodatni opseg primene u odnosu na ozbiljne nepravde navedene u tačkama (a) i (b). Međutim, u vezi sa slučajem *Elgafađi*, Evropski sud za ljudska prava u svojoj presudi od 28. juna 2011, *Sufi i Elmi protiv Ujedinjenog Kraljevstva*, zahtevi br. 8319/07 i 11449/07, u stavu 226 navodi da „nije uveren da član 3 Konvencije, kako je tumačen u *N.A. protiv UK [zahtev br.* 25904/07, *17. jul 2008*], ne nudi zaštitu koja se može uporediti s onom omogućenom [Direktivom o kvalifikaciji]. Posebno ističe da prag postavljen obema odredbama može u izuzetnim okolnostima biti dostignut u slučaju stanja opšteg nasilja takvog intenziteta u kom bi svako lice koje bi bilo vraćeno u dati region bilo pod rizikom samo na osnovu svog tamošnjeg prisustva." Iz svega rečenog proizlazi, dakle, da nije sigurno da član 15(c) ide značajno dalje od člana 3 kako ga Evropski sud za ljudska prava tumači u slučaju *Sufi i Elmi*.
([15]) Evropski sud za ljudska prava, presuda od 7. jula 1989, *Soering protiv Ujedinjenog Kraljevstva,* zahtev br. 14308/88, stav 88.

Imajući na umu svrhu ovog dokumenta, sledeći tekst je usmeren prvenstveno ka ozbiljnoj nepravdi kako je definisana u članu 15(c), prema kom ozbiljnu nepravdu predstavlja „ozbiljna i individualna pretnja životu ili telesnom integritetu civila usled neselektivnog nasilja u situacijama međunarodnog ili unutrašnjeg oružanog sukoba".

U predmetu *Elgafadži*, Sud pravde Evropske unije je, ne isključujući preklapanje, potvrdio da nepravda definisana u članu 15(c) obuhvata rizik opštije prirode u odnosu na član 15(a) i (b) ([16]). Prema ovoj presudi, ono što je potrebno jeste „pretnja... životu ili telesnom integritetu", pre nego konkretni činovi nasilja. Štaviše, ako je stepen neselektivnog nasilja dovoljno visok, takva pretnja može biti svojstvena opštem stanju „međunarodnog ili unutrašnjeg oružanog sukoba". Najzad, nasilje koje dovodi do te pretnje opisuje se kao „neselektivno", što je termin kojim se ukazuje na to da se ono može proširiti na ljude bez obzira na njihove lične okolnosti ([17]). Pojedinačni elementi ove definicije su detaljno objašnjeni u delovima ovog dokumenta koji slede.

Pored toga, vrste nepravde pomenute u kategorijama člana 15 mogu se u izvesnoj meri u činjeničnom smislu poklapati ne samo jedna s drugom, već i sa činovima progona definisanim u članu 9 ([18]). U takvom slučaju je neophodno imati na umu prioritet davanja statusa izbeglice, pod uslovom da su ispunjeni i ostali uslovi prema članu 2(d). Sud pravde wEvropske unije je izjavio da član 15(c) po svojoj suštini odgovara članu 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda ([19]).

1.2. Oružani sukob

Izraz koji se koristi u članu 15(c) je „međunarodni ili unutrašnji oružani sukob".

1.2.1. Unutrašnji oružani sukob

Sud pravde Evropske unije je značenje ovog termina objasnio u predmetu *Dijakite.* U stavu 35, Sud je potvrdio sledeće:

> […] član 15(c) Direktive 2004/83 treba tumačiti na način da […] je potrebno priznati postojanje unutrašnjeg oružanog sukoba, u smislu primene te odredbe, ako su oružane snage jedne države u sukobu s jednom ili više naoružanih grupa ili ako su dve ili više naoružanih grupa u međusobnom sukobu. Nije neophodno da taj sukob bude kvalifikovan kao „oružani sukob koji nije međunarodnog karaktera" u smislu međunarodnog humanitarnog prava, niti je neophodno da se pored procene intenziteta nasilja prisutnog na datoj teritoriji, vrši i posebna ocena intenziteta oružanih sukoba, nivoa organizovanosti naoružanih snaga koje učestvuju u tim sukobima ili trajanja sukoba.

Ovim tumačenjem se postižu dve stvari:

Kratka definicija - daje se kratka definicija unutrašnjeg oružanog sukoba (koji postoji kada su „oružane snage jedne države u sukobu s jednom ili više naoružanih grupa ili ako su dve ili više naoružanih grupa u međusobnom sukobu"([20])).

Odbacivanje pristupâ poput onog koji ima međunarodno humanitarno pravo (MHP) - izričito se odbacuju alternativni pristupi definiciji. Odbačeni pristupi su opisani kao pristup međunarodnog humanitarnog prava i pristup koji smatra da unutrašnji oružani sukob postoji samo ukoliko je određenog intenziteta, ili su u njega uključene oružane snage određenog stepena organizovanosti, ili ako traje određeni period. Pošto je potonje

([16]) *Elgafadži*, op. cit., fn. 5, stav 33.
([17]) Ibid, stav 34.
([18]) Up. sa članom 9(2) Direktive o kvalifikaciji koji navodi neiscrpan spisak vrsta nepravde koje se mogu smatrati progonom. Videti predmet trenutno pred Sudom pravde Evropske unije, predmet C-472/13, *Andre Lorens Šeperd protiv Savezne Republike Nemačke*.
([19]) *Elgafadži*, op. cit., stav 28. Videti i predmet trenutno pred Sudom pravde Evropske unije, predmet C-562/13, Javni centar za socijalnu akciju. Otinji-Luven la Nev protiv Muse Abdide, mišljenje generalnog advokata dato 4. septembra 2014.
([20]) *Dijakite*, op. cit., fn. 7, stav 28.

u suštini pristup međunarodnog humanitarnog prava, može se opravdano pretpostaviti da Sud pravde Evropske unije odbacuje pristupe „poput onog koji ima međunarodno humanitarno pravo” ([21]).

1.2.1.1. Razlika između definisanja unutrašnjeg oružanog sukoba i utvrđivanja intenziteta nasilja

Za Sud pravde Evropske unije u predmetu *Dijakite* je od posebne važnosti bilo to da sudovi i tribunali razdvoje:

- procenu postojanja oružanog sukoba; i
- procenu intenziteta nasilja.

Postojanje oružanog sukoba je neophodan, ali ne i dovoljan uslov za primenu člana 15(c). U vezi s opštim rizikom po civile ([22]), član 15(c) će biti primenjen samo ako procena pokaže da se dati oružani sukob može opisati kao sukob u kom postoji neselektivno nasilje tako visokog intenziteta da civilima kao takvima preti stvaran rizik od ozbiljne nepravde. Tako Sud pravde Evropske unije u stavu 30 u predmetu *Dijakite* primećuje sledeće:

> Štaviše, treba imati na umu da postojanje unutrašnjeg oružanog sukoba može biti osnov za ostvarivanje supsidijarne zaštite samo ako se izuzetno smatra da sukobi između oružanih snaga neke države i jedne ili više naoružanih grupa, ili između dve ili više naoružanih grupa, stvaraju ozbiljnu i individualnu pretnju životu ili telesnom integritetu podnosioca zahteva za dobijanje supsidijarne zaštite u smislu člana 15(c) Direktive 2004/83, pošto intenzitet neselektivnog nasilja karakterističnog za te sukobe dostiže toliko visok nivo da se opravdano veruje da bi se civil, ako bi se vratio u datu zemlju ili, u zavisnosti od konkretnog slučaja, određeni region – samo na osnovu svog prisustva na teritoriji te zemlje ili regiona – bio izložen stvarnom riziku od trpljenja te pretnje (videti u tom smislu *Elgafadži*, stav 43).

1.2.1.2. Osnova definicije

Sud pravde Evropske unije svoju definiciju termina oružani sukobi opisuje kao zasnovanu na „njegovom najčešćem značenju u svakodnevnom govoru, istovremeno uzimajući u obzir i kontekst u kom se javlja, kao i svrhe pravila čiji je deo” (*Dijakite*, stav 27). Već smo napomenuli da Sud time jasno stavlja do znanja da se u vezi sa članom 15(c) mora usvojiti poseban pristup tumačenju svojstven Evropskoj uniji.

Očigledno je da Sud pravde Evropske unije želi da istakne da sudovi i tribunali ne treba da traže razlog za uskraćivanje zaštite prema članu 15(c) na osnovu toga što postojeći oružani sukobi ne ispunjavaju minimalne zahteve postavljene međunarodnim humanitarnim pravom ili bilo kojim sličnim spoljnim skupom standarda.

U stavu 17 u predmetu *Dijakite*, Sud pravde Evropske unije je prvo pitanje na koje je trebalo da odgovori opisao kao pitanje iz dva dela: (i) da li procenu postojanja unutrašnjeg oružanog sukoba treba izvršiti na osnovu kriterijuma utvrđenih međunarodnim humanitarnim pravom; i (ii) „ako ne, koje kriterijume treba koristiti prilikom procene postojanja takvog sukoba […]”.

1.2.1.3. Primena definicije Suda pravde Evropske unije

Sud pravde vEvropske unije daje jasan odgovor ne na (i), ali kad je reč o (ii), ne nudi više od veoma kratke definicije značenja tog termina u svakodnevnom govoru. Iz toga proizlazi da je sudovima i tribunalima ostavljeno da sami rastumače i/ili koriste ovu definiciju u praksi. Definicija Suda pravde Evropske unije je očigledno šira od definicije međunarodnog humanitarnog prava i mogla bi obuhvatiti, na primer, oružane sukobe proistekle iz ratova narkokartela u nekim latinoameričkim zemljama ([23]). Prema tome, na osnovu situacije u nekoj zemlji,

([21]) Ibid, stav 21.
([22]) Videti, međutim, i odeljak 1.6.1. o specifičnom riziku i odeljak 1.6.1. o pojmu „klizna skala”.
([23]) C. Bauloz, *„Definicija unutrašnjeg oružanog konflikta u Zakonu o azilu*, Časopis za međunarodno krivično pravosuđe (2014), str. 11; C. Bauloz, *„(Zlo)upotreba međunarodnog humanitarnog prava pri tumačenju člana 15 (c) Direktive o kvalifikaciji*“ u D. Kantor i J.-F. Durieux (ur.), op. cit., str. 261.

sudovi i tribunali u određenim situacijama i dalje moraju da odluče da li oružani sukob postoji u smislu u kom ga je opisao Sud. Na primer, nemiri i pobune u kojima uopšte nema ili gotovo da nema upotrebe oružja ne bi ispunjavali taj kriterijum. Upotreba oružja nije dovoljna sama po sebi, osim u slučaju kada ga koriste naoružane grupe ili kada se koristi unutar naoružanih grupa. Postojanje naoružanih grupa ne mora biti dovoljno samo po sebi, na primer, u slučajevima u kojima grupe praksi ne upotrebljavaju oružje. Treba takođe da postoje dokazi o sukobima (tj. borbama) među njima ili između naoružane grupe i državnih vojnih snaga.

1.2.1.4. Moraju postojati dve ili više naoružanih grupa

Definicija Suda pravde Evropske unije naizgled izuzima situacije postojanja samo jedne naoružane grupe koja se sukobljava sa stanovništvom, iako generalni pravobranilac Mengozzi u svom mišljenju po predmetu *Dijakite* (kao što je slučaj i s Apelacionim sudom Engleske u slučaju *QD (Irak)*) ([24]) zastupa stav da bi trebalo obuhvatiti i takve situacije. Međutim, takva situacija je relativno retka.

1.2.2. Međunarodni oružani sukob

Sud pravde Evropske unije u predmetu *Dijakite* nije dao definiciju „međunarodnog oružanog sukoba", već kao i u njegovom rasuđivanju u pogledu „unutrašnjeg oružanog sukoba", izgleda da se ovaj termin takođe mora tumačiti u svom najčešćem značenju u svakodnevnom govoru i stoga mora biti termin na koji se ne primenjuju minimalni kriterijumi međunarodnog humanitarnog prava. Uprkos tome, postoji mogućnost (kao i u međunarodnom humanitarnom pravu) pojave situacije da u nekoj zemlji istovremeno postoje i unutrašnji i međunarodni oružani sukob.

1.3. Neselektivno nasilje

„Neselektivno nasilje" se odnosi na izvor posebne vrste ozbiljne nepravde utvrđene u članu 15(c). Budući da ova odredba ima za cilj da ponudi (supsidijarnu) zaštitu onim civilima koji trpe posledice oružanog sukoba, termin „neselektivno nasilje" mora imati široko tumačenje.

Potrebe za zaštitom koje ima civilno stanovništvo u nekoj zemlji ili nekoj od njenih regija ne treba utvrđivati koristeći usku definiciju termina „neselektivno" ili „nasilje", već treba izvršiti pažljivu i celovitu procenu činjenica uz detaljnu i preciznu analizu nivoa nasilja, u smislu prirode nasilja i njegovog intenziteta.

1.3.1. Definicija neselektivnog nasilja prema Sudu pravde Evropske unije

U svojoj presudi u predmetu *Elgafadži*, Sud pravde Evropske unije tvrdi da termin „neselektivno" podrazumeva da se nasilje „može preneti na ljude bez obzira na njihove lične okolnosti" ([25]).

Sud pravde Evropske unije je naglasio „izuzetne okolnosti" potrebne da se član 15(c) primeni na civile uopšteno. U predmetu *Elgafadži* u stavu 37, Sud je jasno naveo da je uslov za to sledeće:

> […] stepen neselektivnog nasilja koje karakteriše postojeći oružani sukob … [mora dostići] toliko visok nivo da se opravdano veruje da bi se civilno lice, ako bi se vratilo u datu zemlju ili, u zavisnosti od konkretnog slučaja, određeni region, samo na osnovu svog prisustva na teritoriji te zemlje ili regiona, bilo izloženo stvarnom riziku od trpljenja pretnje navedene u članu 15(c) Direktive.

([24]) Apelacioni sud (UK), *QD (Irak) protiv ministra unutrašnjih poslova* [2009] EWCA Civ. 620, stav 35.
([25]) *Elgafadži,* op. cit., fn. 5, stav 34.

1.3.2. Nacionalna sudska praksa

Od presude u slučaju *Elgafadži*, nacionalni sudovi i tribunali više ne pokušavaju detaljnije da definišu taj pojam, već nastoje da utvrde pokazatelje njegove prirode i intenziteta (videti Deo II, odeljak 2.2. ispod). Visoki sud Ujedinjenog kraljevstva (UKUT) izjavio je da bombaški napadi ili pucnjave:

> mogu opravdano da se smatraju neselektivnim u smislu da, iako im mete mogu biti konkretne ili opšte, običnog civila koji se zatekne na mestu događaja nužno izlažu opasnosti da postane ono što se u raspravama opisuje kao kolateralna šteta. Korišćena sredstva mogu biti bombe koje, osim mete, mogu ugroziti i druge ljude, ili pucnjave koje stvaraju manji, ali ipak stvaran rizik od kolateralne štete ([26]).

Kada je reč o opštim metama, Visoki sud Ujedinjenog Kraljevstva navodi primer eksplozija ili bombi na mestima s velikim brojem ljudi, poput pijaca ili mesta održavanja verskih povorki ili okupljanja ([27]). Savezni upravni sud Nemačke (FAC) je, tumačeći presudu u predmetu *Elgafadži,* došao do zaključka da nije neophodno utvrditi da li činovi nasilja predstavljaju kršenje međunarodnog humanitarnog prava, pošto je pojam nasilja u Direktivi o kvalifikaciji korišćen u širokom značenju ([28]). Bilo je značajnih rasprava u nacionalnoj sudskoj praksi u vezi s obimom indirektnih uticaja neselektivnog nasilja koje treba uzeti u obzir.

Državni savet Francuske je zlostavljanje civilnog stanovništva i napade na njega, kao i prisilno raseljavanje, navodio kao moguće karakteristike neselektivnog nasilja. ([29] Takve karakteristike postojale su u slučaju u kom je jedan podnosilac zahteva morao da putuje kroz delove Avganistana zahvaćene takvim nasiljem ([30]); prilikom davanja procene nije bilo potrebno analizirati opštu situaciju u zemlji, već u delovima o kojima je reč ([31]).

Upravni sud Republike Slovenije je u dve presude naveo sledeće faktore koje treba uzeti u obzir prilikom procene intenziteta nasilja: broj poginulih i povređenih civila u borbama, uključujući moguću vremensku dinamiku broja poginulih i povređenih, broj interno raseljenih lica, osnovne humanitarne uslove u centrima za raseljena lica, između ostalog hranu, higijenu i bezbednost, kao i stepen „neuspešnosti države" da garantuje osnovnu materijalnu infrastrukturu, red, zdravstvenu negu, hranu, pijaću vodu. Upravni sud je istakao da zaštićena vrednost u vezi sa članom 15(c) nije prosto „preživljavanje" tražilaca azila, već i zabrana nečovečnog postupanja ([32]). Vrhovni sud Slovenije je odlučio da su ti faktori „pravno relevantni" ([33]).

1.3.3. UNHCR

Slično tome, UNHCR smatra da termin „neselektivno" obuhvata „činove nasilja koji nisu usmereni ka konkretnom objektu ili pojedincu, kao i činove nasilja usmerena na konkretan objekat ili pojedinca, ali čije dejstvo može naškoditi drugima" ([34]).

1.3.4. Tipični oblici neselektivnog nasilja u oružanim sukobima

Priroda nasilja može biti ključni faktor pri utvrđivanju da li je nasilje neselektivno. U primere takvih činova neselektivnog nasilja mogu spadati: masovna ciljana bombardovanja, vazdušni napadi, gerilski napadi, kolateralna šteta u direktnim ili nasumičnim napadima u gradskim područjima, opsade, spaljena zemlja, snajperisti, odredi smrti, napadi na javnim mestima, pljačkanje, upotreba improvizovanih eksplozivnih naprava itd.

([26]) Visoki sud, Odeljenje za imigraciju i azil (UK), presuda od 13. novembra 2012, *HM* i drugi (član 15(c)) *Irak CG protiv ministra unutrašnjih poslova*, [2012] UKUT 00409(IAC), stav 42.
([27]) Ibid.
([28]) Savezni upravni sud (Nemačka), presuda od 27. aprila 2010, 10 C 4.09, ECLI:DE:BVerwG:2010:270410U10C4.09.0, stav 34
([29]) Državni savet (Francuska), presuda od 3. jula 2009, br. 320295, Francuska kancelarija za zaštitu izbeglica i lica bez državljanstva c *M. Baskarathas*, br. 320295.
([30]) CNDA (Francuska), presuda od 11. januara 2012, *M. Samadi* br. 11011903 C.
([31]) CNDA (Francuska), presuda od 28. marta 2013, *M. Mohamed Adan* br. 12017575 C.
([32]) Upravni sud Slovenije, presude od 25. septembra 2013, I U 498/2012-17 i 29. januara 2014. I U 1327/2013-10.
([33]) Vrhovni sud Republike Slovenije, presuda od 10. aprila 2014, I Up 117/2014.
([34]) UNHCR, *Najzad na sigurnom* fn. 2, str. 103.

1.3.5. Uloga ciljanog nasilja

Što procena prirode nasilja više ukazuje na to da je dato lice bilo ili bi moglo biti žrtva ciljanog napada, to sudovi i tribunali treba da obrate više pažnje na to da li to lice zapravo ispunjava kriterijume za dobijanje zaštite kao izbeglica, a ne supsidijarne zaštite. Ali u svakom slučaju nema razloga da se ciljano nasilje izostavi prilikom analize intenziteta neselektivnog nasilja u relevantnom području ili regiji zemlje. Ciljano nasilje obuhvata i konkretne i opšte napade: neki činovi nasilja, iako su ciljani, mogu povrediti značajan broj civila ([35]).

Dalja analiza pristupa proceni intenziteta neselektivnog nasilja data je u Delu II, u odeljcima 2.2 i 2.3.

1.4. Zbog

Supsidijarna zaštita prema članu 15(c) daje se svakom licu za koje se opravdano veruje da bi, ako bi se vratilo u svoju zemlju porekla, bilo izloženo stvarnom riziku od ozbiljne i individualne pretnje njegovom ili njenom životu ili telesnom integritetu *zbog* neselektivnog nasilja. Ključni element u utvrđivanju uzročnosti biće intenzitet takvog nasilja ([36]). S obzirom na široku definiciju neselektivnog nasilja, zahtev za postojanjem uzročno-posledične veze ne treba primenjivati u uskom značenju. Posledice neselektivnog nasilja mogu biti kako indirektne, tako i direktne. Indirektne posledice činova nasilja, poput potpunog sloma reda i poretka nastalog zbog sukoba, takođe treba u određenoj meri uzeti u obzir.

Da li krivična dela, koja su rezultat narušavanja reda i poretka i druge indirektne posledice neselektivnog nasilja, treba smatrati neselektivnim nasiljem u smislu člana 15(c)?

Savezni upravni sud Nemačke je 2008. doneo odluku da krivična dela nasilja, koja nije počinila jedna od sukobljenih strana, treba uzeti u obzir samo prilikom ocenjivanja prirode ozbiljne i individualne pretnje životu ili telesnom integritetu ([37]). Prema Saveznom upravnom sudu Nemačke „opšte pretnje životu koje su samo posledica oružanog sukoba - na primer, pogoršanje situacije u vezi sa snabdevanjem - ne mogu biti obuhvaćene procenom intenziteta opasnosti" ([38]), pa stoga ne predstavljaju pretnju u smislu člana 15(c). Visoki sud Ujedinjenog Kraljevstva je 2010. izneo stav da opšti kriminalitet, koji izaziva nepravdu neophodnog nivoa ozbiljnosti, može biti posledica oružanog sukoba u kom je poremećen normalan red i poredak. Ozbiljno narušen red i poredak, koji dopušta bezvlašće i pojavu kriminala, usled čega povremeno dolazi do ozbiljne nepravde navedene u članu 15(c), može faktički dovesti do neselektivnog nasilja čak i ako mu to nije nužno cilj ([39]). Mora postojati dovoljno jaka uzročno-posledična veza između nasilja i sukoba, ali neselektivno nasilje koje utiče na civilno stanovništvo ne mora nužno biti direktno izazvano od strane boraca koji učestvuju u sukobu ([40]). Državni savet Francuske ([41]), kao i Državni savet Holandije ([42]), smatraju da indirektne posledice oružanih sukoba treba uzeti u obzir.

Slično tome, UNHCR u tom pogledu naglašava da narušavanje reda i poretka kao posledice neselektivnog nasilja ili oružanog sukoba treba uzeti u obzir. Konkretno, izvor iz kog neselektivno nasilje potiče je nebitan ([43]).

Još uvek se ne može predvideti da li će ovaj novi i širi pristup tumačenju pojma oružanog sukoba, koji ima Sud pravde Evropske unije u predmetu *Dijakite*, dovesti i do šireg prihvatanja toga da indirektne posledice neselektivnog nasilja mogu predstavljati neselektivno nasilje u smislu člana 15(c).

([35]) *HM i drugi*, op. cit., fn. 26, stav 292.
([36]) Videti H. Lambert, „Uzročnost u međunarodnoj zaštitit od oružanog sukoba", D. Kantor i J.-F. Durieux (ur.), op. cit., str. 65.
([37]) Savezni upravni sud (Nemačka), presuda od 17. novembra 2011, 10 C 13.10, ECLI: DE: BVerwG: 2011: 171 111U1 0C13.10.0, stav 23.
([38]) Savezni upravni sud (Nemačka), presuda od 24. juna 2008, 10 C 43.07, ECLI: DE: BVerwG: 2008: 240608U10C43.0 7.0, stav 35.
([39]) *HM i drugi*, op. cit., fn. 26, stavovi 79-80.
([40]) Ibid, stav 45.
([41]) *Baskarathas*, op. cit., fn. 29.
([42]) Državni savet (Holandija), presuda od 7. jula 2008, 200802709/1, ECLI:NL:RVS:2008:BD7524.
([43]) UNHCR, "Najzad na sigurnom", fn. 2, str. 60 i 103.

1.5. Civil

1.5.1. Lični opseg primene člana 15(c): ograničen na civilno stanovništvo

Logički gledano, neophodan preduslov za dobijanje zaštite prema članu 15(c) jeste da je lice civil ([44]). Ako podnosilac zahteva nije civil pa se na njega član 15(c) ne može primeniti, neophodno je da se proveri da li je razmotrena ili treba da bude razmotrena ispunjenost uslova za dobijanje zaštite u statusu izbeglice prema članu 15(a) i (b), osim ukoliko podnosilac zahteva spada u kategoriju na koju se primenjuju klauzule izuzeća (članovi 12 i 17). Članovi 2 i 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda (na koje se klauzule izuzeća ne primenjuju) takođe mogu biti relevantni.

1.5.2. Pristup definiciji koji najverovatnije odbacuje definiciju međunarodnog humanitarnog prava

S obzirom na široki spektar razloga, koje je Sud pravde Evropske unije naveo u predmetu *Dijakite,* za odbacivanje kriterijuma međunarodnog humanitarnog prava prilikom definisanja oružanog sukoba, mora se pretpostaviti da on ne bi prihvatio definiciju civila prema međunarodnom humanitarnom pravu ([45]). Umesto toga, Sud bi nastojao da taj termin koristi u njegovom najčešćem značenju u svakodnevnom govoru, istovremeno uzimajući u obzir i kontekst u kom se javlja, kao i svrhe pravila čiji je deo (*Dijakite*, stav 27). Kada se tome doda i činjenica da čak i u okviru međunarodnog humanitarnog prava ne postoji potpuna usaglašenost oko definicije ovog termina ([46]), može se izvesti zaključak u vezi s tim koliko je definicija zasnovana na kriterijumima međunarodnog humanitarnog prava nepodesna.

Rečničke definicije, budući da u velikoj meri variraju, nude nedovoljnu pomoć i u svakom slučaju ne pomažu u smislu značenja koje je usklađeno s ciljevima i svrhom Direktive o kvalifikaciji. Jednostavno značenje u svakodnevnom govoru moglo bi biti da su civili oni koji nisu borci ili da su to lica koja se ne bore; međutim, to je toliko kratko da ne daje nikakav doprinos u smislu sadržine.

1.5.3. Razlikovanje vojnog i nevojnog

Iz činjenice da Sud pravde Evropske unije u predmetu *Dijakite* očigledno ima u vidu da oružani sukob može nastati čak i bez umešanosti države ili bez učešća države u njemu („ili ako su dve ili više naoružanih grupa u međusobnom sukobu") može se zaključiti da se taj termin koristi prvenstveno za razlikovanje nevojnog od vojnog osoblja. U vojna lica mogu spadati i pripadnici državnih oružanih snaga ili policije, kao i pripadnici pobunjeničkih ili ustaničkih grupa (koje se ponekad nazivaju „neregularni borci").

([44]) C. Bauloz, op. cit., fn. 23, str. 253 – *„Supsidijarna zaštita prema članu 15(c) pažljivo je ograničena prema kriterijumu ratione personae na civile državljane trećih zemalja ili civile bez državljanstva koji se ne kvalifikuju kao izbeglice"*.

([45]) Konačna definicija u međunarodnom humanitarnom pravu ne postoji, ali mnogi smatraju da ona koju je dao G. Mettraux u *Međunarodni zločini i ad hoc tribunali* (OUP, 2005) odslikava uobičajenu pravnu definiciju; ona civile definiše kao *„one koji nisu, ili više nisu, pripadnici borbenih snaga ili organizovane vojne grupe koja pripada nekoj strani u sukobu"*. U međunarodnom humanitarnom pravu postoji pretpostavka u korist zaštite, a u članu 50(1) Dopunskog protokola I se navodi „[u] *slučaju sumnje da li je neko lice civil, to lice će se smatrati civilom"*. Videti i E. Wilmshurst i S. Breau, *Perspektiva studije Međunarodnog komiteta Crvenog krsta o uobičajenom međunarodnom humanitarnom pravu* (CUP, 2007), str. 10-11, 111-112, 406.

([46]) Iako je ključna za princip razlikovanja u međunarodnom humanitarnom pravu: studija koju je Međunarodni komitet Crvenog krsta sproveo u vezi s običajnim međunarodnim humanitarnim pravom u Pravilu 1 navodi: *„Strane u sukobu moraju u svakom trenutku praviti razliku između civila i boraca"* [J. Henckaerts i L. Doswald-Beck, *Uobičajeno međunarodno humanitarno pravo* (CUP, 2005)].

1.5.4. Civili = svi koji nisu borci?

Ako se primeni značenje koje termin „civil" ima u međunarodnom pravu ljudskih prava (IHRL) ([47]) (koje sve češće prepoznaje komplementarnost međunarodnog prava ljudskih prava i međunarodnog humanitarnog prava), taj termin će morati da se usaglasi s istim značenjem koje mu je dato u zajedničkom članu 3 u sve četiri Ženevske konvencije iz 1949: „[lica] koja ne učestvuju neposredno u neprijateljstvima, podrazumevajući tu i pripadnike oružanih snaga koji su položili oružje i lica van borbe […]". Potonji deo iskaza ukazuje na to da to što neko više ne učestvuje u sukobima nije dovoljno; dato lice mora preduzeti aktivne korake da se isključi iz sukoba ([48]).

Postoji određeni broj odluka na nacionalnom nivou koje ilustruju taj pristup. U predmetu *ZQ (vojnik na odsluženju vojnog roka)* ([49]), Tribunal za azil i imigraciju Ujedinjenog Kraljevstva (UKAIT) je istakao da u međunarodnom humanitarnom pravu činjenica da vojnik nije na dužnosti ili da je na bolovanju ne znači nužno da ima status civila. Sud je citirao Žalbeno veće Međunarodnog krivičnog suda za bivšu Jugoslaviju (ICTY), koje je u predmetu *Tužilac protiv Blaškića* ([50]) u stavu 114 uočio sledeće: „posebna situacija žrtve u trenutku činjenja zločina [ratnih zločina ili zločina protiv čovečnosti] nužno ne određuje njen civilni ili necivilni status. Ukoliko je on zaista pripadnik oružane organizacije, činjenica da nije naoružan ili da ne učestvuje u borbi u trenutku činjenja zločina ne daje mu civilni status." U predmetu *HM i drugi* Visoki sud Ujedinjenog Kraljevstva je zaključio da definicijom civila ne treba obuhvatiti „nikoga ko učestvuje u oružanom sukobu", što obuhvata pripadnike oružanih snaga ili policiju ([51]). Prema tumačenju Međunarodnog komiteta Crvenog krsta (ICRC), civili u oružanim sukobima koji nemaju međunarodni karakter jesu „sva lica koja nisu pripadnici državnih oružanih snaga ili organizovanih naoružanih grupa koje pripadaju nekoj strani u sukobu".

1.5.5. Da li termin „civil" isključuje sve pripadnike oružanih snaga i policije?

Imajući na umu da Sud pravde Evropske unije smatra da značenje ključnih termina zahteva objašnjenje konteksta u kom se javljaju, kao i svrhe pravila čiji su deo (*Dijakite*, stav 27), moguće je da se termin „civil" može tumačiti u širem značenju, tako da označava sve one koji nisu borci, one koji se ne bore ili sve one koji su *hors de combat* (van borbe). Tako, na primer, nasuprot stavu naizgled zastupljenom u međunarodnom humanitarnom pravu, pripadnik oružanih snaga ili policije, koji bi se suočio sa stvarnim rizikom od trpljenja ozbiljne nepravde samo dok nije na dužnosti u svojoj rodnoj regiji ili području, nesumnjivo bi se mogao kvalifikovati. S obzirom na argumentaciju u predmetu *Dijakite*, može se smatrati da je Sud za taj termin trebao utvrditi činjeničnu definiciju, pre nego ga posmatrati kao termin koji označava unapred utvrđeni pravni status ([52]).

1.5.6. Da li je sama pripadnost nekoj oružanoj grupi dovoljna za izuzimanje iz statusa civila?

Iz argumentacije Suda pravde Evropske unije u predmetu *B i D*, ([53]) bilo bi pogrešno jednostavno pokušati doneti zaključak o necivilnom statusu nekog lica na osnovu njegove pripadnosti nekoj oružanoj grupi. U predmetu *B i D*, koji se ticao primene klauzula o izuzeću iz statusa izbeglice u Direktivi o kvalifikaciji, Sud je odbio da izvrši automatska izjednačenja bilo na osnovu Rezolucija Saveta bezbednosti Ujedinjenih nacija, bilo instrumenata Evropske unije donetih u okviru Zajedničke spoljne i bezbednosne politike. U stavu 89 u predmetu *B i D*, Sud

([47]) Uvodna izjava [24] Direktive o kvalifikaciji navodi: „Nužno je uvesti zajedničke kriterijume na osnovu kojih će se tražiocima međunarodne zaštite priznavati da ispunjavaju uslove za dobijanje supsidijarne zaštite. Ti bi kriterijumi trebalo da budu utvrđeni na osnovu obaveza koje proizlaze iz međunarodnih pravnih akata o ljudskim pravima i na osnovu postojeće prakse u državama članicama Evropske unije." Generalni pravobranilac Mengozzi je u predmetu Dijakite izjavio da je iz travaux preparatoires („pripremnih radova") jasno da „je pojam supsidijarne zaštite izveden iz međunarodnih instrumenata koji se bave ljudskim pravima".
([48]) U svojoj presudi od 1. jula 1997, Kalac protiv Turske, zahtev br. 20704/92, Evropski sud za ljudska prava navodi da je „odabravši vojničku karijeru g. Kalac svojevoljno prihvatio sistem vojne discipline koji po samoj svojoj prirodi podrazumeva postavljanje pripadnicima oružanih snaga ograničenja na određena prava i slobode koja se ne mogu postaviti civilima"; videti i presudu Evropskog suda za ljudska prava od 8. juna 1976, *Engel i drugi protiv Holandije,* zahtevi br. 5100/71 i drugi, stav 57. Opšte uzev, međunarodno pravo ljudskih prava sve više smatra da, kad je reč o oružanim sukobima, međunarodno humanitarno pravo ima komplementarnu ulogu i da je zapravo *lex specialis*: videti Orna Ben-Naftali (ur.) *Međunarodno humanitarno pravo i međunarodno pravo ljudskih prava* (, OUP, 2011, str. 3-10.
([49]) Tribunal za azil i imigraciju (UK) (prethodnik Visokog suda Ujedinjenog Kraljevstva), presuda od 2. decembra 2009, *ZQ (vojnik na odsluženju vojnog roka) Irak protiv ministra unutrašnjih poslova,*CG [2009] UKAIT 00048.
([50]) Međunarodni krivični sud za bivšu Jugoslaviju, Žalbeno veće, presuda od 29. jula 2004, *Tužilac protiv Blaškića*, predmet br. IT-95-14-A.
([51]) *HM i drugi*, op. cit., fn. 26 citiran i u presudi *ZQ (vojnik na odsluženju vojnog roka)*, op.cit. fn. 49.
([52]) C. Bauloz, op. cit., fn. 23, tvrdi da *„činjeničnoj definiciji treba dati prednost u odnosu na nepromenljive pravne kategorije usmerene na suviše rigidne statuse"*.
([53]) Sud pravde Evropske unije (Veliko veće), presuda od 9. novembra 2010, Savezna republika Nemačka *protiv B i D*, spojeni predmeti C-57/09 i C-101/09.

pravde Evropske unije je rekao da nema direktne veze između definicije terorističkih akata u ovom materijalu i Direktivi o kvalifikaciji „u smislu ciljeva koje žele da postignu". Stoga, „nadležni organ nije imao opravdanje da, prilikom odlučivanja o tome da li da nekom licu ne odobri status izbeglice […] svoju odluku donese isključivo na osnovu pripadnosti tog lica nekoj organizaciji koja se nalazi na usvojenoj listi izvan okvira koji je postavila Direktiva". To što se nalazi na nekoj listi ili u iskazanoj definiciji ne može da zameni pojedinačnu ocenu konkretnih činjenica. Isto tako, „učešće u aktivnostima terorističke grupe [ne može] nužno i automatski da predstavlja osnov za izuzeće opisano u Direktivi".

1.5.7. Pokazatelji civilnog statusa

Pod pretpostavkom da nema automatskog usvajanja definicije iz međunarodnog humanitarnog prava ili bilo kog drugog spoljnog skupa propisa, već da umesto toga Sud pravde Evropske unije, slično onome što je uradio u predmetu *B i D*, zahteva „detaljno ispitivanje svih okolnosti svakog pojedinačnog slučaja", sledeći pokazatelji (ne nužno usklađeni jedni s drugima) mogli bi biti od pomoći:

- Civil je osoba koja ne učestvuje u sukobu i samo teži da nastavi sa životom bez obzira na konfliktnu situaciju.
- To što je neko lice nenaoružano nije dovoljno da se smatra civilom, već treba da bude i neutralan u sukobu.
- Lica koja svojevoljno učestvuju u aktivnostima oružanih grupa uglavnom se ne smatraju civilima.
- Definicija civila zapravo ima za cilj izuzimanje učesnika u ratu, stoga su njome obuhvaćena lica koja ne učestvuju ili ne bi učestvovala aktivno u neprijateljstvima.
- Treba istražiti ulogu pojedinca u organizaciji. Treba razmotriti pitanje da li je pojedinac nešto učinio (ili bi učinio) pod prinudom. S druge strane, treba uzeti u obzir i to da, na primer, naizgled civilni politički predstavnici pobunjenika u nekom ustanku mogu biti odgovorni za donošenje odluka koje za posledicu imaju ubistva.
- Pojedinci koji rade za vojne institucije, uključujući vojne bolnice, mogu imati poteškoća pri priznavanju statusa civila, čak i ako su dužni da poštuju vojna pravila komandovanja.
- Pojedinac koji u vojsci ima civilni zadatak, poput lekara, može se smatrati civilom, osim kada to radno mesto podrazumeva posedovanje vojnog čina.
- To što neko lice nema vojni čin može mu olakšati tvrdnju da *de facto* ima status civila.
- Član 43 o oružanim snagama Dopunskog protokola uz Ženevske konvencije od 12 avgusta 1949, a u vezi sa zaštitom žrtava međunarodnih oružanih sukoba (Protokol 1), od 8. juna 1977, iz definicije oružanih snaga izuzima „medicinsko osoblje i sveštenike obuhvaćene članom 33. III konvencije". Za vojnog lekara koji nije borac, a koji radi u vojnoj bolnici, može se smatrati da obavlja u suštini humanitarnu pre nego vojnu dužnost, promovišući pravo na život zaštićeno Poveljom i Evropskom konvencijom za zaštitu ljudskih prava i osnovnih sloboda ([54]).
- Vizuelna percepcija je jedan od kriterijuma za prepoznavanje civila i njihovo razlikovanje od boraca. Za utvrđivanje statusa neophodno je ispitati samo svojstvo datog lica kao necivila i razmotriti pitanje da li bi lice po povratku moglo biti identifikovano kao necivil.

1.5.8. Procena okrenuta ka budućnosti

Treba imati na umu da se sudovi i tribunali prilikom procene svih zahteva za dobijanje međunarodne zaštite prvenstveno bave hipotetičkim rizikom u slučaju povratka, tj. u kakvoj će se situaciji podnosilac zahteva naći ako bude vraćen u svoju zemlju porekla. To da li je neko prethodno bio civil ili borac neće nužno značiti da će po povratku biti (ili biti posmatran kao) civil ili borac.

([54]) Videti npr. odluku Komisije za ljudska prava od 10. jula 1984, *Stjuart protiv UK,* zahtev br. 10044/82, stav 15, *„koncept da će svačije pravo na život biti zaštićeno zakonom"* zahteva od države da se ne samo suzdrži od „namernog" oduzimanja života već i da preduzme odgovarajuće korake da život zaštiti. U ovom slučaju se radilo o primeni člana 2(2) Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda.

1.5.9. U slučaju sumnje

Ukoliko se prilikom utvrđivanja toga da li je neko lice civil (tj. da li bi bilo civil po povratku) koristi činjenični pristup, akcenat treba staviti na načelo da, citirajući član 50 Dodatnog protokola I pod naslovom 'Definicija civila i civilnog stanovništva', u podstavu 1: „u slučaju sumnje da li je neko lice civil, to lice će se smatrati za civila".

Belgijsko Veće za parnične postupke po Zakonu o strancima ([55]) izjavilo je da podnosioca zahteva, koji je sarađivao s organima nadležnim za azil, prilikom pokušaja da se utvrdi opravdanost zahteva, u slučaju sumnje treba smatrati civilom.

1.5.10. Bivši borci i prinudna regrutacija

Kada je reč o bivšim borcima (uključujući decu vojnike), treba uzeti u obzir to da svrha Direktive o kvalifikaciji nije uvođenje dodatnih klauzula o izuzeću, već identifikovanje lica kojima je potrebna zaštita. Klauzulu o izuzeću obično treba razmotriti u nekoj kasnijoj fazi. Francuski Nacionalni sud za pravo azila je u jednom predmetu u vezi s licem iz Avganistana napomenuo da bivši vojnik, koji je napustio avganistansku vojsku, može biti smatran civilom ([56]).

UNHCR je preporučio sledeći pristup:

> U vezi s tim, termin „civil" u članu 15(c) ne treba da služi tome da izuzme bivše borce koji mogu da dokažu da su se odrekli vojnih aktivnosti. Činjenica da je neki pojedinac bio borac u prošlosti ne mora nužno značiti njegovo izuzeće iz međunarodne zaštite ako se iskreno i trajno odrekao vojnih aktivnosti. Kriterijume kojima se utvrđuje da li neko lice ispunjava taj uslov definisao je Izvršni komitet UNHCR-a ([57]).

Time se naglašava da postoji mogućnost da bivši borac, naročito ako je prethodno bio pripadnik državnih vojnih snaga, po povratku i dalje bude smatran borcem.

Ministarstvo unutrašnjih poslova Ujedinjenog Kraljevstva je u svojim Smernicama za postupak azila od 15. maja 2013, a u vezi s humanitarnom zaštitom, izjavilo da se samo pravi neborci, tj. oni koji ne učestvuju u sukobu, kvalifikuju za zaštitu prema članu 15(c): „Ovo može obuhvatati bivše borei koji su se iskreno i trajno odrekli oružanih aktivnosti."

Opšte govoreći, podnosilac zahteva koji je prisilno regrutovan ([58]) kao vojnik/borac time ne gubi status civila ali, kao i kod dece vojnika, čini se da bi u odlučivanju po tom pitanju trebalo primeniti činjenični pristup, sličan onom koji je Sud pravde Evropske unije primenio u predmetu *B i D*: videti gore 1.5.6.

1.6. Ozbiljna i individualna pretnja

Član 15(c) zahteva da podnosilac zahteva predoči da je suočen sa stvarnim rizikom od trpljenja ozbiljne pretnje ili nepravde, a ne nužno od trpljenja konkretnih činova nasilja. Pretnja se tumači kao pretnja svojstvena opštem stanju sukoba, i to je u suštini razlog zašto ova odredba obuhvata opštiji rizik od nepravde nego član 15(a) ili (b): videti predmet *Elgafadži*, stavove 32-34. U stavu 45, Sud pravde Evropske unije navodi:

> Na osnovu toga, Sud (Veliko veće) odlučuje sledeće: član 15(c) u vezi sa članom 2(e) Direktive Saveta 2004/83/EZ... mora se tumačiti u sledećem značenju:

([55]) Veće za parnične postupke po Zakonu o strancima (Conseil du contentieux des étrangers/Raad voor Vreemdelingenbetwistingen)(Belgija), presuda od 4. decembra 2007, predmet 4460.
([56]) CNDA (Francuska), presuda od 24. januara 2013, *M. Miakhail* br. 12018368 C+.
([57]) UNHCR, Izjava o supsidijarnoj zaštiti po Direktivi o kvalifikaciji Saveta Evropske unije, januar 2008, p. 7. Dostupno na: http://www.refworld.org/docid/479df7472.html.
([58]) Treba napraviti razliku između lica koja su regrutovana prema zakonu zemlje porekla (u kojoj je služenje vojnog roka možda obavezno) i lica koja su protiv svoje volje primorana da se pridruže nekoj naoružanoj grupi: videti još i UNHCR, *Smernice za pružanje međunarodne zaštite br. 10: Zahtevi za dobijanje statusa izbeglice u vezi s vojnom službom u kontekstu člana 1A (2) Konvencije iz 1951. i/ili protokola o statusu izbeglice iz 1967*, 3. decembar 2013, naročito stavove 35-41.

- priznavanje postojanja ozbiljne i individualne pretnje životu ili telesnom integritetu nekog podnosioca zahteva za dobijanje supsidijarne zaštite nije uslovljeno time da podnosilac zahteva predoči dokaze da je on ciljana meta zbog činilaca specifičnih za njegove lične okolnosti;

- postojanje takve pretnje se izuzetno može smatrati utvrđenim kada stepen neselektivnog nasilja karakterističnog za dati oružani sukob – prema oceni nadležnih nacionalnih organa, pred kojima je zahtev za dobijanje supsidijarne zaštite podnet, ili prema oceni sudova države članice Evropske unije, kojima je upućena odluka o odbijanju takvog zahteva – dostiže toliko visok nivo da se opravdano veruje da bi se civilno lice, ako bi se vratilo u datu zemlju ili, u zavisnosti od konkretnog slučaja, određeni region, samo na osnovu svog prisustva na teritoriji te zemlje ili regiona, bilo izloženo stvarnom riziku od trpljenja te pretnje.

1.6.1. Opšti rizik i specifični rizik

Iz analize Suda pravde Evropske unije u predmetu *Elgafadži*, jasno je da postojanje ozbiljne i individualne pretnje životu ili telesnom integritetu podnosioca zahteva nije uslovljeno time da podnosilac zahteva predoči dokaze da je on ciljana meta zbog činilaca specifičnih za njegove lične okolnosti. Za podnosioca zahteva se može smatrati da je pod opštim rizikom od takve pretnje ukoliko je stepen neselektivnog nasilja karakterističan za oružani sukob toliko visok da se opravdano veruje da bi civilno lice samo na osnovu svog prisustva u datom području ili regiji bilo izloženo stvarnom riziku od trpljenja te pretnje. Drugim rečima, „individualizacija" koja je neophodna da bi se dokazalo da je pretnja „individualna" može se postići ili pomoću faktora „specifičnog rizika", koji imaju veze s određenim karakteristikama ili okolnostima nekog lica, ili pomoću faktora „opšteg rizika", koji proizlaze iz izuzetne situacije veoma visokog stepena nasilja.

1.6.2. Pojam „klizne skale"

Prema članu 15(c), to da li je kod nekog lica prisutan opšti rizik ili specifični rizik ne treba posmatrati kao dihotomiju. Naprotiv, Sud pravde Evropske unije je osmislio nešto što je poznato pod nazivom koncept „klizne skale", što znači sledeće:

> što je podnosilac zahteva više u mogućnosti da dokaže da je posebno ugrožen zbog faktora karakterističnih za njegove lične okolnosti, to je niži nivo neselektivnog nasilja neophodan da bi ispunio uslove za dobijanje supsidijarne zaštite (*Elgafadži*, stav 39; *Dijakite*, stav 31). Važi i obrnuto: izuzetno, nivo nasilja može dostići toliko visok nivo da bi civilno lice, samo na osnovu svog prisustva na teritoriji date zemlje ili regiona, bilo izloženo stvarnom riziku od trpljenja ozbiljne pretnje (stav 43). Sud je utvrdio da ovo tumačenje nije u suprotnosti s [tadašnjom] uvodnom izjavom 26 Direktive, budući da formulacija potonje ostavlja mogućnost postojanje takve izuzetne situacije ([59]).

Pomoću koncepta klizne skale, Sud pravde Evropske unije uspeva da uspostavi ravnotežu između individualne pretnje i neselektivnog nasilja, kao i da razjasni kako datu odredbu treba primenjivati u konkretnom slučaju.

Primećuje se da je za Sud pravde Evropske unije pojam „opšti rizik" sličan po značenju onom koji se prepoznaje u sudskoj praksi Evropskog suda za ljudska prava, a u vezi sa članom 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda, u smislu mogućnosti da se za nekog pojedinca može reći da je pod stvarnim rizikom od trpljenja ozbiljne nepravde samim tim što je prisutan u situaciji koju karakteriše izuzetno visok stepen nasilja. U predmetu *NA protiv UK* ([60]), u stavovima 115-116, Evropski sud za ljudska prava navodi:

> 115. Iz gorenavedenog ispitivanja njegove sudske prakse sledi da Sud nikada nije isključio mogućnost da opšte nasilje u nekoj određišnoj zemlji bude dovoljno visokog intenziteta da se podrazumeva da bi svako udaljavanje u tu zemlju nužno predstavljalo kršenje člana 3 Konvencije. Pa ipak, Sud bi primenio takav

([59]) E. Tsourdi, *Kako zaštititi osobe koje beže od neselektivnog nasilja? Uticaj evropskih sudova na Režim subsidijarne zaštite Evropske unije*, u D. Cantor i J-F Durieux (ur.), op.cit., str. 277.
([60]) Evropski sud za ljudska prava, presuda od 17. jula 2008, *NA protiv Ujedinjenog Kraljevstva*, zahtev br. 25904/07.

> pristup samo u najekstremnijim slučajevima opšteg nasilja, kada postoji stvaran rizik od zlostavljanja samo zbog toga što bi pojedinac po povratku bio izložen takvom nasilju.
>
> 116. Međutim, u izuzetnim slučajevima, kada podnosilac zahteva tvrdi da je pripadnik ili pripadnica grupe koja je izložena sistematskom zlostavljanju, Sud smatra da zaštita prema članu 3 Konvencije stupa na snagu onda kada podnosilac zahteva dokaže da postoje opravdani razlozi da se veruje u postojanje prakse o kojoj je reč, i da je pripadnik ili pripadnica grupe na koju se to odnosi (videti Saadi protiv Italije, citirano iznad, stav 132). U takvim okolnostima Sud neće insistirati da podnosilac zahteva dokaže postojanje drugih posebnih odlika ako bi to zaštitu ponuđenu članom 3 učinilo prividnom. To će biti utvrđeno na osnovu iskaza podnosioca zahteva i informacija o situaciji u odredišnoj zemlji u pogledu grupe o kojoj je reč (videti Salah Sheekh, citirano iznad, stav 148).

U predmetu *Sufi i Elmi protiv Ujedinjenog Kraljevstva,* Evropski sud za ljudska prava je dalje dodao da bi primena tog pristupa podrazumevala i primenu kriterijuma klizne skale (kako smo taj koncept nazvali). Evropski sud za ljudska prava je potvrdio, prvo, da ako se dokaže rizik suprotan članu 3, „udaljavanje podnosioca zahteva bi nužno predstavljalo kršenje ovog člana bez obzira na to da li rizik proističe iz opšteg stanja nasilja, lične karakteristike podnosioca zahteva ili kombinacije ta dva faktora" (stav 218).

Jedan komentator je dodao:

> U suštini, kriterijum „klizne skale" u predmetu *Elgafadži* naizgled ne odstupa mnogo od nedavne takve sudske prakse Evropskog suda za ljudska prava, bar ne kad je reč o individualizaciji. U pogledu slučajeva krajnje neselektivnog i opšteg nasilja, kriterijum je formulisan na sličan način. Sud pravde Evropske unije je takođe jasno istakao da bi takva situacija bila „izuzetna". Kad je nasilje slabijeg intenziteta, oba suda zahtevaju određeni stepen individualizacije ([61]).

Ako „klizna skala" postoji u odnosu na član 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda, onda ona mora postojati i u odnosu na član 15(b) ([62]). Izazov predstavlja pristup takvoj individualizaciji u kontekstu člana 15(c): „Drugi izazov koji proizilazi iz kriterijuma klizne skale kad je reč o određivanju faktora koji su karakteristični za lične okolnosti podnosioca zahteva u slučajevima kada je nasilje slabijeg intenziteta" ([63]). Generalni pravobranilac Maduro je to primetio u slučaju „kada prilikom objašnjavanja relevantnih faktora za davanje ocene o tome da li je lice kao pojedinac ugroženo kao primer bude navedena njegova pripadnost određenoj društvenoj grupi [MPSG]" ([64]). Faktor pripadnosti određenoj društvenoj grupi odslikava Konvenciju o statusu izbeglica iz 1951.

Međutim, ako „lične okolnosti" predstavljaju pripadnost određenoj društvenoj grupi ili neko od preostala četiri osnova Konvencije o statusu izbeglica iz 1951, tada bi odgovarajući okvir razmatranja zahteva mogao biti definicija izbeglice ([65]).

U svakom slučaju, lične okolnosti koje ovde treba pokazati ne mogu biti ograničene na razloge iz Konvencije o statusu izbeglica navedene u definiciji izbeglice; one bi u načelu trebalo da obuhvate faktore zbog kojih bi dato lice bilo izloženo većem riziku u odnosu na ostatak stanovništva. Valja podsetiti da član 4(3)(c) zahteva da se prilikom procene zahteva za dobijanje međunarodne zaštite moraju uzeti u obzir „individualni položaj i lične okolnosti podnosioca zahteva, uključujući faktore kao što su poreklo, rod i uzrast, kako bi se procenilo da li se, s obzirom na lične okolnosti podnosioca zahteva, postupci kojima je on bio ili mogao biti izložen mogu smatrati progonom ili ozbiljnom nepravdom".

Prema tome, iako se prema članu 15(c) istražuje specifični, kao i opšti rizik, teškoće na koje su nacionalni sudovi i tribunali nailazili prilikom primene kriterijuma „klizne skale" ukazuju na to da će njegova najveća korist biti u slučajevima zahteva zasnovanih na opštem riziku. Zahtevi zasnovani na specifičnom riziku se često mogu rešiti po osnovu definicije izbeglice ili (ako ne postoji osnov za primenu Konvencije o statusu izbeglica) na osnovu člana 15(b) ili člana 15(a). Potrebno je ponoviti da prilikom rešavanja slučajeva u vezi s međunarodnom zaštitom sudovi i tribunali moraju prvo ispitati da li osoba ispunjava uslove za zaštitu u svojstvu izbeglice, pa

([61]) E. Tsourdi, op. cit., fn. 59, str. 281.
([62]) E. Tsourdi, op. cit., str. 288.
([63]) Ibid.
([64]) Ibid.
([65]) Ibid.

će do primene „klizne skale" prema članu 15(c) doći samo ako je odlučeno da podnosilac zahteva nije dokazao osnovan strah od progona.

1.7. Život ili telesni integritet [civila]

Član 15(c), kako je navedeno u predmetu *Elgafadži* ([66]), ima dodatni opseg primene u odnosu na član 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda pa stoga mora biti tumačen nezavisno, ali uz dužno poštovanje osnovnih prava zagarantovanih Evropskom konvencijom za zaštitu ljudskih prava i osnovnih sloboda.

Ni Direktiva o kvalifikaciji ni Sud pravde Evropske unije u svojim odlukama ne definišu pojam „život ili telesni integritet": dve glavne vrednosti civila na koje utiče neselektivno nasilje u situacijama međunarodnog ili unutrašnjeg oružanog sukoba.

Kada se odredbe člana 15(a) i (b), koje ukazuju na određenu vrstu nepravde, uporede s odredbama člana 15(c), očigledno je da tamo definisana nepravda obuhvata uopšteniji rizik od nepravde ([67]).

Nepravda, kojoj neki podnosilac zahteva može biti izložen, nije ograničena samo na fizičke aspekte, već može biti i psihološke ili mentalne prirode ([68]). Nepravda može proizaći i iz „indirektnih oblika nasilja, poput zastrašivanja, ucenjivanja, zaplene imovine, napada na domove i preduzeća, kontrolnih punktova i kidnapovanja ([69]), što sve utiče na „telesni integritet" civila. Iz tog razloga sudovi i tribunali prilikom istraživanja rizika u slučaju povratka treba temeljno da istraže širok opseg elemenata kako bi procenili lokalnu situaciju i uslove.

Pitanje da li je rizik po „život ili telesni integritet" ograničen na stvarni rizik od trpljenja nepravde kojom se krše neotuđiva prava, ili se proširuje na važna kršenja relativnih prava nekog podnosioca zahteva, ostaje otvoreno. U predmetu *KH (Irak*), u stavu 101 napomenuto je sledeće:

> ova odredba, koja se bavi fokusom pretnje, prošla je kroz pet radnih verzija. Dr Makadam (iznad na str. 75) napominje da je izvorni izraz „život, bezbednost ili sloboda", zajedno s kasnijim formulacijama sačinjenim oko pojma slobode [„život ili fizički integritet ili sloboda od proizvoljnog pritvaranja"], na kraju izbrisan zbog zabrinutosti nekih država članica da bi bezrazložno proširio opseg primene Direktive ([70]).

Zajednički član 3 Ženevskih konvencija iz 1949. koristi izraz „život i telesni integritet" (a ne „život ili telesni integritet"), a u predmetu *KH (Irak*) napomenuto je da taj izraz očigledno ne može da obuhvati ništa što ima veze s civilnim *objektima*. Potonje prema definiciji u međunarodnom humanitarnom pravu obuhvata sledeće: „stambene objekte, prodavnice, škole i druga mesta na kojima se obavljaju poslovi koji nisu vojne prirode, mesta za rekreaciju, verske objekte, prevozna sredstva, kulturnu baštinu, bolnice i zdravstvene ustanove i jedinice". Iako je na osnovu predmeta *Dijakite* jasno da ključne termine člana 15(c) ne treba tumačiti prema međunarodnom humanitarnom pravu, čini se da je ta diferencijacija neophodna u bilo kojoj definiciji.

U predmetu *KH,* u stavu 107, Tribunal za azil i imigraciju Ujedinjenog Kraljevstva primećuje razliku unutar člana 3(1) između (a) nasilja usmerenog ka „životu i telesnom integritetu" s jedne strane i (c) „povrede ličnog dostojanstva, naročito ponižavajućeg i degradirajućeg postupanja" s druge. To je dovelo do toga da Sud izrazi sumnju u to da bi se materijalni opseg izraza „život i telesni integritet" mogao proširiti na pretnje koje dostižu nivo nečovečnog i degradirajućeg postupanja. Na ograničenje koje pojam „život ili telesni integritet" sam po sebi ima u međunarodnom humanitarnom pravu ukazuje i činjenica da je u Dopunskom protokolu I (do čijeg donošenja se već smatralo da zaštiti civila treba dati širi materijalni opseg) korišćena dopunska formulacija kako bi ta zaštita bila sveobuhvatnija. Član 4(2)(a) iste konvencije propisuje: „nasilje nad životom, zdravljem i fizičkim ili mentalnim blagostanjem ljudi, naročito ubistvo i okrutno postupanje kao što su mučenje, sakaćenje ili bilo koji oblik telesne kazne". Sud je zaključio da „vodeći, međutim, računa o tome da terminu „život ili telesni integritet" treba dati široko značenje, prihvatili bismo da taj izraz mora obuhvatiti sredstva potrebna

([66]) *Elgafadži,* op. cit., fn. 5, stav 28.
([67]) Ibid, stav 33.
([68]) UNHCR, *Najzad na sigurnom*, fn. 2, str. 60.
([69]) *HM i drugi*, op. cit., fn. 26, stav 114.
([70]) Tribunal za azil i imigraciju (UK), presuda od 25. marta 2008, *KH (član 15(c) Direktive o kvalifikaciji) Irak* CG [2008] UKAIT 00023.

da neko lice preživi". Upravni sud Slovenije je istakao da zaštićena vrednost u vezi sa članom 15(c) nije prosto „preživljavanje" tražilaca azila, već i zabrana nečovečnog postupanja ([71]).

1.8. Geografski opseg: zemlja/područje/regija

Prilikom razmatranja zaštite na osnovu člana 15(c) od suštinske je važnosti proceniti situaciju koja preovladava u zemlji povratka ([72]). Međutim, nije neophodna odluka da li je oružani sukob na nivou cele zemlje; pažnju pre treba usmeriti na regiju u kojoj podnosilac zahteva živi (ili odredišno područje), kao i na utvrđivanje da li je takvo lice izloženo riziku u tom području ili na putu koji mora proći do njega. Dalje, član 8 prepoznaje da čak i ako neki podnosilac zahteva može da dokaže postojanje stvarnog rizika od trpljenja ozbiljne nepravde prema članu 15(c) u rodnom području, ispunjenost uslova za dobijanje supsidijarne zaštite može se utvrditi samo ako takav podnosilac zahteva nije u mogućnosti da dobije zaštitu unutar zemlje preseljenjem u neki njen drugi deo. Prema tome, prvo pitanje je da li je podnosilac zahteva izložen stvarnom riziku od trpljenja ozbiljne nepravde u rodnom području (ili na putu do tog rodnog područja). Ako je odgovor da, tada je drugo pitanje da li se ozbiljna nepravda može izbeći pružanjem zaštite unutar zemlje preseljenjem u neki njen drugi deo.

1.8.1. Određivanje rodnog područja

Prilikom odlučivanja o lokaciji rodnog područja podnosioca zahteva kao odredištu povratka, potrebno je imati činjenični pristup u vezi s pitanjima poput područja poslednjeg boravišta i područja uobičajenog boravišta ([73]).

1.8.2. Rodno područje kao odredišno područje

Prilikom procene rizika u rodnom području podnosioca zahteva mora se, dakle, voditi računa i o tome da li postoji mogućnost da se u to područje otputuje. Ako ne postoji – usled oružanog sukoba koji utiče na rute čije se korišćenje u razumnoj meri može očekivati – tada se smatra da je taj podnosilac zahteva pokazao rizik svog odredišnog područja u smislu člana 15(c).

Evropski sud za ljudska prava uzeo je u obzir geografski aspekt sukoba u kontekstu opšteg nasilja u predmetu *Sufi i Elmi* ([74]). Savezni upravni sud Nemačke i Nacionalni sud za pravo azila Francuske su u nacionalnoj sudskoj praksi u vezi sa članom 15(c) utvrdili da za postupak procene nije potrebno analizirati opšte stanje u zemlji, već samo u regiji o kojoj je reč ([75]), uključujući rutu kojom bi podnosilac zahteva išao od tačke povratka do rodnog područja ([76]). To je takođe dosledno stanovište koje zauzimaju sudovi i tribunali Ujedinjenog Kraljevstva ([77]).

1.8.3. Zaštita od ozbiljne nepravde u odredišnom području

Treba napomenuti da će prilikom razmatranja postojanja rizika u smislu člana 15(c) u rodnom području podnosioca zahteva, takav rizik biti dokazan samo ukoliko nema efikasne zaštite od njega. U članu 7 ([78] se

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([71]) Upravni sud Slovenije, presude od 25. septembra 2013, I U 498/2012-17 i 29. januara 2014. I U 1327/2013-10.
([72]) *„Dodatna vrednost člana 15(c) je njegova mogućnost da obezbedi zaštitu od ozbiljnih rizika koji su situacioni, a ne usmereni individualno."* Izjava o supsidijarnoj zaštiti UNHCR-a, op. cit., fn. 57.
([73]) Savezni upravni sud (Nemačka), presuda od 31. januara 2013, 10 C 15.12, stav 14.
([74]) *Sufi i Elmi*, op. cit., fn. 14, stavovi 210, 265-292.
([75]) *M. Mohamad Adan*, op. cit, fn. 31.
([76]) Savezni upravni sud (Nemačka), op. cit., stav 13f; M. Mohamad Adan, op. cit.
([77]) *HM i drugi*, op. cit., fn. 26.
([78]) Član 7 Direktive o kvalifikaciji - Davaoci zaštite*: 1. „Zaštitu od proganjanja ili ozbiljne nepravde mogu pružiti samo: (a) država; ili (b) stranke ili organizacije, uključujući međunarodne organizacije, koje kontrolišu državu ili značajan deo teritorije države; pod uslovom da žele i da su u mogućnosti da pruže zaštitu u skladu sa stavom 2.*

2. Zaštita od ozbiljne nepravde mora biti efikasna i trajna. Takva zaštita se uglavnom pruža kada davaoci zaštite, spomenuti u članu tačkama (ª) i (b) stava 1, preduzimaju razumne mere u cilju sprečavanja proganjanja i trpljenja ozbiljne nepravde, između ostalog i tako što imaju efikasan pravni sistem za sprečavanje, otkrivanje, gonjenje i kažnjavanje dela koja se smatraju proganjanjem ili nanošenjem ozbiljne nepravde, kao i kad podnosilac zahteva ima pristup takvoj zaštiti.

3. Kada procenjujuj da li neka međunarodna organizacija kontroliše državu ili značajan deo njene teritorije i da li pruža zaštitu kako je opisano u stavu 2, države članice Evropske unije uzimaju u obzir svaku smernicu koja se može naći u odgovarajućim aktima Unije."

navodi da zaštita od ozbiljne nepravde mora biti efikasna i trajna. Takva zaštita se uglavnom pruža kada davaoci zaštite, spomenuti u članu 7(1)(a) i (b), preduzimaju razumne mere u cilju sprečavanja takve nepravde, između ostalog i tako što imaju efikasan pravni sistem za sprečavanje, otkrivanje, gonjenje i kažnjavanje dela smatrana proganjanjem ili nanošenjem ozbiljne nepravde, kao i kad podnosilac zahteva ima pristup takvoj zaštiti.

1.8.4. Zaštita unutar zemlje

1. Kao deo postupka procene zahteva za dobijanje međunarodne zaštite, države članice Evropske unije mogu utvrditi da nekom podnosiocu zahteva nije potrebna međunarodna zaštita ako on ili ona u određenom delu zemlje porekla:

(a) nema osnovani strah od progona ili nije izložen stvarnom riziku od trpljenja ozbiljne nepravde; ili

(b) ima pristup zaštiti od progona ili trpljenja ozbiljne nepravde kako je definisano članom 7; i ako on ili ona mogu bezbedno i legalno da putuju do tog dela zemlje, dobiju pristup i ako se može opravdano očekivati da tamo ostanu.

2. Prilikom ispitivanja toga da li podnosilac zahteva ima osnovan strah od progona, ili je pod velikim rizikom od trpljenja ozbiljne nepravde, ili da li ima pristup zaštiti od proganjanja ili trpljenja ozbiljne nepravde u delu zemlje porekla u skladu sa stavom 1, države članice Evropske unije prilikom donošenja odluke u vezi sa datim zahtevom moraju uzeti u obzir opšte okolnosti koje preovladavaju u tom delu zemlje, i lične okolnosti podnosioca zahteva u skladu sa članom 4. U tu svrhu, države članice Evropske unije moraju obezbediti dobijanje preciznih i aktuelnih informacija iz relevantnih izvora, poput Visokog komesarijata Ujedinjenih nacija za izbeglice i Evropske kancelarije za podršku azilu.

U uvodnoj izjavi (27) navodi se:

Unutrašnja zaštita protiv gonjenja ili trpljenja ozbiljne pretnje treba na efikasan način da bude dostupna podnosiocu zahteva u delu zemlje porekla gde on ili ona mogu bezbedno i legalno da putuju, dobiju pristup i opravdano očekuju da tamo ostanu. U slučajevima u kojima su država ili zastupnici države ti koji vrše progon ili nanose tešku nepravdu, treba smatrati da efikasna zaštita podnosiocu zahteva nije dostupna. Kada je podnosilac zahteva maloletno lice bez pratnje, dostupnost odgovarajuće brige i organizovanog staranja o tom licu, a koji su u najboljem interesu maloletnog lica bez pratnje, treba da budu deo postupka kojim se istražuje da li je efikasna zaštita dostupna.

Sud pravde Evropske unije je važnost unutrašnje zaštite potvrdio u predmetu *Elgafadži* kad je naveo da „prilikom procene pojedinačnog zahteva za dobijanje supsidijarne zaštite […] u obzir treba uzeti sledeće stavke […] geografski opseg situacije neselektivnog nasilja i stvarno odredište podnosioca zahteva u slučaju da bude vraćen" ([79]).

Geografski opseg i zaštita unutar zemlje su povezani principi u tom smislu da se može smatrati da zaštita unutar zemlje u svom najširem značenju obuhvata ne samo zaštitu koju pružaju treća lica ([80]), već i samozaštitu preseljenjem u deo zemlje u kom sukob ne postoji ili gde je pretnja od neselektivnog nasilja usled sukoba manja.

Član 8(2) preinačene Direktive o kvalifikaciji (ali ne i prvobitne - videti dalje ispod) posebno upućuje na pristup zaštiti. Član 7 kao davaoce zaštite definišu i državne i nedržavne subjekte koji kontrolišu državu ili značajan deo njene teritorije. Načelo zaštite unutar zemlje odnosi se na član 15 u celini i može se smatrati da ima širu primenu od člana 15(a) i (b), u kojima je reč o ciljanim metama više nego što je to slučaj u 15(c). Iz razloga što, kada se jednom utvrdi da postoji pretnja od neselektivnog nasilja kao rezultat oružanog sukoba u rodnom području, pružanje unutrašnje zaštite u tom području može biti onemogućeno zbog toga što u mnogim slučajevima oružanog sukoba nema sumnje da je efikasna zaštita nedostupna. „Kapacitet davalaca zaštite da

([79]) *Elgafadži*, op.cit., fn. 5, stav 40.
([80]) Međutim, u članu 7(1)(b) navodi se da nedržavni subjekti mogu pružiti zaštitu samo ako kontrolišu državu ili značajan deo njene teritorije i ako žele i mogu da pruže zaštitu u skladu sa članom 7(2) Direktive o kvalifikaciji. Videti Vrhovni upravni sud Češke Republike, odluka od 27. oktobra 2011, *D.K.c.Ministarstvo unutršnjih poslova*, Azs 22/2011.

pruže zaštitu, kao i pokazatelji koji ukazuju na neuspešnost države da to učini" spadaju u pokazatelje koji se koriste prilikom procene stepena nasilja i ozbiljne pretnje koje je utvrdio UNHCR ([81]).

Zbog toga je za pravilnu primenu člana 15(c) neophodno proceniti situaciju ne samo u rodnom području podnosioca zahteva, već i u drugim delovima zemlje u kojima bi mogla biti omogućena unutrašnja zaštita. Opšte preovlađujuće okolnosti, kao i lične okolnosti podnosioca zahteva zahtevaju detaljnu procenu prilikom davanja te ocene. Direktiva o kvalifikaciji zahteva da ta procena bude izvršena u skladu sa članom 4 (Procena elemenata) i da se pribave „precizne i aktuelne informacije".

Detaljnija analiza geografskog opsega i zaštite unutar zemlje izvršena je u Delu II, u odeljcima 2.4 i 2.5.

([81]) UNHCR, *Najzad na sigurnom?,* op. cit. fn. 2.

Drugi deo: Primena

2.1. Sažetak: celoviti pristup

Prvi deo se bavi analizom sastavnih elemenata člana 15(c). Ovaj deo je usmeren ka tome kako tu odredbu treba primeniti u praksi.

Kao što je napomenuto ranije, ocena člana 15(c) zahteva celoviti pristup. Sudovi i tribunali moraju uzeti u obzir nekoliko elemenata: oružani sukob, život ili telesni integritet civila, ozbiljnu i individualnu pretnju, neselektivno nasilje, prag nasilja, geografski opseg i alternativu zaštite unutar zemlje. Između ovih različitih elemenata postoji interakcija.

U Prilogu A nalazi se stablo odlučivanja čiji je cilj da pomogne da se odredi logičan sled pitanja koja sudovi i tribunali treba da postave pri proceni ispunjenosti uslova za dobijanje supsidijarne zaštite prema članu 15(c). U ovom delu, fokus je na glavnim pitanjima primene koja zahtevaju dodatno objašnjenje.

2.2. Procena intenziteta nasilja - praktični pristup

Smernice koje je Sud pravde Evropske unije dao u predmetima *Elgafadži* ([82]) i *Dijakite* ([83]) imaju ograničen opseg primene, što znači da se način primene člana 15(c) očigledno u velikoj meri prepušta nacionalnim sudovima i tribunalima. On naročito ne pomaže nacionalnim sudovima i tribunalima da odgovore na pitanje kako treba da vrše procenu (i) situacije u relevantnom području ili regiji zemlje kako bi ocenili koliki je nivo nasilja i (ii) toga da li takvo nasilje dovodi do stvarnog rizika da ozbiljnu nepravdu trpe civili uopšte, pojedinci zbog svojih ličnih okolnosti ili i jedni i drugi.

Sud pravde Evropske unije još uvek nije dao smernice o kriterijumima za ocenjivanje intenziteta nasilja u nekom oružanom sukobu. Sudovi i tribunali će morati da usvoje praktičan pristup procenjivanju dokaza predočenih u korist podnetog zahteva. Svi kriterijumi koje primenjuju nacionalni sudovi i tribunali moraju biti ispitani kako bi se utvrdilo da li u praksi omogućavaju postizanje punog učinka člana 15(c). Na nivou države članice Evropske unije, predmeti koji se vode prema članu 15(c) su posebni jer se u njima radi o nekoj zemlji u kojoj se barem neki delovi nalaze u stanju nasilja i sukoba. Kao što je objašnjeno u prvom delu, sudovi i tribunali moraju u obzir uzeti više faktora ili pokazatelja; u tom smislu je važno poći od iskustva sudske prakse Evropskog suda za ljudska prava, kao i nacionalnih sudova i tribunala.

2.2.1. Sudska praksa u Strazburu

Pristup koji Evropski sud za ljudska prava ima prilikom ocenjivanja intenziteta nasilja za potrebe primene člana 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda – kako bi utvrdio da li su svi civili ili većina njih pod stvarnim rizikom od zlostavljanja – naveden je u predmetu *Sufi i Elmi* u stavu 241:

> Podnosioci zahteva u ovom predmetu tvrde da je neselektivno nasilje u Mogadišu bilo dovoljno jakog intenziteta da je predstavljalo stvarnu pretnju životu i telesnom integritetu svakog civila u glavnom gradu. Iako je sud prethodno istakao da bi samo „u najekstremnijim slučajevima" stanje opšteg nasilja bilo dovoljno jakog intenziteta da predstavlja takav rizik, nije dao nikakve dalje smernice o tome kako proceniti intenzitet nekog sukoba. Međutim, Sud se pozvao na to da je Tribunal za azil i imigraciju morao da izvrši slično ocenjivanje u predmetu AM i AM (Somalija) ([84]) (citirano iznad), pri čemu je

([82]) *Elgafadži,* op. cit., fn. 5, stav 43.
([83]) *Dijakite*, op. cit., fn. 7, stav 30.
([84]) Tribunal za azil i imigraciju (UK), *AM i AM (oružani sukob: kategorije rizika*) Rev. 1 Somalija CG [2008] UKAIT 00091 27. januar 2009.

utvrdio sledeće kriterijume: prvo, da li sukobljene strane primenjuju metode i taktike ratovanja koje povećavaju rizik od stradanja civila ili svoja dejstva usmeravaju direktno na civile; drugo, da li je primena takvih metoda i/ili taktika raširena među sukobljenim stranama; treće, da li su borbe lokalizovane ili rasprostranjene; i konačno, broj civila koji su ubijeni, ranjeni i raseljeni zbog tih borbi. Iako ove kriterijume ne treba posmatrati kao konačnu listu koju treba primenjivati u svim budućim slučajevima, u kontekstu datog predmeta Sud smatra da predstavljaju odgovarajuće merilo kojim se može oceniti intenzitet nasilja u Mogadišu.

2.2.2. Nacionalni sudovi i tribunali

Određeni broj sudova i tribunala država članica Evropske unije usvojio je sličan pristup prilikom ocenjivanja intenziteta nasilja u oružanim sukobima u svrhe primene člana 15(c). Međutim, postoje neznatne razlike u primenjenim metodama, kao i u naglasku stavljenom na različite pokazatelje.

Visoki sud Ujedinjenog Kraljevstva je izjavio da se veza između opšteg oružanog sukoba i neselektivnog nasilja koje predstavlja pretnju životu ili telesnom integritetu nekog lica uspostavlja kada na intenzitet sukoba utiče način borbe (bilo da je dozvoljen običajima rata ili ne), koji na direktan ili indirektan način ozbiljno ugrožava neborce ([85]). To je za Sud značilo da je težište na dokazima o broju poginulih ili ranjenih civila od najveće važnosti prilikom ocenjivanja intenziteta nasilja u smislu člana 15(c) ([86]). Pa ipak, Sud je naglasio potrebu za primenom uključivog pristupa ocenjivanju intenziteta neselektivnog nasilja. Taj pristup zahteva analizu intenziteta nasilja kako u kvantitativnom, tako i u kvalitativnom smislu. Kvantitativna analiza posmatra broj poginulih ili ranjenih civila, broj bezbednosnih incidenata itd. Kvalitativna analiza nasilja koje se odvija mora uzeti u obzir posledice pretnja nasiljem, kao i samo fizičko nasilje, zatim postupanje sukobljenih strana i dugoročne kumulativne efekte u slučajevima u kojima sukob traje već duže vreme. Uključivi pristup, i kvantitativan i kvalitativan, treba da ide dalje od utvrđivanja broja stradalih civila – povređenih ili poginulih – i mora da ima na umu da su raseljavanje stanovništva i stepen neuspešnosti države takođe relevantni kriterijumi prilikom procene rizika da neko lice bude žrtva neselektivnog nasilja ([87]). Sud Ujedinjenog Kraljevstva smatra da čak i pažljivo ciljana ubistva koja ne povređuju civile već samo borce doprinose stvaranju atmosfere straha i nesigurnosti, što na indirektan način doprinosi pojačanju intenziteta nasilja ([88]). Zbog toga je stanovište Suda da „nikada ne može biti ispravno pokušati jednostavno oduzeti ciljano nasilje od ukupnog neselektivnog nasilja"([89]).

Savezni upravni sud Nemačke je izjavio da je prilikom ocenjivanja intenziteta nasilja neophodno utvrditi približan broj civila koji žive u datom području s jedne strane, i broj slučajeva neselektivnog nasilja počinjenog od strane sukobljenih strana, a protiv života ili telesnog integriteta civila u tom području s druge strane. Pored toga, neophodna je i opšta ocena u vezi s brojem žrtava i brojem stradalih (mrtvih i ranjenih) među civilnim stanovništvom. U tom smislu se mogu primeniti i kriterijumi za utvrđivanje postojanja progona grupa, koje je prema zakonu o izbeglicama razvio Savezni upravni sud Nemačke ([90]). Pored kvantitativnog utvrđivanja intenziteta nasilja, pristup Saveznog upravnog suda Nemačke zahteva opštu procenu statističkog materijala u pogledu broja žrtava i ozbiljnosti nepravde (broja mrtvih i ranjenih) među civilnim stanovništvom. Ova opšta procena bi u svakom slučaju obuhvatila i ocenu stanja zdravstvene nege na datoj teritoriji, od čijeg kvaliteta i dostupnosti može zavisiti ozbiljnost nanetih telesnih povreda, imajući u vidu trajne posledice koje žrtve mogu trpeti usled povreda ([91]).

U jednom predmetu u vezi s bezbednošću u Mogadišu, Državni savet Holandije je 2010. odlučio da utvrđivanje izuzetne situacije u kojoj se član 15(c) primenjuje na bilo kog pojedinca zahteva analizu koja ide dalje od broja mrtvih i ranjenih u datom području i uzima u obzir relevantne faktore poput internog raseljavanja, izbeglica koje beže iz zemlje i nasumičnost nasilja ([92]).

([85]) *HM i drugi*, op. cit., fn. 26, stav 45.
([86]) Ibid, stav 43.
([87]) Ibid., stavovi 271-274.
([88]) Ibid, stav 292.
([89]) Visoki sud (UK), presuda od 18. maja 2012, *AK (član 15(c)) Avganistan CG protiv ministra unutrašnjih poslova (Secretary of State for the Home Department)*, [2012] UKUT 00163, stav 207.
([90]) Presuda 10 C 4.09, op. cit., fn. 28, stav 34.
([91]) Presuda 10 C 13.10., op. cit., fn. 37, stav 23.
([92]) Državni savet (Holandija), presuda od 26. januara 2010, 200905017/1/V2, ECLI:NL:RVS:2010:BL1483.

Prema navodima Francuskog Tribunala za azil i imigraciju i Državnog saveta Francuske, intenzitet oružanog sukoba dostiže prag utvrđen u predmetu *Elgafadži* u situacijama opšteg nasilja. Prinudno raseljavanje, kršenje međunarodnog humanitarnog prava i okupacija teritorije su takođe elementi za merenje intenziteta opšteg nasilja ([93]).

2.2.3. Pozicija Visokog komesarijata Ujedinjenih nacija za izbeglice

UNHCR je isto tako pozvao sudove i tribunale da u obzir uzimaju kako kvantitativne, tako i kvalitativne elemente, kao deo „pragmatične i celovite ocene okrenute ka budućnosti", koja „ne može biti svedena na matematičko izračunavanje verovatnoće" ([94]). Ova organizacija skreće pažnju na opreznost koji je potrebna prilikom bavljenja statistikom, s obzirom na razlike u metodologiji i kriterijumima primenjenim prilikom prikupljanja podataka, nedovoljno prijavljivanja nasilja, kao i na važnost geografskog i vremenskog opsega u odnosu na koji se incidenti posmatraju ([95]). Pored broja bezbednosnih incidenata i broja stradalih (uključujući mrtve, povređene i one koji trpe druge pretnje telesnom integritetu), u obzir treba uzeti i „opštu atmosferu u zemlji u smislu bezbednosti, raseljavanja stanovništva i posledica nasilja na ukupnu humanitarnu situaciju" ([96]).

2.2.4. Zaključci – neiscrpna lista mogućih pokazatelja

Između Visokog suda Ujedinjenog Kraljevstva, Državnog saveta Francuske, Državnog saveta Holandije, Saveznog upravnog suda Nemačke i Vrhovnog suda Slovenije vlada opšti konsenzus da se intenzitet nasilja mora ocenjivati ne samo kvantitativno, već i kvalitativno. Za sudove Nemačke, ocena kvantiteta nasilja je neophodna početna tačka za njegovo kvalitativno ocenjivanje ([97]). Odluke koje su doneli sudovi i tribunali u drugim zemljama Evrope pokazuju sličan stav, da ocena mora uzeti u obzir i kvantitativne i kvalitativne aspekte. Nema sumnje da je značajna količina nasilja neophodan preduslov bez kog supsidijarna zaštita neće biti odobrena. Međutim, definisanje praga za primenu člana 15(c) nije samo jednostavna analiza kvantitativnih podataka.

S obzirom na fluidnu sudsku praksu, bilo bi nesmotreno pokušati napraviti konačnu listu mogućih pokazatelja, ali iz analize vodećih slučajeva, uključujući tu i *Sufi i Elmi*, *K.A.B.* ([98]) (koji se bavi članom 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda), kao i prakse Saveznog upravnog suda Nemačke, Državnog saveta Holandije, Visokog suda Ujedinjenog Kraljevstva, Nacionalnog suda za azilante Francuske, Vrhovnog suda Slovenije (da navedemo samo neke), a i pozivajući se i na UNHCR-ove Smernice za podobnost za zemlje poput Iraka, Somalije i Avganistana, može se reći da postoje tri načela kojima se treba voditi prilikom davanja ocene:

a) Prvo, pristup mora biti celovit i uključiv. Sudovi i tribunali moraju uzeti u obzir širok raspon relevantnih varijabli.

b) Drugo, sudovi i tribunali ne treba da se ograniče na čisto kvantitativnu analizu broja mrtvih i povređenih civila itd. Pristup mora biti i kvalitativan, ne samo kvantitativan. Prilikom ocenjivanja kvantitativnih i kvalitativnih aspekata, sudovi i tribunali treba da imaju na umu verovatnoću postojanja neprijavljenih incidenata i druge neizvesnosti.

c) Treće, nadovezujući se na sudsku praksu, koja pak koristi uvide iz akademskih studija, sudovi i tribunali treba posebno da istraže šta nam o pokazateljima stanja nasilja i sukoba govore dokazi (ono što sledi nije zamišljeno kao konačna lista):

- „*Kriterijumi Sufi i Elmi*" Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda:
  - sukobljene strane i njihove relativne vojne snage;
  - primenjene metode i tehnike ratovanja (rizik od stradanja civila);
  - vrste korišćenog oružja;

([93]) *Baskarathas*, op. cit., fn. 29; videti i CNDA, presuda od 18. oktobra 2011, br. 10003854.
([94]) UNHCR, Najzad na sigurnom?, fn. 2, str. 104.
([95]) Ibid., str. 46-47.
([96]) Ibid., str. 104.
([97]) H. Lambert, „Sledeća granica: Proširena zaštita u Evropi za žrtve oružanog sukoba i neselektivnog nasilja", IJRL 2013, 224.
([98]) Evropski sud za ljudska prava, presuda od 5. septembra 2013, *K.A.B protiv Švedske*, zahtev br. 886/11.

  - geografski opseg borbi (lokalizovan ili rasprostranjen);
  - broj civila koji je poginuo, povređen ili raseljen kao rezultat borbi.
- Sposobnost ili nesposobnost države da zaštiti svoje građane od nasilja (tamo gde je to moguće, navođenje različitih mogućih davalaca zaštite i razmatranje njihove stvarne uloge može biti od pomoći) / stepen neuspešnosti države).
- Socioekonomski uslovi (u šta treba da spada i ocena ekonomske i drugih vrsta pomoći koje pružaju međunarodne i nevladine organizacije).
- Kumulativne posledice dugotrajnih oružanih sukoba.

U načelu, ovi neiscrpni pokazatelji se koriste prilikom ocenjivanja opšteg ili specifičnog rizika po nekog podnosioca zahteva. Budući da svaki oružani sukob može slediti drugačije obrasce, od suštinske je važnosti zapamtiti da lista pokazatelja - poput one iznad - nikada ne može biti konačna. Razmatranje karakteristika nekog oružanog sukoba i njegovih civilnih žrtava može dovesti do drugih pokazatelja koje treba uzeti u obzir.

2.3. Ocenjivanje na osnovu klizne skale

Koncept klizne skale, izveden na osnovu presude u predmetu *Elgafadži* (iako ona konkretno nije tako opisana), nudi okvir za ocenjivanje relativnog značaja pojmova opšti rizik (kada je neselektivno nasilje toliko visokog intenziteta da je neko lice u opasnosti samim tim što je civil) i specifični rizik (kada postoji individualizovana pretnja). To daje kontekst za primenu formulacije uvodne izjave (35) (ranije (26)) u uvodnim napomenama Direktive o kvalifikaciji: postojanje ozbiljne i individualne pretnje civilima uopšte se može smatrati izuzetno utvrđenim kada intenzitet neselekitvnog nasilja karakterističan za dati oružani sukob dostiže visok nivo: to je dimenzija člana 15(c) koja se tiče opšteg rizika.Ukoliko postoji opšti rizik, pitanje verodostojnosti nije relevantno; tačnije rečeno, verodostojnost je ograničena na proveru toga da li podnosilac zahteva dolazi iz određene zemlje ili regiona.

Međutim, ona može biti uspešno korišćena pri primeni člana 15(c) čak i kada je intenzitet neselektivnog nasilja niži, ako podnosilac zahteva može da dokaže da na njega konkretno utiču faktori specifični za njegove lične okolnosti: to je dimenzija člana 15(c) koja se tiče specifičnog rizika. Klizna skala oblikuje način na koji treba oceniti specifičan rizik: „što je podnosilac zahteva više u mogućnosti da dokaže da je posebno ugrožen zbog faktora karakterističnih za njegove lične okolnosti, to je niži nivo neselektivnog nasilja neophodan da bi ispunio uslove za dobijanje supsidijarne zaštite" (*Elgafadži*, stav 39, *Dijakite*, stav 31). Ovde će ocena verodostojnosti biti važna.

Elementi koje treba uzeti u obzir prilikom ocenjivanja intenziteta neselektivnog nasilja navedeni su gore (videti odeljak 1.3. „Neselektivno nasilje").

Jasno je da davanje ocene o postojanju specifičnog rizika prema članu 15(c) mora biti izvršeno na sličan način kao i ocenjivanje zahteva za dobijanje međunarodne zaštite na osnovu člana 15(a) i (b). To proizlazi iz insistiranja Suda pravde Evropske unije da „ta odredba [član 15(c)] mora biti tumačena dosledno u odnosu na druge dve situacije navedene u članu 15 Direktive i stoga mora biti tumačena oslanjajući se na tu individualizaciju" ([99]). Izazov za sudije u dosadašnjoj nacionalnoj sudskoj praksi (videti drugi deo, odeljak 2.31 ispod) jeste taj da je, kada je reč o primeni člana 15(c) na situacije u kojima intenzitet neselektivnog nasilja nije dovoljno visok da bi predstavljao opasnost po civile uopšte, često veoma teško shvatiti zašto slučaj nekog podnosioca zahteva, koji može da dokaže lične okolnosti zbog kojih je pod većim rizikom, treba razmotriti prema članu 15(c). Kao što je navedeno ranije, to lice može ispunjavati uslove za zaštitu po statusu izbeglice ili za supsidijarnu zaštitu po članu 15(b) ([100]) ili (a). Prema tome, možda će glavna vrednost člana 15(c) biti u slučajevima u kojima se radi o tome da li postoji opšti rizik po sve civile.

([99]) *Elgafadži,* op.cit., fn. 5*,* stav 38.
([100]) Videti mišljenje generalnog pravobranioca u *M'Bodj*, op. cit., fn. 9 o opsegu primene člana 15(b).

2.3.1. Nacionalna sudska praksa

Nakon slučaja *Elgafadži,* Državni savet Francuske je u predmetu *Baskarathas* ([101]) izjavio da nije neophodno da podnosilac zahteva dokaže da je ciljana meta zbog svoje lične situacije kada intenzitet neselektivnog nasilja dostiže toliki nivo da postoje ozbiljni i dokazani razlozi da se veruje da bi neki civil bio u opasnosti samo zbog svog prisustva na datoj teritoriji, što je prema navodima Suda bio slučaj u Šri Lanki u leto 2009.

Nacionalni sud za pravo azila Francuske je u nekoliko slučajeva iz Avganistana uzeo u obzir mlađi uzrast tražioca azila kao individualni element prilikom ocenjivanja stvarnog rizika od trpljenja ozbiljne nepravde. Prema navodima Suda, taj element prilikom procene slučajeva sa nižim intenzitetom nasilja predstavlja individualni element koji povećava rizik. Prema tome, odobrena je supsidijarna zaštita. Sud je takođe uzeo u obzir i elemente u vezi s njegovim mladim uzrastom, poput smrti roditelja, nepostojanja porodičnih veza, izloženosti nasilju i prisilnoj regrutaciji u jednoj od oružanih snaga ([102]). Još jedan individualni element, koji je Sud procenio kao povećani rizik, pojavio se u slučaju jednog muškarca iz Severnog Kivua (Demokratska Republika Kongo), kada je Sud utvrdio da bi stručnjaci koji su morali da putuju u Angolu i iz nje mogli biti izloženi nasilju od strane naoružanih grupa ([103]). Jedna važna stvar ovde bila je ta da je konkretno zanimanje podnosioca zahteva od ključne važnosti za njegov identitet, tako da ne bi bilo razumno očekivati od njega da ga promeni kako bi izbegao moguću nepravdu.

Savezni upravni sud Nemačke je naveo primere individualnih okolnosti koje povećavaju opasnost od neselektivnog nasilja: npr. ako je podnosilac zahteva zbog svog zanimanja prisiljen da bude blizu mesta gde se nasilje odvija, poput lekara ili novinara. Isto tako, lične okolnosti, kao što su verska ili etnička pripadnost, takođe moraju biti uzete u obzir, pod uslovom da ne vode do dobijanja statusa izbeglice. Savezni upravni sud Nemačke je u slučaju postojanja takvih ličnih okolnosti zahtevao i postojanje visokog intenziteta neselektivnog nasilja ili ozbiljne pretnje po civilno stanovništvo u tom području. Pokazatelji toga mogu biti broj slučajeva neselektivnog nasilja, broj žrtava i ozbiljnost stradanja civila ([104]).

Viši upravni sud u Bavarske činjenicu da podnosilac zahteva pripada hazarskoj manjini (Avganistan) nije uzeo u obzir kao individualnu okolnost koja „povećava rizik". Prema informacijama koje su Sudu bile na raspolaganju, opšta situacija u vezi s dugo diskriminisanim Hazarima se popravila, iako stare napetosti ne prestaju i ponovo se javljaju s vremena na vreme. Hazari su oduvek živeli u provincijama Parvan i Kabula i, prema informacijama dobijenim od UNHCR-a, mnogi su se vratili u tu regiju. Ni pripadnost podnosioca zahteva verskoj zajednici Šiita takođe ne predstavlja individualnu okolnost koja „povećava rizik", budući da Šiiti čine 15 procenata avganistanskog stanovništva ([105]).

Viši upravni sud Severnorajnske Vestfalije izjavio je da mora biti ispunjen uslov postojanja ozbiljne i individualne pretnje. To je slučaj samo ako se opšti rizici nakupe na način da svi stanovnici neke regije budu ozbiljno i lično ugroženi, ili ako je neko posebno ugrožen zbog individualnih okolnosti koje rizik čine većim. Takve individualne okolnosti koje povećavaju rizik mogu biti rezultat i nečije pripadnosti nekoj grupi ([106]).

U predmetu *HM i drugi*, Visoki sud Ujedinjenog Kraljevstva objašnjava svoj stav u vezi s obrazloženjem Suda pravde Evropske unije u predmetu *Elgafadži:*

> Primećeno je da Sud pravde Evropske unije u tom slučaju smatra da se licu kod kog postoji stvaran rizik od toga da bude ili konkretna ili opštija meta neselektivnog nasilja može pružiti zaštita kada opšti nivo nasilja nije dovoljno visok da bi postojao neophodan stepen rizika po onoga ko ne može da pokaže nijedan konkretan razlog zbog kog je ugrožen nasiljem ukoliko ono ne dostigne visok stepen ([107]).

Sud je razmatrao da li bi se na osnovu klizne skale moglo reći da postoji povećan rizik po civile u Iraku ako su oni suniti ili šiiti, Kurdi ili nekadašnji baatisti. Zaključio je da se, opšte uzev, to ne bi moglo reći. U stavu 297, Sud navodi:

([101]) *Baskarathas*, op. cit. fn. 29.
([102]) CNDA (Francuska), presuda od 21. marta 2013, *M. Youma Khan*, br. 12025577 C; CNDA, presuda od 2. jula 2012, *M. Ahmad Zai* br. 12006088 C; CNDA, presuda od 18. oktobra 2011, *M. Hosseini* br. 10003854 C+; CNDA, presuda od 3. juna 2011 *M.*
([103]) CNDA, presuda od 5. septembra 2013, M. Muela br. 13001980 C.
([104]) Savezni upravni sud (Nemačka), presuda od 20. februara 2013, *BVerwG 10 C 23.12*, stav 33.
([105]) Viši upravni sud u Bajernu (Nemačka), presuda od 3. februara 2011, 13a B 10.30394.
([106]) Viši upravni sud Severnorajnske Vestfalije (Nemačka), presuda od 29. oktobra 2010, 9 A 3642/06.A.
([107]) *HM i drugi,* op. cit., fn. 26, stav 40.

Prema našem sudu, ostali dokazi u vezi sa sunitima i šiitima pokazuju slično. Međutim, iako iz gorenavedenih razloga smatramo da su dokazi u celini nedovoljni da bi se identitet sunita ili šiita sam po sebi smatrao „kategorijom povećanog rizika" prema članu 15(c), prihvatamo da bi, u zavisnosti od individualnih okolnosti, a naročito ukoliko bi se suočilo s povratkom u područje u kom su pripadnici njegovog bratstva sunita ili šiita u manjini, određeno lice moglo da dokaže postojanje stvarnog rizika prema članu 15(c). (To lice bi, naravno, moglo da dokaže i postojanje stvarnog rizika od progona prema Konvenciji o statusu izbeglica ili od postupanja suprotno članu 3 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda).

2.4. Geografski opseg: zemlja/područje/regija

Sudovi i tribunali po dobijanju dokaza o postojanju oružanog sukoba u zemlji porekla moraće da utvrde geografski opseg tog sukoba. Ukoliko je neselektivno nasilje širom zemlje toliko visokog stepena da su lica suočena s rizikom u smislu člana 15(c) samim tim što su civili, tada će podnosilac zahteva imati pravo na supsidijarnu zaštitu. Međutim, ako je područje zemlje u kom postoji tako visok stepen neselektivnog nasilja ograničeno po svom geografskom opsegu samo na deo ili delove zemlje porekla, tada će (osim ako data država članica Evropske unije ne primenjuje član 8) sposobnost podnosioca zahteva da dokaže stvarni rizik od trpljenja ozbiljne nepravde u rodnom području prema članu 15(c) samo zato što je civil zavisiti od toga da li je njegovo rodno područje ono u kom postoji tako visok stepen nasilja. Treba oceniti i praktične aspekte putovanja i boravka ili naseljavanja u taj deo zemlje kako bi se utvrdilo da li je opravdano očekivati da se podnosilac zahteva tamo nastani. U faktore koje treba uzeti u obzir mogu spadati bezbednost oko aerodroma/grada u koji se vraća, zajedno s bezbednošću rute neophodne pri putovanju do područja u kom nema sukoba. Ukoliko unutar zemlje postoji ograničena sloboda kretanja, moguće je da će biti potrebno ustanoviti da li je naseljavanje u tom području zakonito. Kao što je ranije navedeno, ukoliko neko lice ne može bezbedno stići do odredišnog područja zbog stanja oružanog sukoba u zemlji, tada se smatra da je rizik u rodnom području prema članu 15(c) dokazan.

2.5. Zaštita unutar zemlje

Konkretne odredbe člana 8(2) u vezi sa zaštitom unutar zemlje odnose se na „deo zemlje porekla". Podrazumeva se da u slučajevima u kojima se utvrdi postojanje rizika od trpljenja ozbiljne nepravde usled neselektivnog nasilja protivno članu 15(c), tada se smatra da su (osim ako data država članica Evropske unije ne primenjuje član 8) sudovi i tribunali zaključili da je zaštita unutar zemlje nedostupna.

Ne može se tvrditi da podnosilac zahteva ima valjanu alternativu zaštite unutar zemlje ukoliko alternativni deo ili delovi zemlje (i) takođe predstavljaju stvaran rizik od trpljenja ozbiljne nepravde (od koje nema efikasne zaštite); ili (ii) ako bi bilo neopravdano očekivati od podnosioca zahteva da se tamo nastani; ili (iii) ako podnosilac zahteva praktično ne bi mogao da dobije pristup tom delu ili tim delovima zemlje ([108]). Prilikom razmatranja toga da li postoji zaštita od trpljenja ozbiljne nepravde u drugom delu ili delovima zemlje, neophodno je ispitati prirodu te zaštite, a da bi to bilo urađeno mora se voditi računa o izvoru zaštite, njenoj efikasnosti i trajanju u skladu sa članom 7.

Član 8(2) zahteva od država članica Evropske unije da vode računa o okolnostima koje preovladavaju u zemlji porekla u trenutku donošenja odluke. Visoki sud Ujedinjenog Kraljevstva je utvrdio da državi ne predstavlja zakonski teret da dokaže postojanje dela zemlje za koji se opravdano veruje da bi podnosilac zahteva, koji je dokazao opravdan strah od trpljenja ozbiljne nepravde u svom rodnom području, u njega mogao da ode i tamo živi. Zakonski teret je na podnosiocu zahteva, ali u praksi, pitanje internog preseljenja treba da pokrene država, a na podnosiocu zahteva će tada biti obaveza da dokaže neopravdanost očekivanja od njega da se tamo preseli ([109]).

([108]) (i) se ponekad naziva aspekt „bezbednosti"; (ii) aspekt „opravdanosti", a (iii) aspekt „dostupnosti".
([109]) Vsoki sud (UK), presuda od 25. novembra 2011, *AMM i drugi (sukob; humanitarna kriza; povratnici; FGM*) Somalija protiv ministra unutrašnjih poslova CG [2011] UKUT 00445 (IAC). Za najnoviju odluku u vezi sa situacijom u Mogadišu, videti odluku Visokog suda u predmetu *MOJ i drugi* (Povratak u Mogadiš) (Rev1) (CG) [2014] UKUT 442 (IAC).

2.5.1. Član 8 (prvobitna i preinačena Direktiva o kvalifikaciji)

Između prvobitnog i preinačenog člana 8 postoje razlike koje do sada nisu bile predmet analize Suda pravde Evropske unije, ali te izmene mogu imati posledice u praksi. Član 8 u svom prvobitnom obliku ([110]) prepoznaje mogućnost da pretnja nije zastupljena na celoj teritoriji zemlje porekla i da stoga podnosiocu zahteva nije potrebna međunarodna zaštita ako se od takvog lica može opravdano očekivati da boravi u nekom drugom delu zemlje uprkos tehničkim preprekama u vezi s povratkom. Preinačena Direktiva o kvalifikaciji (videti 1.8 iznad) ovo modifikuje zahtevajući ne samo to da se od podnosioca zahteva može opravdano očekivati da boravi u tom delu zemlje, već i da može da otputuje u njega, da dobije pristup tom delu zemlje i da se od njega može opravdano očekivati da se tamo nastani. Više se ne pominje termin „tehničke prepreke", čije je tumačenje izazivalo teškoće. Postoji snažan razlog da se smatra da je cilj preinačene formulacije tih aspekata odredbe pojašnjenje onoga što je u prvobitnoj formulaciji bilo implicitno.

Upotreba reči „nastani"([111]) u preinačenoj Direktivi o kvalifikaciji razlikuje se od reči „boravi" u prvobitnoj Direktivi i postoji mogućnost da je predviđeno stanje veće stabilnosti.

Član 8(2) preinačene Direktive o kvalifikaciji nameće specifičnu obavezu državama članicama Evropske unije da, prilikom odlučivanja o tome da li podnosilac zahteva ima održivu alternativu u vidu zaštite unutar zemlje, dobiju precizne i aktuelne informacije iz relevantnih izvora o uslovima u predloženom alternativnom delu ili delovima zemlje:

> […] države članice Evropske unije pri donošenju odluke o zahtevu uzimaju u obzir opšte okolnosti koje preovladavaju u tom delu zemlje i lične okolnosti podnosioca zahteva u skladu sa članom 4. U tu svrhu, države članice Evropske unije moraju obezbediti dobijanje preciznih i aktuelnih informacija iz relevantnih izvora, poput Visokog komesarijata Ujedinjenih nacija za izbeglice i Evropske kancelarije za podršku azilu.

([110]) Član 8 - prvobitni (i dalje važi za Irsku i Ujedinjeno Kraljevstvo videti fn. 1)) navodi:
„Zaštita unutar zemlje
1. 1.Pri ocenjivanju zahteva za dobijanje međunarodne zaštite, države članice Evropske unije mogu utvrditi da podnosiocu zahteva nije potrebna međunarodna zaštita ako u nekom delu zemlje porekla ne postoje osnovani razlozi za strah od proganjanja, kao ni stvarna opasnost od ozbiljne nepravde pa se opravdano može očekivati da on u tom delu zemlje boravi.
2.2. Kada ispituju da li je situacija u nekom delu zemlje porekla u skladu sa stavom 1, države članice Evropske unije pri donošenju odluke o zahtevu uzimaju u obzir opšte okolnosti koje preovladavaju u tom delu zemlje i lične okolnosti podnosioca zahteva.
3.3. Stav 1 može važiti bez obzira na tehničke prepreke povratku u zemlju porekla."
([111]) Koju koristi i Evropski sud za ljudska prava: videti npr. presudu od 11. januara 2007, *Salah Skeekh protiv Holandije, zahtev br.* 1948/04 [2007] ECHR 36, *stav 141*: „Sud smatra da kao preduslov za oslanjanje na alternativu unutrašnjeg bega moraju postojati određene garancije: lice koje se proteruje mora biti u mogućnosti da otputuje u dato područje, dobije pristup tom području i tamo se nastani; ukoliko taj preduslov nije ispunjen, može se javiti pitanje regulisano članom 3, tim više ako bez takvih garancija postoji mogućnost da proterano lice dospe u deo zemlje porekla u kom može biti izloženo zlostavljanju."

Prilog A – Stablo odlučivanja

A. Zahtev za status izbeglice odbijen?

Supsidijarna zaštita može biti odobrena samo licima koja se ne kvalifikuju kao izbeglice (član 2(f)).

B. Situacija u rodnom području predstavlja rizik prema članu 15(c)?

1. Da li je situacija u rodnom području podnosioca zahteva takva da postoji oružani sukob?
2. Ukoliko je odgovor da, da li ga karakteriše neselektivno nasilje tako visokog intenziteta da su lica izložena stvarnom riziku od trpljenja ozbiljne nepravde samim tim što su civili? *(Pitanje „opšteg rizika")?*
3. Čak i ako je odgovor na drugo pitanje ne, da li podnosilac zahteva ipak može dokazati da je suočen sa stvarnim rizikom od trpljenja ozbiljne nepravde u vidu jedne ili više nepravdi zbog ličnih okolnosti u kombinaciji s neselektivnim nasiljem (manjeg intenziteta)? Što neki podnosilac zahteva može bolje da dokaže da je konkretno ugrožen, to je niži nivo neselektivnog nasilja neophodan (*Pitanje „specifičnog rizika"*).

Da bi odgovor na bilo koje od ovih pitanja bio potvrdan, sudovi i tribunali moraju biti uvereni da nema efikasne zaštite od takve ozbiljne nepravde u skladu sa članom 7 (*Pitanje zaštite*).

Budući da se odredištem smatra rodno područje podnosioca zahteva, može biti neophodno postaviti pitanje da li se do tog područja može bezbedno stići. Ako ne može, onda se mora pretpostaviti da je podnosilac zahteva dokazao postojanje stvarnog rizika od trpljenja ozbiljne nepravde na putu do odredišnog područja i da je to dovoljno za ispunjenje uslova B.

C. BEZ MOGUĆNOSTI ZAŠTITE UNUTAR ZEMLJE?

Ako je odgovor na pitanja 2 ili 3 potvrdan, i dalje je neophodno postaviti pitanje (osim ako data država članica Evropske unije ne primenjuje član 8) da li, u skladu sa članom 8, podnosilac zahteva može izbeći ozbiljnu nepravdu tako što će se nastaniti u nekom drugom delu zemlje porekla.

Ta istraga (koja mora biti zasnovana na preciznim i aktuelnim informacijama iz relevantnih izvora) zahteva da se u vezi s podnosiocem zahteva postave sledeća pitanja:

- da li je zaštićen od ozbiljne nepravde u tom drugom delu zemlje;
- da li može bezbedno i zakonito da otputuje u taj deo zemlje i dobije pristup tom delu zemlje;
- da li se od njega može opravdano očekivati da se tamo nastani;

Da bi alternativni deo zemlje bio bezbedan, neophodno je postaviti pitanje da li je to deo zemlje u kom nema stvarnog rizika od toga da podnosilac zahteva trpi ozbiljnu nepravdu (od koje nema efikasne zaštite).

Da bi alternativni deo zemlje bio dostupan, podnosilac zahteva mora biti u mogućnosti da tamo otputuje/da dođe do tamo i dobije pristup tom području pri čemu ga u tome ne sprečavaju zakonske ili praktične prepreke (npr. zahtev da ima određenu vrstu identifikacionog dokumenta, neprohodnost svih puteva do tamo ili nebezbednost na putu do tamo).

Da bi se od podnosioca zahteva opravdano očekivalo da se nastani u alternativnom delu zemlje, neophodno je postaviti pitanje da li će to izazvati prekomerne poteškoće.

Da bi podnosilac zahteva mogao tamo da se nastani, neophodno je smatrati da postoji mogućnost da se on tamo nastani trajno i bezuslovno.

D. ISPUNJENOST USLOVA ZA SUPSIDIJARNU ZAŠTITU

Ako je odgovor na pitanja u odeljcima B i C potvrdan, podnosilac zahteva ispunjava uslove predviđene članom 15(c) i (ako nema pitanja izuzeća ili prestanka) i ispunjava kriterijume za dobijanje supsidijarne zaštite.

Prilog B – Metodologija

Metodologija za aktivnosti profesionalnog razvoja dostupnih članovima sudova i tribunala

Kontekst i uvod

U članu 6 Uredbe o osnivanju Evropske kancelarije za podršku azilu (EASO) ([112]) (u daljem tekstu Uredba) navodi se da će Agencija uspostaviti i razviti obuku dostupnu članovima sudova i tribunala u državama članicama Evropske unije. U tu svrhu će EASO koristiti stručnost akademskih institucija i drugih relevantnih organizacija, a uzeće u obzir i postojeću saradnju u Uniji u toj oblasti uz puno poštovanje nezavisnosti nacionalnih sudova i tribunala.

S ciljem pružanja podrške jačanju standarda kvaliteta i usaglašavanju odluka širom Evropske unije, a u skladu sa svojim zakonskim ovlašćenjima, EASO nudi dvostruku podršku obuci koja obuhvata razvijanje i objavljivanje materijala za profesionalni razvoj, kao i organizovanje aktivnosti vezanih za profesionalni razvoj. Usvajanje ove metodologije EASO ima za cilj da opiše postupke koji će biti primenjeni prilikom sprovođenja njenih aktivnosti vezanih za profesionalni razvoj.

Da bi ispunio te zadatke, EASO se obavezuje da poštuje pristup i načela navedena u oblasti EASO-ve saradnje sa sudovima i tribunalima usvojene 2013. godine ([113]).

Kurikulum za profesionalni razvoj

Sadržaj i opseg - U skladu sa zakonskim ovlašćenjima utvrđenim Uredbom i u saradnji sa sudovima i tribunalima, EASO će doneti kurikulum za profesionalni razvoj s ciljem davanja članovima suda i tribunala celovitog prikaza Zajedničkog evropskog sistema azila (u daljem tekstu CEAS). Uzimajući u obzir potrebe na koje je ukazala EASO-va mreža, kretanja u evropskoj i nacionalnoj sudskoj praksi, stepen razmimoilaženja u tumačenju relevantnih odredaba i kretanja u toj oblasti, biće razvijeni materijali koji će biti u skladu sa sledećom strukturom, ali neće biti ograničeni na nju (bez određenog redosleda):

1. Uvod u Zajednički evropski sistem azila (CEAS) i uloga i odgovornosti sudova i tribunala u oblasti međunarodne zaštite
2. Pristup postupcima uređivanja međunarodne zaštite i princip navraćanja
3. Kriterijumi za uključivanje i odobravanje supsidijarne zaštite u kontekstu Direktive Evropske unije o kvalifikaciji ([114])
4. Ocena dokaza i verodostojnosti
5. Izuzeće i prestanak pružanja zaštite u kontekstu Direktive Evropske unije o kvalifikaciji
6. Međunarodna zaštita u situacijama sukoba:
7. Zaštita izbeglica u situacijama sukoba
8. Primena člana 15(c) Direktive Evropske unije o kvalifikaciji
9. Prijem u kontekstu Direktive Evropske unije o uslovima prijema ([115])

([112]) Uredba (EU) br. 439/2010 Evropskog parlamenta i Saveta od 19. maja 2010, kojom se uspostavlja Evropska kancelarija za podršku azilu, u: *Službenom listu Evropske unije* L 132/11, 29/05/2010, str. 11-28, http://eur-lex.europa.eu/LexUriServ/LexUri Serv.do?uri=OJ:L:2010:132:0011:0028:EN:PDF.
([113]) Napomena o EASO-voj saradnji sa sudovima i tribunalima država članica Evropske unije, 21. avgust 2013.
([114]) Direktiva 2011/95/EU Evropskog parlamenta i Saveta od 13. decembra 2011. o standardima za kvalifikaciju državljana trećih zemalja ili lica bez državljanstva za ostvarivanje međunarodne zaštite, za jedinstveni status izbeglica ili lica koja ispunjavaju uslove za supsidijarnu zaštitu, kao i za sadržaj odobrene zaštite (preinačena), objavljena u: *Službenom listu Evropske unije* L 337/9, 20/12/2011, str. 9-26, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF.
([115]) Direktiva 2013/33/EU Evropskog parlamenta i Saveta od 26. juna 2013. o uspostavljanju standarda za prijem podnosilaca zahteva za dobijanje međunarodne zaštite (prerađena), u: *Službenom listu Evropske unije* L 180/96, 29/06/2013, str. 96-116, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF.

10. Dablinski postupak u kontekstu Uredbe Dablin III ([116])
11. Proceduralni aspekti u kontekstu Direktive Evropske unije o postupcima azila ([117])
12. Pristup pravima dobijenim na osnovu pravnog okvira Evropske unije nakon priznavanja prava na dobijanje međunarodne zaštite
13. Postupci vraćanja u kontekstu Direktive Evropske unije o vraćanju ([118])
14. Procena i korišćenje informacija o zemlji porekla
15. Pristup efikasnom pravnom leku u kontekstu pravnih instrumenata Zajedničkog evropskog sistema azila (CEAS)

Detaljan sadržaj kurikuluma, kao i redosled po kom će poglavlja biti razvijana, biće utvrđen nakon procene potreba izvršene u saradnji s EASO-vom mrežom sudova i tribunala (u daljem tekstu EASO-va mreža) koja trenutno okuplja EASO-va nacionalna kontaktna mesta u sudovima i tribunalima država članica Evropske unije, Sudu pravde Evropske unije (CJEU), Evropskom sudu za ljudska prava (ECtHR) i dva pravosudna organa s kojima EASO ima formalnu razmenu pisama: Međunarodnom asocijacijom sudija u izbegličkom pravu (IARLJ) i Udruženju sudija evropskih upravnih sudova (AEAJ). Pored toga, po potrebi će biti konsultovani i drugi partneri, uključujući UNHCR, Agenciju Evropske unije za osnovna prava (FRA), Evropsku mrežu za obuku u pravosuđu Evropske unije (EJTN) i Akademiju za evropsko pravo (ERA). On će takođe biti prikazan i u godišnjem planu rada koji EASO usvaja unutar okvira EASO-vih sastanaka na temu planiranja i koordinacije.

Učešće stručnjaka

Timovi za izradu nacrta - EASO će razvijati kurikulum u saradnji s EASO-vom mrežom putem osnovanja posebnih radnih grupa (timove za izradu nacrta) za izradu svakog poglavlja. Timovi za izradu nacrta će se sastojati od stručnjaka nominovanih putem EASO-ve mreže i izabranih u skladu sa određenim kriterijumima za odabir. U skladu s EASO-vim programom rada i konkretnim planom usvojenim na godišnjim sastancima na temu planiranja i koordinacije, EASO će uputiti poziv stručnjacima za izradu svakog poglavlja.

Poziv će biti poslan EASO-voj mreži sa naznakama opsega poglavlja za izradu, očekivanog vremenskog okvira i broja stručnjaka koji će biti potreban. EASO-va nacionalna kontaktna mesta će zatim biti pozvana radi povezivanja s nacionalnim sudovima i tribunalima s ciljem pronalaženja stručnjaka koji su na raspolaganju i koji su zainteresovani da doprinesu izradi poglavlja.

Na osnovu primljenih nominacija, EASO će sa svojom mrežom podeliti predlog za osnivanje tima za izradu nacrta. EASO će taj predlog obrazložiti u skladu sa sledećim kriterijumima:

1. Ukoliko broj primljenih nominacija bude jednak broju traženih stručnjaka ili manji od tog broja, svi nominovani stručnjaci će automatski biti pozvani da učestvuju u radu tima za izradu nacrta.
2. Ukoliko je broj nominacija veći od potrebnog broja stručnjaka, EASO će napraviti motivacioni predodabir stručnjaka. Predodabir će biti izvršen na sledeći način:
   - EASO će dati prednost stručnjacima koji su na raspolaganju za učešće tokom celog procesa, uključujući tu i učešće na svim stručnim sastancima.
   - Ukoliko je iz jedne države članice nominovano više od jednog stručnjaka, EASO će se obratiti kontaktnoj tački i zamoliti je da odabere jednog stručnjaka. To će omogućiti zastupljenost većeg broja država članica Evropske unije u grupi.
   - EASO će zatim predložiti da se prednost da članovima sudova i tribunalima u odnosu na pravne asistente ili izvestioce.

([116]) Uredba (EU) br. 604/2013 Evropskog parlamenta i Saveta od 26. juna 2013, kojom se uspostavljaju kriterijumi i mehanizmi za određivanje države članice Evropske unije odgovorne za razmatranje zahteva za dobijanje međunarodne zaštite koji je u jednoj od država članica Evropske unije podneo državljanin treće zemlje ili lice bez državljanstva (preinačena), u: *Službenom listu Evropske unije* L 180/31, 29/06/2013, str. 31-59, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=en.

([117]) Direktiva 2013/32/EU Evropskog parlamenta i Saveta od 26. juna 2013. o zajedničkim postupcima za odobravanje i oduzimanje međunarodne zaštite (preinačena), u: *Službenom listu Evropske unije* L 180/60, 29/06/2013, str. 60-95, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en.

([118]) Direktiva 2008/115/EZ Evropskog parlamenta i Saveta od 16. decembra 2008. o opštim standardima i postupcima država članica Evropske unije za povratak ilegalno migrirajućih državljana trećih zemalja, u: *Službenom listu Evropske unije* L 348/98, 24/12/2008, str. 98-107, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115&from=EN.

– Ukoliko broj nominovanih stručnjaka i dalje prelazi potreban broj, EASO će predložiti motivacioni odabir pri kom će u obzir biti uzet datum prijema nominacije (nominacije primljene ranije imaće prednost), kao i EASO-v interes da obezbedi širu regionalnu zastupljenost.

EASO će pozvati i UNHCR da nominuje jednog predstavnika koji će se pridružiti timu za izradu nacrta.

EASO-va mreža će biti pozvana da, najduže u roku od 10 dana, da svoje mišljenje i/ili predloge u vezi s predloženim izborom stručnjaka. Pri konačnom izboru uzeće se u obzir i mišljenja EASO-ve mreže i biće potvrđen sastav tima za izradu nacrta.

Proces konsultacija - EASO će u skladu s Uredbom učestvovati u procesu konsultacija u vezi s razvojem materijala. U svrhe sprovođenja procesa konsultacija, EASO će uputiti poziv za iskazivanje zainteresovanosti članovima EASO-vog savetodavnog foruma, uključujući tu i predstavnike država članica Evropske unije, organizacije civilnog društva, druge relevantne organizacije, akademsku zajednicu, kao i druge stručnjake ili akademike preporučene od strane EASO-ve mreže sudova i tribunala.

Uzimajući u obzir stručnost i poznavanje oblasti sudstva onih koji se odazovu na poziv, kao i kriterijume za izbor EASO-vog savetodavnog foruma, EASO će uputiti motivacioni predlog svojoj mreži koja će konačno potvrditi identitet onih koji treba da budu uključeni u proces konsultacija. Nakon toga, izabrani učesnici u procesu savetovanja mogu biti pozvani da obuhvate sve što se razvija ili da se fokusiraju na područja u uskoj vezi s njihovom stručnošću.

Na učešće u procesu konsultacija biće pozvana i Agencija Evropske unije za osnovna prava (FRA).

Razvoj kurikuluma

Pripremna faza - Pre započinjanja procesa izrade nacrta, EASO će pripremiti skup materijala, uključujući između ostalog:

1. Bibliografiju relevantnih dostupnih izvora i materijala o datoj temi
2. Zbirku evropske i nacionalne sudske prakse u vezi s datom temom

Učesnici u procesu konsultacija će zajedno s EASO-vom mrežom ([119]) odigrati važnu ulogu u pripremnoj fazi. U tu svrhu, EASO će učesnike u procesu konsultacija, kao i svoju mrežu, informisati o opsegu svakog poglavlja i podeliti nacrt pripremnih materijala zajedno s pozivom za davanje dodatnih informacija koje se smatraju relevantnim za izradu datog poglavlja. Te informacije će biti obuhvaćene materijalima koji će zatim biti podeljeni odgovarajućim timovima za izradu nacrta.

Proces izrade nacrta - EASO će organizovati najmanje dva radna sastanka za izradu svakog poglavlja. Na svom prvom sastanku, tim za izradu nacrta će:

- nominovati jednog ili više koordinatora za proces izrade nacrta;
- izraditi strukturu poglavlja i usvojiti radnu metodologiju;
- podeliti zadatke procesa izrade nacrta;
- razviti osnovnu skicu sadržaja poglavlja.

Pod koordinacijom koordinatora tima, a u tesnoj saradnji s EASO-m, tim će nastaviti da izrađuje preliminarni nacrt odgovarajućeg poglavlja.

Na svom drugom sastanku, grupa će:

- Revidirati preliminarni nacrt i usaglasiti se oko sadržaja.
- Obezbediti doslednost svih delova i doprinosa nacrtu.
- Revidirati nacrt s didaktičke perspektive.

([119]) Biće konsultovan i UNHCR.

U zavisnosti od potrebe, grupa može predložiti da EASO organizuje dodatne sastanke radi detaljnije razrade nacrta. Nakon završetka, nacrt će biti podeljen s EASO-m.

Ocena kvaliteta - EASO će prvi nacrt sačinjen od strane tima za izradu nacrta podeliti sa svojom mrežom, UNHCR-om i učesnicima u procesu konsultacija i pozvati ih da pregledaju materijale s ciljem pružanja pomoći radnoj grupi da poboljša kvalitet konačne verzije.

Svi primljeni predlozi biće podeljeni s koordinatorom tima za izradu nacrta koji će u saradnji s timom za izradu nacrta razmotriti date predloge i pripremiti konačnu verziju. Druga mogućnost je da, ukoliko su predlozi naročito obimni ili bi u značajnoj meri uticali na strukturu i sadržaj poglavlja, koordinator predloži održavanje dodatnog sastanka za razmatranje tih predloga.

Koordinator će zatim u ime tima za izradu nacrta podeliti poglavlje s EASO-m.

Proces ažuriranja - Na svojim godišnjim sastancima na temu planiranja i koordinacije, EASO će pozvati svoju mrežu da iskaže svoje stavove u pogledu potrebe da se poglavlja kurikuluma ažuriraju.

Na osnovu te razmene EASO može:

- Izvršiti manje izmene kako bi poboljšao kvalitet poglavlja, uključujući dodavanje relevantnih trendova u sudskoj praksi. EASO će u tom slučaju direktno pripremiti prvi predlog za ažuriranje koji će njegova mreža usvojiti.
- Uputiti poziv za osnivanje tima za izradu nacrta radi ažuriranja jednog ili više poglavlja kurikuluma. Postupak ažuriranja će u tom slučaju biti izvršen na isti način kao i postupak izrade kurikuluma.

Primena kurikuluma

EASO će u saradnji sa članovima svoje mreže i relevantnim partnerima (npr. EJTN, ERA itd.) pružiti podršku nacionalnim institucijama za obuku u primeni kurikuluma za obuku. U EASO-vu podršku u tom pogledu spadaće:

Smernice za fasilitatore - Primenjujući isti postupak korišćen za izradu različitih poglavlja koja sačinjavaju kurikulum, EASO će osnovati tim za izradu nacrta koji će izraditi smernice za fasilitatore. To će fasilitatorima služiti kao praktični referentni alat i dati smernice za organizovanje i vođenje praktičnih radionica na osnovu kurikuluma za profesionalni razvoj.

Radionice za fasilitatore - Uz to, nakon izrade svakog poglavlja kurikuluma, EASO će organizovati radionicu za fasilitatore koja daje detaljan pregled poglavlja i ponuđenu metodologiju organizovanja radionica na nacionalnom nivou.

- **Nominovanje fasilitatora i priprema radionice -** EASO će zatražiti podršku najmanje dva člana tima za izradu nacrta prilikom pripreme i vođenja radionice. Ukoliko nijedan član tima za izradu nacrta ne bude na raspolaganju za ove potrebe, EASO će putem svoje mreže uputiti poseban poziv za stručne fasilitatore.
- **Izbor učesnika -** EASO će zatim uputiti poziv svojoj mreži da pronađe određeni broj potencijalnih fasilitatora uže specijalizovanih u datoj oblasti, a koji su zainteresovani i na raspolaganju da organizuju radionice u vezi s kurikulumom za profesionalni razvoj na nacionalnom nivou. Ukoliko je broj nominacija veći od broja navedenog u pozivu, EASO će izvršiti izbor pri kom će prednost dati široj geografskoj zastupljenosti, kao i onim fasilitatorima koji će olakšati primenu kurikuluma na nacionalnom nivou. U slučaju potrebe i u skladu sa svojim programom rada i godišnjim planom rada, usvojenim u okviru EASO-vih sastanaka na temu planiranja i koordinacije, EASO može razmotriti organizovanje dodatnih radionica za fasilitatore.

Nacionalne radionice - EASO će u tesnoj saradnji sa svojom mrežom uspostaviti kontakt s relevantnim institucijama za obuku u oblasti pravosuđa na nacionalnom nivou kako bi promovisao organizovanje radionica na nacionalnom nivou. Na taj način EASO će takođe dati podršku angažovanju članova sudova i tribunala koji su dali doprinos izradi kurikuluma ili učestvovali u EASO-vim radionicama za fasilitatore.

EASO-ve napredne radionice

EASO će takođe održati i jednu naprednu radionicu godišnje o odabranim aspektima Zajedničkog evropskog sistema azila (CEAS) s ciljem promovisanja praktične saradnje i dijaloga na visokom nivou među članovima sudova i tribunala.

Određivanje relevantnih područja - EASO-ve napredne radionice će biti usmerene ka područjima sa velikim razmimoilaženjem u nacionalnom tumačenju ili područjima u kojima su, prema mišljenju EASO-ve mreže, kretanja u sudskoj praksi važna. Na svojim godišnjim sastancima na temu planiranja i koordinacije, EASO će pozvati svoju mrežu, kao i članove UNHCR-a i članove savetodavne grupe da daju svoje predloge u vezi s eventualnim područjima od interesa. EASO će na osnovu tih sugestija napraviti predlog svojoj mreži, koja će doneti konačnu odluku o tome koje područje će biti pokriveno na sledećoj radionici. Kad god je to relevantno, radionice će rezultirati izradom poglavlja s posebnim fokusom unutar kurikuluma.

Metodologija - EASO će prilikom pripreme radionica zatražiti podršku svoje mreže, koja će doprineti razvoju metodologije za radionicu (npr. rasprave o slučajevima, simulacije suđenja itd.) i pripremi materijala. Maksimalan broj učesnika svake radionice zavisiće od odabrane metodologije.

Učešće u EASO-vim radionicama - EASO će maksimalan broj učesnika svake radionice odrediti na osnovu metodologije, kao i uz konsultacije s pravosudnim udruženjima. Radionica će biti otvorena za članove evropskih i nacionalnih sudova i tribunala, kao i za EASO-vu mrežu sudova i tribunala, uključujući Evropsku mrežu za obuku u pravosuđu (EJTN), Agenciju Evropske unije za osnovna prava (FRA), Akademiju za evropsko pravo (ERA) i UNHCR.

Pre organizovanja svake radionice, EASO će uputiti otvoreni poziv svojoj mreži sudova i tribunala, kao i gorenavedenim organizacijama, navodeći fokus radionice, metodologiju, maksimalan broj učesnika i rok za prijavu. Spisak učesnika će obezbediti ravnomernu zastupljenost članova sudova i tribunala i dati prednost prvoj prijavi primljenoj iz svake države članice Evropske unije.

Praćenje i evaluacija

Tokom razvijanja svojih aktivnosti, EASO će promovisati otvoren i transparentan dijalog sa svojom mrežom, pojedinačnim članovima sudova i tribunala, UNHCR-om, pojedincima uključenim u proces konsultacija i učesnicima u EASO-vim aktivnostima, koji će biti pozvani da s EASO-m podele svoja mišljenja ili predloge koji bi eventualno mogli poboljšati kvalitet njegovih aktivnosti.

Ne samo to, EASO će izraditi i evaluacione upitnike koji će biti distribuirani tokom njegovih aktivnosti vezanih za profesionalni razvoj. Sitnije predloge za poboljšanja EASO će uneti direktno, a svoju mrežu će obavestiti o evaluaciji svojih aktivnosti tokom godišnjeg sastanka na temu planiranja i koordinacije.

EASO će na godišnjem nivou svojoj mreži predočiti i pregled svojih aktivnosti, kao i relevantne dobijene predloge za dalje unapređenje, o čemu će se raspravljati na godišnjim sastancima na temu planiranja i koordinacije.

Primena načela

- Prilikom vršenja svojih aktivnosti u vezi s profesionalnim razvojem, EASO će dužnu pažnju posvetiti svojoj javnoj odgovornosti i načelima koja važe za javnu korišćenje.
- EASO i evropski i nacionalni sudovi i tribunali imaće zajedničku odgovornost za kurikulum za profesionalni razvoj. Svi partneri će nastojati da se usaglase oko sadržaja svakog od svojih poglavlja kako bi konačni proizvod osigurao „*podršku pravosuđa*”.
- Izrađeni kurikulum biće deo EASO-vog kurikuluma za profesionalni razvoj, uključujući i povezana prava. EASO će ga po potrebi ažurirati i pri tom u taj proces u potpunosti uključiti evropske i nacionalne sudove i tribunale.
- Sve odluke u vezi s primenom kurikuluma i izborom stručnjaka donosiće se u dogovoru sa svim partnerima.

- Izrada nacrta, usvajanje i primena kurikuluma za profesionalni razvoj biće izvršena u skladu s metodologijom aktivnosti u vezi s profesionalnim razvojem dostupnim članovima sudova i tribunala.

Velika luka Valeta, 11. decembar 2014.

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

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

	The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
	"on a proper construction of Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, it must be acknowledged that an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict".	
	The actors of protection referred to in Article 7(1)(b) of Directive 2004/83 may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.	
	The fundamental right guaranteed under Article 3 of the European Convention on Human Rights forms part of the general principles of Community law, observance of which is ensured by the Court. In addition, the case-law of the European Court of Human Rights is taken into consideration in interpreting the scope of that right in the Community legal order. However, it is Article 15(b) of Directive 2004/83 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, which corresponds, in essence, to Article 3 of the ECHR. By contrast, Article 15(c) of that directive is a provision, the content of which is different from that of Article 3 of the ECHR, and the interpretation of which must, therefore, be carried out independently, although with due regard for fundamental rights as they are guaranteed under the ECHR. 2. Article 15(c) of Directive 2004/83 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof, must be interpreted as meaning that: – the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances; – the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat. That interpretation is fully compatible with the European Convention on Human Rights (ECHR), including the case-law of the European Court of Human Rights relating to Article 3 of the ECHR.	Referenced cases concern main principles of EU law and not asylum law (CJEU , C-106/89, Marleasing SA v La Comercial Internacional de Alimentacion SA ; CJEU, C-188/07 Commune de Mesquer v Total France SA and Total International Ltd.) ECtHR - NA v UK, Application No 25904/07

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

	The main points of the decision's reasoning (if possible)	References to jurisprudence of European or national courts
	The Court notes that the appellant, a former soldier who left the Afghan army in July 2008, can be considered as a civilian and falls therefore within the personal scope of Article L.712-1 c) CESEDA. Claim was rejected both on Geneva Convention and subsidiary protection grounds.	
	Of particular importance was the observation that decision-makers ensured that following *Elgafaji*, Case C-465/07 and *QD* (Iraq) [2009] EWCA Civ 620, in situations of armed conflict in which civilians were affected by the fighting, the approach to assessment of the level of risk of indiscriminate violence was an inclusive one, subject only to the need for there to be a sufficient causal nexus between the violence and the conflict.	Many cases cited, significant cases are: AK (Afghanistan) [2012] UKUT 163 MK (documents - relocation) Iraq CG [2012] UKUT 126 AMM [2011] UKUT 445 EA (Sunni/Shi'a mixed marriages) Iraq CG [2011] UKUT 342 HM (Iraq) [2011] EWCA Civ 1536 MSS v Belgium & Greece [2011] 53 EHRR2 HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 Elgafaji v Straatsscretaris van Justitie Case C-465/07; [2009] 1 WLR 2100 FH v. Sweden, No 32621/06, § 9320, January 2009 NA v United Kingdom [2009] 48 EHRR 15 QD (Iraq) [2009] EWCA Civ 620 ZQ (serving soldier) Iraq CG [2009] UKAIT 00048 SR (Iraqi/Arab Christian: relocation to KRG) Iraq CG [2009] UKAIT 00038 KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 46 SI (expert evidence – Kurd- SM confirmed) Iraq CG [2008] UKAIT 00094
	The subsidiary protection was granted on the basis of the situation of generalised violence that exists in Pakistan. In fact, on the basis of an interpretation of the requirements provided in the Act, the court considered the Applicant's request, which included abundant supporting documentation (international reports), to be justified. In particular, the court held that there did not have to be a real civil war as such, but that it is sufficient if violence appears to have become permanent and ongoing and has spread to a significant degree.	Italy - Court of Cassation, No 27310/2008
	Relying on a variety of information on the country of origin, deriving in particular, from the United Nations Security Council and the UNHCR, the Court concluded that the conflicts between the forces of the Transitional Federal Government, various clans and a number of Islamist militias were characterised, in certain geographical areas and in particular the southern and central regions, by a climate of generalised violence. Citing the 28 June 2011 ruling of the European Court of Human Rights in the case of *Sufi and Elmi v. the United Kingdom*, the Court moreover expressed doubts about the feasibility of internal relocation for a person who, having landed at Mogadishu, would need to cross a zone controlled by Al-Shabaab, and who had no family ties. The Court concluded that this situation must be regarded as a situation of generalised violence resulting from an armed conflict. Lastly, the Court considered that, taking account of the level of intensity that this situation of generalised violence had attained in the region from which the Applicant originated, he was currently exposed to a serious, direct and individual threat to his life or person and was unable at present to secure of any kind of protection within his country.	ECtHR - Sufi and Elmi v United Kingdom (Application Nos 8319/07 and 11449/07)
	The Supreme Court held that the appellant has not provided a basis to allow him to reside in Spain on grounds of humanitarian considerations. In this sense, the Supreme Court abided by the same definition of 'serious harm' contained in Article15(c) of the Qualification Directive, as well as the CJEU's interpretation in case C-465/07, affirmed the non-existence of an armed conflict in Columbia (that is, a situation of widespread violence).In effect, according to the arguments raised, the Supreme Court deemed that the violent situation that existed in some areas of Columbia did not extend to the whole territory or affect the entire population. Furthermore, it emphasised the implausibility of the appellant's narrative, as well as his inability to provide evidence of a real risk of serious threats to his life and physical integrity in the event of his returning to his country. Therefore, the Supreme Court's assessment was that in this particular case there were no grounds for humanitarian considerations which justified the appellant's right to reside in Spain.	CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie Spain - Supreme Court, 22 December 2006, No 2956/03 Spain - High National Court, 22 February 2008, No 832/2005 Spain - High National Court, 14 December 2007, No 847/2005 Spain - High National Court, 14 July 2006, No 449/2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO94	Level of violence	High Administrative Court of Bavaria, 21 October 2010, 13a B 08.30304	Germany	German	High Administrative Court of Bavaria	21.10.10	Iraq	The Court found that the applicant was not entitled to protection from deportation within the meaning of Section 60(7)(2) of the Residence Act/Article 15(c) QD as the levels of indiscriminate violence in his home area were not characterised by a sufficient 'density of danger'.
EASO95	Internal protection	HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331	United Kingdom	English	Upper Tribunal (Immigration and Asylum Chamber)	10.10.10	Iraq	If there were certain areas where the violence in Iraq reached levels sufficient to engage Article 15(c) QD, the Tribunal considered it is likely that internal relocation would achieve safety and would not be unduly harsh in all the circumstances.
EASO96	Level of risk (to be assessed against the applicant's area of origin)	AJDCoS, 9 September 2010, 201005094/1/V2	Netherlands	Dutch	Administrative Jurisdiction Division of the Council of State	9.9.10	Somalia	The Council of State found that where the situation described in Article15(c) QD does not occur in all parts of the country of origin, it must be assessed in respect of the distinct area of the country from which the applicant originates.
EASO97	Existence of indiscriminate violence	CNDA 1er septembre 2010 M. HABIBI n° 09016933 C+	France	French	CNDA (National Asylum Court)	1.9.10	Afghanistan	The Court found that, at the date of its ruling, the province of **Ghazni** was plagued by indiscriminate violence but did not specify the level of this violence.
EASO98	Indiscriminate violence	CNDA, 27 July 2010, Mr. A., No 08013573	France	French	CNDA (National Asylum Court)	27.7.10	Afghanistan	The situation in the province of Kabul could not be seen as a situation of indiscriminate generalised violence, within the meaning of Article L.712-1 c) CESEDA [which transposed Article 15(c) QD].
EASO99	Individual risk	46530	Belgium	Dutch	Council of Alien Law Litigation (Raad voor Vreemdelin-genbetwistin-gen) - adopted by a special seat of three judges	20.7.10	Afghanistan	Takes into account the mental deficiencies the young applicant suffers of to consider that he risks to be the victim of indiscriminate violence in northern Afghanistan then considered as quieter by UNHCR.

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

Number	Key words	Case name/ reference	Country of decision	Language of decision	Court or Tribunal	Date of decision	Claimant's country of origin	Relevance of the decision
EASO100	Internal protection	Federal Administrative Court, 14 July 2010, 10 B 7.10	Germany	German	Federal Administrative Court	14.7.10	Afghanistan	Examining the conditions of subsidiary protection (Section 60(7) Sentence 2 Residence Act/Article 15(c) QD), the High Administrative Court proceeded from the assumption that the applicant could not be expected to stay in another part of his country of origin (Section 60(7) Residence Act, Article 8 QD).
EASO101	Individual risk	Supreme Court, 30 June 2011, 1519/2010	Spain	Spanish	Supreme Court	30.6.10	Colombia	Subsidiary protection was granted.
EASO102	Level of violence and individual risk	44623	Belgium	Dutch	Council of Alien Law Litigation (Raad voor Vreemdelin-genbetwistin-gen) - adopted by a special seat of three judges	08/06/2010	Afghanistan	The Council considered that the applicant could not simply refer to the general situation prevailing in his/her home country to benefit from Article 15(c) QD. He/she must also 'show any link between that situation of general violence and his/her own individual situation, what does not mean that he/she must establish an individual risk of serious harm' ('moet enig verband met zijn persoon aannemelijk maken, ook al is daartoe geen bewijs van een individuele bedreiging vereist').
EASO103	Individual risk	10/0642/1, Helsinki Administrative Court, 28 May 2010	Finland	Finnish	Helsinki Administrative Court	28.5.10	Somalia	The Helsinki Administrative Court found that a female minor from a town near Mogadishu was in need of subsidiary protection. The Court held that to return home the applicant would have to travel via Mogadishu which would place her at serious and personal risk due to the nature of the armed conflict.
EASO104	Level of violence and individual risk	Federal Administrative Court, 27 April 2010, 10 C 4.09	Germany	German	Federal Administrative Court	27.4.10	Afghanistan	This case concerns the criteria for determining a serious individual threat and the necessary level of indiscriminate violence in an internal armed conflict. In order for Article15(c) QD to apply, it is necessary to determine the level of indiscriminate violence in the territory of an internal armed conflict. When determining the necessary level of indiscriminate violence, not only acts which contravene international law, but any acts of violence which put life and limb of civilians at risk, have to be taken into account. In the context of Article 4.4 QD, an internal nexus must exist between the serious harm (or threats thereof) suffered in the past, and the risk of future harm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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views of EASO.

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

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

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