# Flygtningenævnets baggrundsmateriale

| | |
|---|---|
| **Bilagsnr.:** | **374** |
| Land: | Diverse emner |
| Kilde: | EUAA |
| Titel: | Practical Guide on Qualification for International Protection |
| Udgivet: | Juni 2026 |
| Optaget på baggrundsmaterialet: | 26. juni 2026 |

Practical Guides and Tools

euaa
EUROPEAN UNION
AGENCY FOR ASYLUM

# Practical Guide on Qualification for International Protection

June 2026

On 19 January 2022, the European Asylum Support Office (EASO) became the European Union Agency for Asylum (EUAA). All references to EASO and to EASO products and bodies should be understood as references to the EUAA.


Manuscript completed in June 2026

Second edition



Luxembourg: Publications Office of the European Union, 2026

| | | | |
|---|---|---|---|
| Print | ISBN 978-92-9418-505-1 | doi: 10.2847/9726112 | BZ-01-26-032-EN-C |
| PDF | ISBN 978-92-9418-504-4 | doi: 10.2847/4308780 | BZ-01-26-032-EN-N |

# About the guide

**Why was this guide created?** The mission of the European Union Agency for Asylum (EUAA) is to facilitate and support the activities of Member States of the European Union (EU) and Schengen associated countries ([1]) in the implementation of the Common European Asylum System (CEAS). In accordance with the EUAA's overall aim of promoting the correct and effective implementation of the CEAS and enabling convergence, it develops common operational standards and indicators, guidelines and practical tools.

The *Practical Guide on Qualification for International Protection* assists case officers in examining each application for international protection individually, objectively and impartially and in applying the same legal criteria and common standards when determining who qualifies for international protection.

**How was this guide developed?** The first edition of this guide was published in 2018. This second edition updates the guide, taking into account the relevant CEAS provisions introduced by the Pact on Migration and Asylum ([2]) and the most recent case-law of the Court of Justice of the EU. It was drafted by experts from across the EU, with valuable input from the European Commission, the United Nations High Commissioner for Refugees and the European Council on Refugees and Exiles ([3]). The development of this guide was facilitated and coordinated by the EUAA. Before finalisation, a consultation was carried out with all EU Member States and Schengen associated countries through the EUAA Asylum Processes Network. The EUAA would like to extend its thanks to the members of the working group who contributed to the development of this guide: Yvonne Bengtsson, Stephen Hand, Laura Jesaulkova, Elsabe Johanna Klingbeil, Pawel Stefanek, and Josine Sunter.

**Who should use this guide?** This guide is primarily intended for asylum case officers, interviewers and decision-makers, as well as policymakers in the national determining authorities. Additionally, the guide will be useful for quality officers, legal advisers and any other person working or involved in the field of international protection in the EU.

## How to use this guide.

The guide facilitates the examination of the merit of applications for international protection to which the criteria in the Qualification Regulation (Regulation (EU) 2024/1347) ([4]) apply.

---

([1]) The 27 Member States and Iceland, Liechtenstein, Norway and Switzerland.

([2]) European Commission: Directorate-General for Migration and Home Affairs, 'Pact on migration and asylum', European Commission website, 21 May 2024, accessed 17 July 2025, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en.

([3]) Note that the finalised guide does not necessarily reflect the positions of the United Nations High Commissioner for Refugees and the European Council on Refugees and Exiles.

([4]) Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the

In addition to providing structured guidance, this practical guide can be used as a reference tool for self-evaluation and quality assessment.

The guide is complemented by a set of checklists and a poster on qualification for international protection (see: https://www.euaa.europa.eu/qualification-international-protection).

**How does this guide relate to national legislation and practice?** This is a soft convergence tool. It is not legally binding and reflects commonly agreed standards, as adopted by the EUAA Management Board in June 2026.

**How does this guide relate to other EUAA tools?** The EUAA *Practical Guide on Qualification for International Protection* should be used in conjunction with other available practical guides and tools. All EUAA practical tools are publicly available online on the EUAA website: https://euaa.europa.eu/practical-tools-and-guides. The relevant EUAA Country Guidance documents (available at: https://www.euaa.europa.eu/asylum-knowledge/country-guidance) and the EUAA country of origin products (available at: https://coi.euaa.europa.eu/) should also be considered, where available.

**Disclaimer**

Following an initial period of implementation of the Pact on Migration and Asylum, this document may require updating, as needed.

This guide was prepared without prejudice to the principle that only the Court of Justice of the European Union can give an authoritative interpretation of EU law.

References to judgments of the Court of Justice of the European Union that interpret provisions of the 2011 Qualification Directive have been added in this guide where there is an understanding that they remain valid for the application of the provisions of the Qualification Regulation, in particular where the text of the relevant articles and the context remained (largely) unchanged. This is, however, without prejudice to different interpretations that might be provided by the Court in future case-law on the Qualification Regulation.

protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401347.

# Contents

# List of abbreviations

| Abbreviation | Definition |
|---|---|
| **APR** | **Asylum Procedure Regulation** – Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing the on procedure for international protection in the Union and repealing Directive 2013/32/EU |
| **CEAS** | Common European Asylum System |
| **CJEU** | Court of Justice of the European Union |
| **COI** | country-of-origin information |
| **ECHR** | European Convention on Human Rights |
| **ECtHR** | European Court of Human Rights |
| **EUAA** | European Union Agency for Asylum |
| **EU** | European Union |
| **IPA** | internal protection alternative |
| **QR** | **Qualification Regulation** – Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council |
| **Refugee Convention** | The 1951 Convention Relating to the Status of Refugees and its 1967 protocol (referred to in EU asylum legislation and by the Court of Justice of the European Union as 'the Geneva Convention') |
| **UN** | United Nations |
| **UNGA** | General Assembly of the United Nations |
| **UNHCR** | Office of the United Nations High Commissioner for Refugees |

# Introduction

The starting points for this guide are the legal provisions of the 1951 Refugee Convention ([5]) and of the Qualification Regulation (Regulation (EU) 2024/1347) (QR) ([6]).

The guide translates these legal requirements into guidance for practitioners. It focuses on who qualifies for international protection, covering both refugee status and subsidiary protection. The term 'qualification' is preferred for consistency with the terminology used in the QR. It is understood as being equivalent to terms such as 'eligibility' and 'inclusion', which are used in other relevant European Union Agency for Asylum (EUAA) products.

The order of the chapters in this guide follows the decision tree that the case officer would follow when examining whether an applicant qualifies for international protection. It is worth noting that while Chapters 3 and 4 are dedicated exclusively to qualification for refugee status and Chapter 5 specifically addresses qualification for subsidiary protection, all the remaining chapters of the guide are applicable to both qualification for refugee status and subsidiary protection.

In assessing qualification for international protection, the case officer should also consider whether exclusion from international protection might apply. Where relevant, the case officer would therefore also need to examine whether any ground for excluding the applicant from international protection applies to the individual case. In this guide, some indications are given of instances where such an examination might be relevant. However, the grounds for exclusion from international protection and their examination are outside the scope of this guide. Guidance in this respect can be found in the EUAA's practical guide on exclusion ([7]).

This guide does not address matters related to the procedure for the examination of application of international protection.

([5]) United Nations General Assembly (UNGA), 1951 Convention Relating to the Status of Refugees, 28 July 1951, *United Nations Treaty Series*, Vol. 189, p. 137, https://www.refworld.org/legal/agreements/unga/1951/en/39821, and the 1967 Protocol Relating to the Status of Refugees, 31 January 1967, *United Nations Treaty Series*, Vol. 606, p. 267, https://www.refworld.org/legal/agreements/unga/1967/en/41400 (referred to in EU asylum legislation and by the Court of Justice of the European Union (the CJEU) as 'the Geneva Convention').

([6]) Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401347.

([7]) EUAA, *Practical Guide on Exclusion from International Protection*, 2026, https://euaa.europa.eu/publications/practical-guide-exclusion-international-protection.

# 1. General principles

## 1.1. International protection

International protection is relevant where there is no effective and non-temporary protection available in the country of origin. International protection is therefore a substitute for national protection in the country of origin. For more details, see Chapter 8.

The 1951 Convention Relating to the Status of Refugees and its 1967 protocol (the Refugee Convention) are the main international legal instruments in the field of refugee protection, in particular with regard to refugee status and the principle of *non-refoulement*. In the European Union (EU), the QR provides for an additional form of protection, namely subsidiary protection status. The QR stipulates the legal criteria for qualification for subsidiary protection status and further develops the criteria for refugee status. Qualification for refugee status must always be examined first. If the criteria for refugee status are not met, the eligibility for subsidiary protection must be considered. With regard to refugee status, the implementation of the provisions of the QR should be based on the full and inclusive application of the Refugee Convention.

The meaning of 'refugee' and 'person eligible for subsidiary protection' are defined in the QR as follows.

**'Refugee' means**

a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 [on exclusion] does not apply.

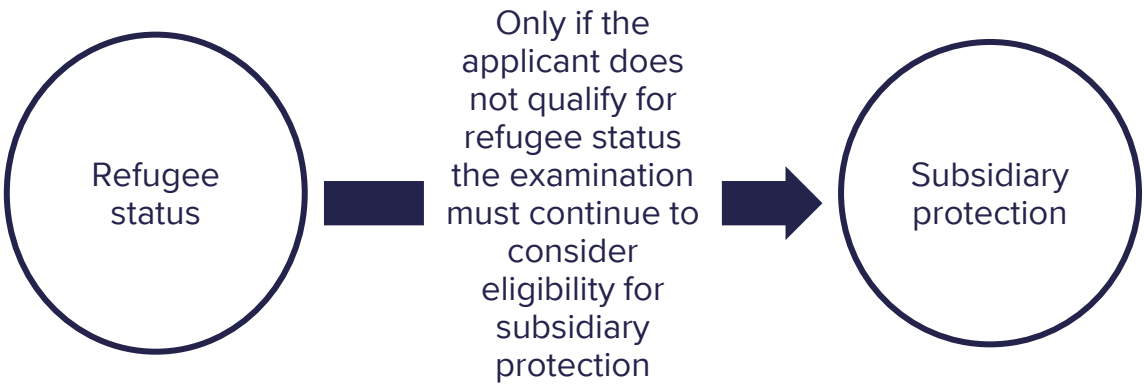
*Article 3(5) QR*

**'Person eligible for subsidiary protection' means**

a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 [the death penalty or execution; torture, inhuman or degrading treatment or punishment; serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict], and to whom Article 17(1) and (2) [exclusion] does not apply, and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

*Article 3(6) QR*

**Figure 1. Flow of the examination of qualification for international protection**




**Specific considerations**

When examining qualification for international protection, **Article 1D Refugee Convention and Article 12(1)(a) QR**, relating to protection or assistance from organs or agencies of the United Nations (UN) other than the Office of the United Nations High Commissioner for Refugees (UNHCR), must be taken into account and applied where relevant.

Where the applicant is receiving protection or assistance from organs or agencies of the UN other than UNHCR, they should be excluded from refugee status. An example of an agency that falls in the scope of this provision is the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) ([8]).

However, it is important to note that when such protection or assistance has ceased for any reason, without the position of the applicant being definitely settled in accordance with the relevant resolutions adopted by the UNGA, that person is *ipso facto* entitled to the benefits of refugee status under the QR. Therefore, in this scenario, the applicant must be granted refugee status based on this fact alone, unless any other grounds for exclusion applies ([9]). When assessing whether the protection or assistance has ceased, the case officer needs to take into account all factors relevant to the individual case ([10]).

([8]) Another ground for exclusion from refugee status for persons already receiving protection is provided in Article 12(1)(b) QR and Article 1E Refugee Convention. It concerns the situation where the third-country national or stateless person is recognised by the competent authorities of the country where they have taken up residence as having the rights and obligations that are attached to the possession of the nationality of that country, or equivalent rights and obligations.

([9]) Judgment of the Court of Justice of 19 December 2012, *El Kott and Others* v *Bevándorlási és Állampolgársági Hivatal*, C-364/11, ECLI:EU:C:2012:826, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CJ0364, paragraphs 76 and 81. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=869.

([10]) See in this regard, Judgment of the Court of Justice of 13 June 2024, *SN and LN* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite,* C-563/22, ECLI:EU:C:2024:494, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CJ056, paragraph 75, which states that

> *it is for the competent national authorities and courts to ascertain not only whether the departure from UNRWA's area of operations of persons applying for refugee status pursuant to the second sentence of*

## 1.2. Elements of the examination

| QR | APR |
|---|---|
| Article 4 | Article 34(2) |

Applications for international protection should always be appropriately examined and decisions should be made objectively, impartially and on an individual basis ([11]). Article 4 QR ([12]) and Article 34(2) APR ([13]) provide guidance on what key elements must be taken into account when examining the application.

Specifically, the case officer in their analysis must consider the following elements of the application:

*a) the applicant's statements; and*

*b) all the documentation at the applicant's disposal regarding the following:*

*(i) the applicant's reasons for applying for international protection;*

*(ii) the applicant's age;*

*(iii) the applicant's background, including that of relevant family members and other relatives;*

*(iv) the applicant's identity;*

*(v) the applicant's nationality or nationalities;*

*(vi) the applicant's country or countries and place or places of previous residence;*

*(vii) previous applications for international protection from the applicant;*

*(viii) the results of any resettlement or humanitarian admission procedure relating to the applicant as defined by [the EU Resettlement and Humanitarian Admission Framework] Regulation ([14]);*

---

*Article 12(1)(a) of Directive 2011/95 [Qualification Directive] may be justified by reasons beyond their control and independent of their volition, which thus prevented them from receiving UNRWA's protection or assistance, but also whether those persons are, at the time when the competent administrative authorities examine an application for granting refugee status …, prevented from receiving such protection or assistance due to the alleged deteriorating situation in the area of operations concerned for reasons beyond their control and independent of their volition.*

On the factors to consider when assessing whether the assistance or protection has ceased within the meaning of Article 12(1)(a) QR, see also, among others, Judgment of the Court of Justice of 12 January 2021, *Bundesrepublik Deutschland* v *XT*, C-507/19, ECLI:EU:C:2021:3, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62019CJ0507; and *El Kott*, see footnote 9.

([11]) Article 34(2) of Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/1348, 22.5.2024), http://data.europa.eu/eli/reg/2024/1348/oj (the Asylum Procedure Regulation (APR)).

([12]) Article 4(1) and (2) QR details the elements of the application on which the applicant should submit substantiating evidence if it is available to them.

([13]) Article 34(2) APR details the elements that the determining authority should take into account when examining an application for international protection, which include the elements mentioned in Article 4(1) and (2) QR.

([14]) Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, (OJ L, 2024/1350, 22.5.2024), https://eur-lex.europa.eu/eli/reg/2024/1350/oj/eng.

*(ix) the applicant's travel routes; and*

*(x) the applicants travel documents.* ([15])

The case officer must also take into account the following in addition to the elements mentioned above:

*(b) relevant, precise and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, obtained from relevant and available national, Union and international sources, including children's rights organisations and, where available, the common analysis on the situation in specific countries of origin and the guidance notes referred to in Article 11 of Regulation (EU) 2021/2303* ([16]);

*(c) where applying the concepts of first country of asylum or safe third country, relevant, precise and up-to-date information relating to the situation prevailing in the third country being considered as a first country of asylum or a safe third country at the time of taking a decision on the application, including information and analysis on safe third countries referred to in Article 12 of Regulation (EU) 2021/2303;*

*(d) the individual position and personal circumstances of the applicant, including factors such as the applicant's background, age, gender, gender identity and sexual orientation, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;* ([17])

## 1.3. Decision-making process

The decision-making process can be viewed as a two-part process.

The **first part** consists of the following factual assessments.

- The **evidence assessment**. It consists of collecting evidence, identification and formulation of materials facts and of a credibility assessment. It aims at establishing the material facts that can be accepted. Material facts are the facts and circumstances that are relevant to the individual application for international protection, linked to one or more of the constitutive elements of the definition of a refugee or of a person eligible for subsidiary protection.
- The **risk assessment**, while being a factual assessment, is future-oriented. It aims at assessing, based on the accepted material facts, the likelihood that the applicant would face an adverse event (or acts or situations) upon return to the country of origin.

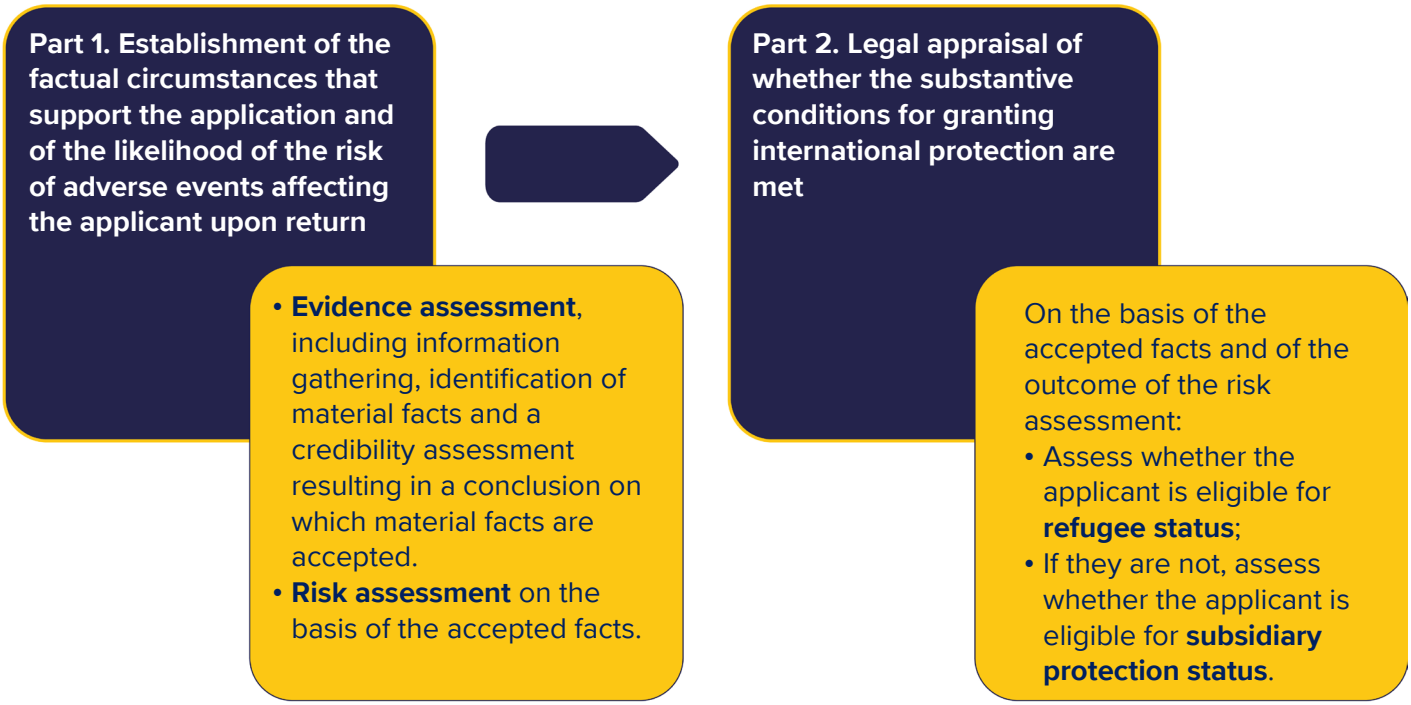
The use of country-of-origin information (COI) is essential. COI analysis is relevant to assess information relevant to the past (during the credibility assessment) as well as the future fear

([15]) Article 4(2) QR.
([16]) Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, (OJ L 468, 30.12.2021), http://data.europa.eu/eli/reg/2021/2303/oj.
([17]) Article 34(2) APR.

(during the risk assessment). Therefore, there is a need to have both the most recent information to determine the future risk and fear, as well as information relevant to events or situations pertaining to the past.

The **second part** of the process consists of a legal analysis, through which the case officer must assess whether the substantive conditions for granting international protection laid down in the QR are met.

**Figure 2. The decision-making process**




This practical guide addresses the legal analysis.

**Related EUAA publication**

For more information and methodological guidance on the first part of the examination process, including the evidence and risk assessment, see the EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.

For more information and methodological guidance on the use of COI in the examination of applications for international protection, see the EASO, *Practical Guide on the use of country of origin information by case officers*, December 2020, https://www.euaa.europa.eu/publications/practical-guide-use-country-origin-information-case-officers.

# 2. ‘Outside the country of origin’: personal and territorial scope

**Personal scope**

- In accordance with the definitions of the terms ‘refugee’ and ‘person eligible for subsidiary protection’ in Article 3 QR, the personal scope of the QR is limited to third-country nationals and stateless persons.

**Territorial scope**

- In accordance with Article 3 QR, the person must be outside their country of origin and in an EU Member State. ‘Country of origin’ refers to a person’s country or countries of nationality or, for stateless persons, to their country or countries of former habitual residence.

## 2.1. Third-country national

When determining whether the applicant falls within the personal scope of the QR, nationality must be interpreted as the legal bond that connects a person to a state ([18]). It is not to be confused with ‘nationality’ as a reason for persecution, which is a wider concept (see Section 4.3 Nationality).

The reference to ‘third-country national’ means that nationals of EU Member States would not fall under the personal scope of the QR ([19]).

Everyone has the right to apply for international protection ([20]). However, Protocol (No 24) on asylum for nationals of Member States of the European Union provides that ‘Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters’ ([21]).

([18]) On the definition of the concept of nationality in the context of identifying the applicant’s country of origin, see the EUAA, *Practical Guide on Nationality,* March 2025, Sections 2.1 to 2.4, https://euaa.europa.eu/publications/practical-guide-nationality-concepts-related-nationality-and-statelessness-context-international-protection.

([19]) See recital 21 QR.

([20]) Article 18 of the EU, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT.

([21]) Consolidated version of the Treaty on the Functioning of the European Union - Protocol (No 24) on asylum for nationals of Member States of the European Union (OJ C 115, 9.5.2008), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12008E%2FPRO%2F24.

**Specific considerations**

**Examining applications by nationals of Member States.** Although this would rarely arise in practice, Protocol No 24 on asylum provides that applications by nationals of Member States may be 'taken into consideration or declared admissible for processing by another Member State' in a number of specific circumstances, including where the Member State of which the applicant is a national takes measures derogating in its territory from its obligations under the European Convention on Human Rights (ECHR) ([22]).

## 2.2 Stateless person

The APR defines a 'stateless person' as a 'person who is not considered as a national by any State under the operation of its law' ([23]). The notion 'under the operation of its law' also includes the way the law is implemented ([24]). The principles governing the determination of statelessness are to be drawn from international law.

The protection provided to stateless persons under the QR is the same as the protection provided to third-country nationals.

## 2.3 Identifying the country of origin

Identifying the applicant's country of origin – that is either the country of nationality or, in the case of a stateless person, the country of former habitual residence – is essential in all applications for international protection. However, the extent of the assessment may vary depending on the country of origin and the elements presented in the individual case.

Case officers should take into consideration the elements set out in Figure 3.

([22]) Although rare in practice, an EU citizen can apply for international protection status in another Member State under the Refugee Convention. Protocol (No 24) on Asylum for Nationals of Member States of the European Union sets out a number of specific circumstances in which the application by another EU national may be taken into consideration or declared admissible and therefore be examined by a Member State. See Protocol (No 24) on Asylum for Nationals of Member States of the European Union, see footnote 21. See also EUAA, *Qualification for International Protection – Judicial analysis*, Second edition, January 2023, Section 1.3.1, https://www.euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu.

([23]) Article 3(15) APR. See also UN Conference on the Status of Stateless Persons, Convention Relating to the Status of Stateless Persons, New York, 28 September 1954, *United Nations Treaty Series*, Vol. 361, p. 117, Article 1, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en

([24]) On the definition of statelessness in the context of international protection, see the EUAA, *Practical Guide on Nationality,* March 2025, https://euaa.europa.eu/publications/practical-guide-nationality-concepts-related-nationality-and-statelessness-context-international-protection.

**Figure 3. Identifying the country of origin**

## Country of nationality

- Every state determines who are its nationals under its own law.
- Identifying the applicant's nationality is not, however, a simple matter of referring to the legislation on nationality in the relevant country of origin.
- Country of origin information on both legislation and practices surrounding nationality should be taken into account.
- A person can have more than one country of nationality.

## Country of habitual residence

- When the applicant for international protection is stateless, their country of former habitual residence must be identified.
- 'Habitual residence' implies that the person has resided, whether lawfully or not, in that country.
- The combination of different factors should show that the applicant had a relevant degree of stable and settled existence in the country.
- The assessment should take into account the duration and regularity of their stay in that country, the connection of the applicant to the country and the level to which they established their life there, and the possible possession of documents from that country.
- A stateless person can have more than one country of former habitual residence.

### Specific considerations

**Dual or multiple nationalities.** In cases involving dual or multiple nationalities, it is necessary to assess whether the applicant can be protected by any of the countries of which they possess the nationality. If effective and non-temporary protection is available for the applicant in any of these countries, they are not in need of international protection. International protection is a substitute for national protection when the latter is lacking.

**Nationals with residence in a different country.** Another possibility is that the applicant is a national of a certain country but has resided in a different country for a prolonged period of time. In such cases, the case officer should consider the applicant's country of nationality when assessing the need for international protection.

The fact that the applicant resided elsewhere, however, may be relevant if the applicability of the concept of first country of asylum or safe third country is considered.

**Renouncing nationality.** If the applicant states that they have renounced their nationality, the case officer needs to assess whether this is an actual fact. The assessment should take into account the rules governing the renunciation of nationality in the country concerned as well as their application. Only when it has been established that the applicant's actions have resulted in an actual loss of nationality, and unless they possess another nationality, can the applicant be considered a stateless person. If the renunciation of nationality occurs

after the applicant left the country, this might give rise to a *sur place* claim and should be analysed accordingly ([25]) (see Section 6. International protection needs arising *sur place*).

**Related EUAA publication**

For more guidance on nationality and statelessness and the identification of the country of origin and the country of formal habitual residence, see the EUAA, *Practical Guide on Nationality,* March 2025, https://euaa.europa.eu/publications/practical-guide-nationality-concepts-related-nationality-and-statelessness-context-international-protection.

## 2.4 Outside the country of origin

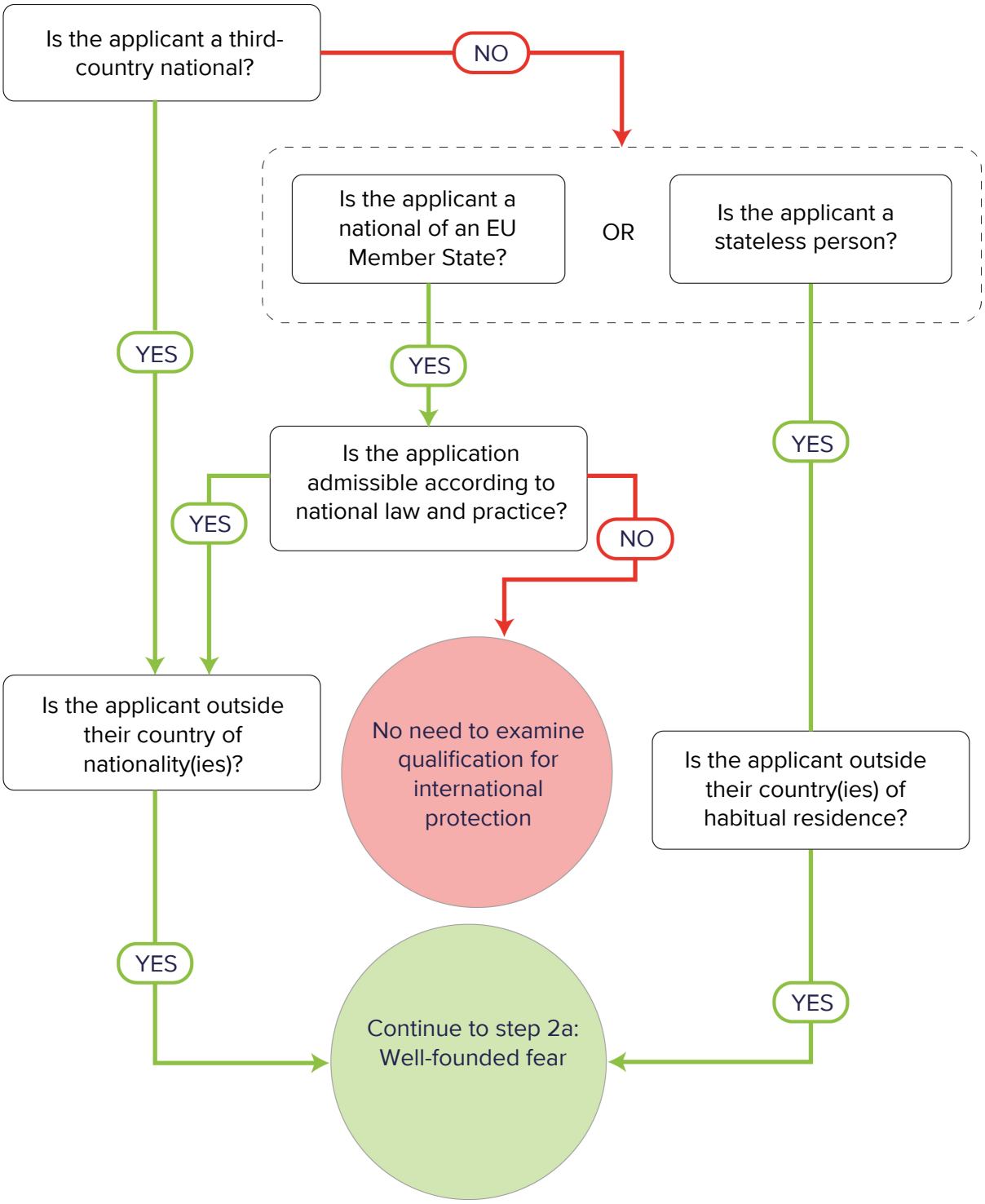
'Outside the country of origin' is a criterion purely based on the applicant's physical absence from the country of nationality or, in the case of stateless person, the country of former habitual residence.

The APR further specifies that its provisions apply 'to all applications for international protection made in the territory of the Member States, including at the external border, on the territorial sea or in the transit zones of the Member States' ([26]).

This means that a person who applies for protection at the embassy or consulate of a Member State while still in their country of origin, for example, would not fall within the territorial scope of the QR and the APR.

([25]) Article 5(1) and (2) QR.
([26]) Article 2(1) APR.

# Step 1. Preliminary considerations: personal and territorial scope



# 3. Refugee status: well-founded fear of persecution

## 3.1 Well-founded fear

| Refugee Convention | QR |
|---|---|
| Article 1A(2) | Article 3<br>Article 4(4) |

The element of 'well-founded fear' is part of the refugee definition. The assessment of the well-founded fear is the risk assessment that is addressed in detail in the EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024. This guide summarises the key principles of the risk assessment.

The assessment of the 'well-founded fear' should focus on whether a risk potentially affecting the applicant upon return to the country of origin can be identified and on whether the fear is well founded.

The assessment must be based on objective elements. On risk assessment, see also Section 1.3 Decision-making process.

**'Fear'**

Applicants may express a fear of adverse events (or situations or acts) potentially affecting them upon return to the country of origin. However, in some cases, the applicant may not explicitly state that they feel fear at the prospect of return. In other cases, they may even state that they do not experience such fear. However, the absence of an expression of fear by the applicant (sometimes referred to as 'subjective fear') would be irrelevant if the facts and circumstances objectively indicate the existence of a risk of facing an adverse event, situation or act upon return to the country of origin. On the other hand, an expression of fear by the applicant would not be relevant if the facts and circumstances objectively indicate the absence of a risk of facing an adverse event, situation or act upon return to the country of origin.

Additionally, it is not necessary to establish that the fear of persecution is a predominant motive for the applicant, as long as such a fear can be identified.

**'Well-founded'**

The 'well-founded' element of the definition of a refugee deals with the degree of likelihood that the applicant faces the identified risk of adverse event(s) or situation(s) or act(s). The fear can be considered well-founded where there is a reasonable degree of likelihood that it will materialise.

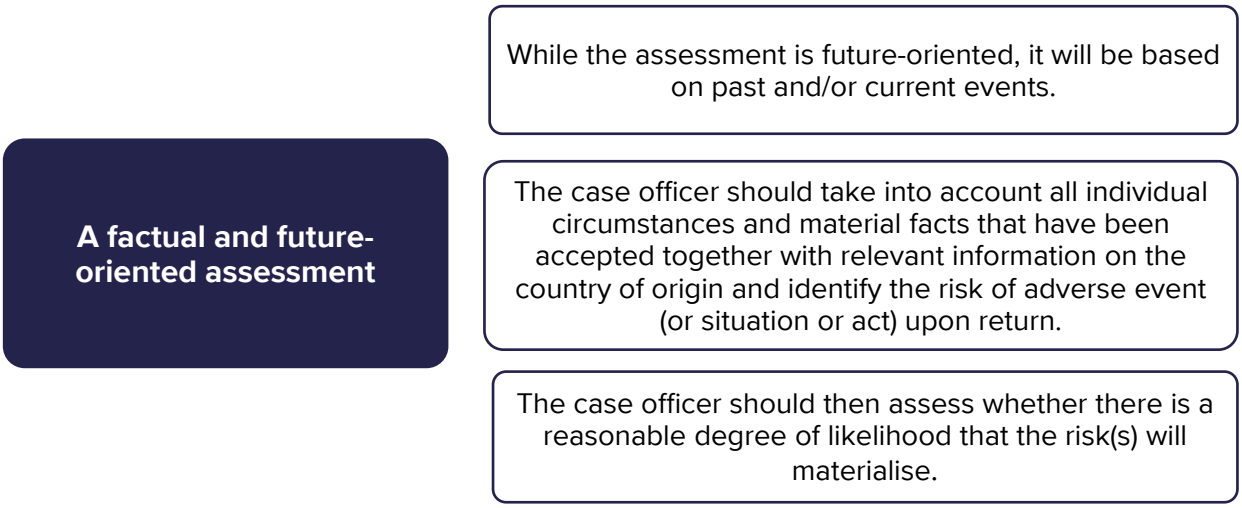
The case officer should first identify and define the risk and then assess its likelihood. Establishing the 'well-founded' element is essentially a matter of conducting a factual, forward-looking risk assessment.

In this assessment, the case officer should consider the individual situation of the applicant in light of information regarding the general situation in their country of origin (e.g. the political, religious, social, human rights or security situation). For more guidance on the elements to consider in the risk assessment, consult the EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, Section 3.3.2. Risk indicators.

The assessment should focus on whether the fear is well-founded **at the time the decision on the application for international protection is made**; that is, the well-founded fear of the applicant has to be current. The circumstances that lie behind a person fleeing might change or cease to exist over time, or conversely appear after they have fled (see Chapter 6. International protection needs arising *sur place*).

The determination of whether there is a well-founded fear is based on the risk assessment, which is **forward-looking**. Because of the inherent difficulties in making a prognosis about what would happen if the applicant were to return, the risk of a subjective assessment in this regard is high. On the other hand, due to this nature, it is not a certain or scientifically precise assessment. Its purpose is not to predict if a risk will surely materialise, but rather if, based on objective factors, it is reasonably likely that it will. It is, therefore, of the utmost importance that the evaluation of well-founded fear is based on an objective methodology and that it avoids speculation, as exemplified in the EUAA's risk assessment methodology summarised in Figure 4 ([27]).

**Figure 4.The risk assessment**




([27]) See EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, Chapter 3. Step 3. Risk assessment, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.

**Specific considerations**

Case officers must keep in mind that **the absence of previous persecution** does not mean that there is no future risk of persecution. The fear may be well founded irrespective of whether the applicant has previously suffered persecution. The risk of being subjected to persecution upon return should always be a risk affecting the applicant individually.

**Experience of past persecution or direct threats of persecution.** The fact that the applicant has previously been subject to persecution or direct threats of persecution does not in itself mean that there is a risk of future persecution. However, past persecution or direct threats of persecution must be considered to constitute serious indications of a well-founded fear. In that circumstance, if refusing international protection, it is the case officer that must demonstrate that there are good reasons to consider that the persecution will not be repeated if the applicant returns to their country or that the threat will not materialise ([28]).

There may be instances where it can be substantiated that the harm would not be repeated, but the past persecution was of such an **atrocious character** that the harm is deemed to be continuous. In such an instance, returning to the country of origin may place the applicant in a situation that could reach the same degree of severity as persecution. While this situation is provided in the QR as an exception to the application of the cessation clause due to 'compelling reasons' ([29]), it can be considered applicable also during the examination of the qualification for refugee status, depending on national practice ([30]).

Experiences of **past persecution that happened outside the country of origin**, for example while in transit, need to be considered by the case officer when assessing the possible existence of a future risk. Nevertheless, the risk assessment must be carried out in relation to possible consequences the applicant would face in the country of origin.

In exceptional situations, it may not be necessary to establish that there is a risk that the applicant will actually and specifically be subject to acts of persecution. For example, in joined cases C-608/22 and C-609/22, the CJEU ruled that

> *regarding applications for international protection lodged by women who are Afghan nationals, the competent national authorities are entitled to consider that it is currently unnecessary to establish, in the individual assessment of the situation of an application for international protection, that there is a risk that she will actually and specifically be subject to acts of persecution if she returns to her country of origin, where the factors relating to her individual status, such as her nationality or gender, are established* ([31]).

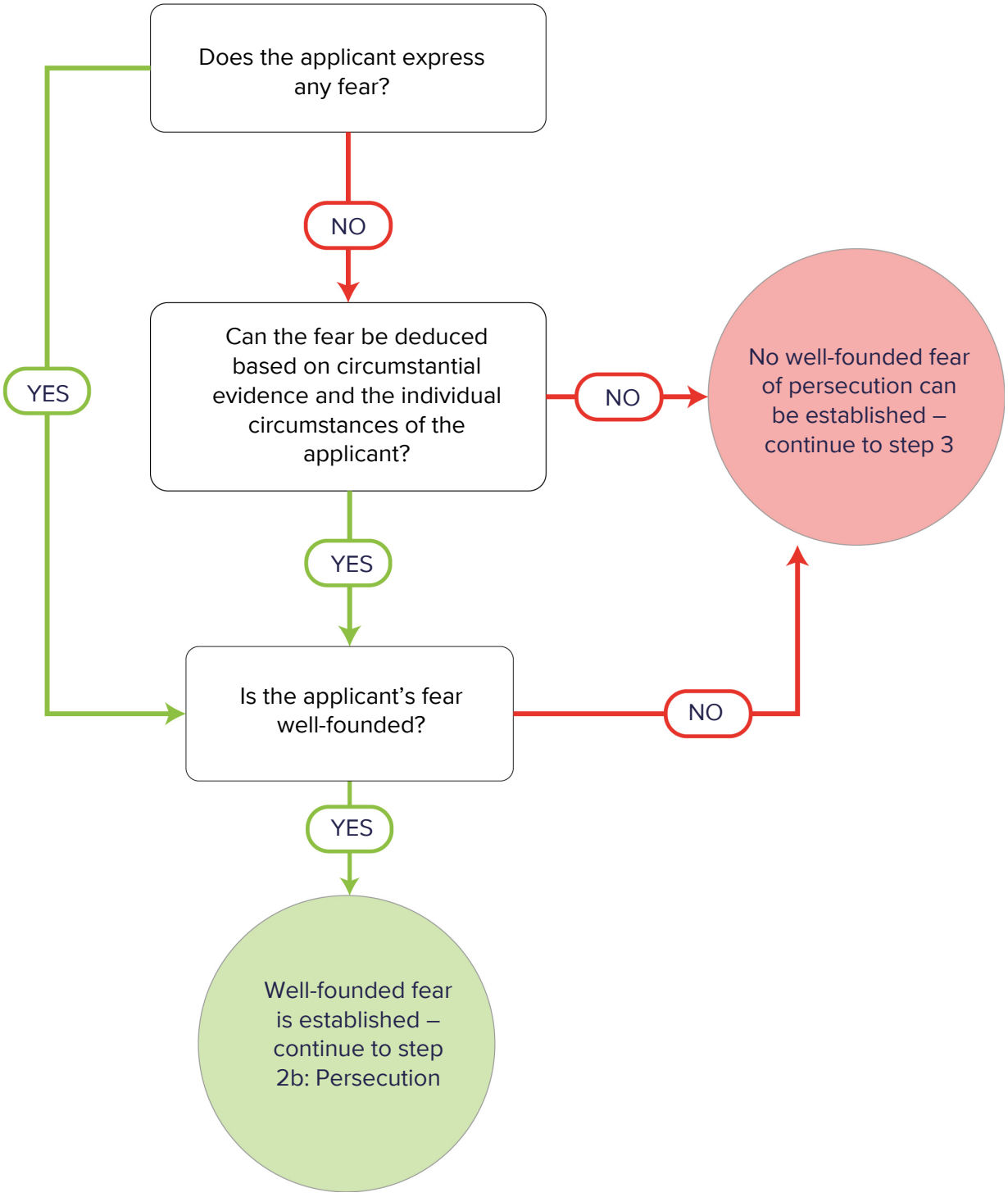
([28]) Article 4(4) QR.
([29]) Article 11(1), second paragraph, QR.
([30]) See also UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/1P/4/Eng/REV.4, paragraph 21, p.104, https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfcdc47.pdf stating that the '*Application of the "compelling reasons" exception is interpreted to extend beyond the actual words of the provision to apply to Article 1A(2) refugees. This reflects a general humanitarian principle that is now well-grounded in State practice.*

**Related EUAA publication**

For more information and guidance on the risk assessment, see EUAA *Practical Guide on Evidence and Risk Assessment*, January 2024, Chapter 3. Step 3. Risk assessment, https://euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.

([31]) Judgment of the Court of Justice of 4 October 2024, *AH and FN v Bundesamt für Fremdenwesen und Asyl*, joined cases C-608/22 and C-609/22, ECLI:EU:C:2024:828, paragraph 57, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CJ0608. Summary available in the EUAA Caselaw database: https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4571.

# Step 2a. Well-founded fear



## 3.2 Persecution

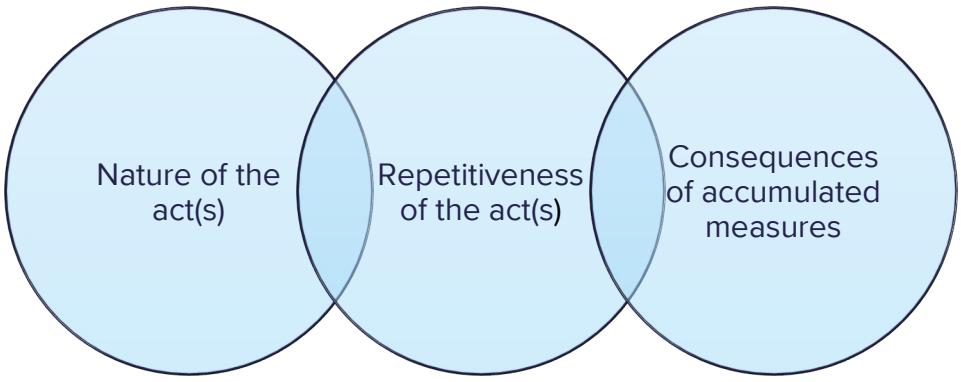
| Refugee Convention | QR |
|---|---|
| Article 1A(2) | Article 9(1) and (2) |

'Persecution' is not defined in the Refugee Convention. The concept is deliberately flexible, adaptable and open, in order to reflect the ever-changing forms that persecution takes.

In order to be regarded as an act of persecution within the meaning of the QR, an act must be one of the following.

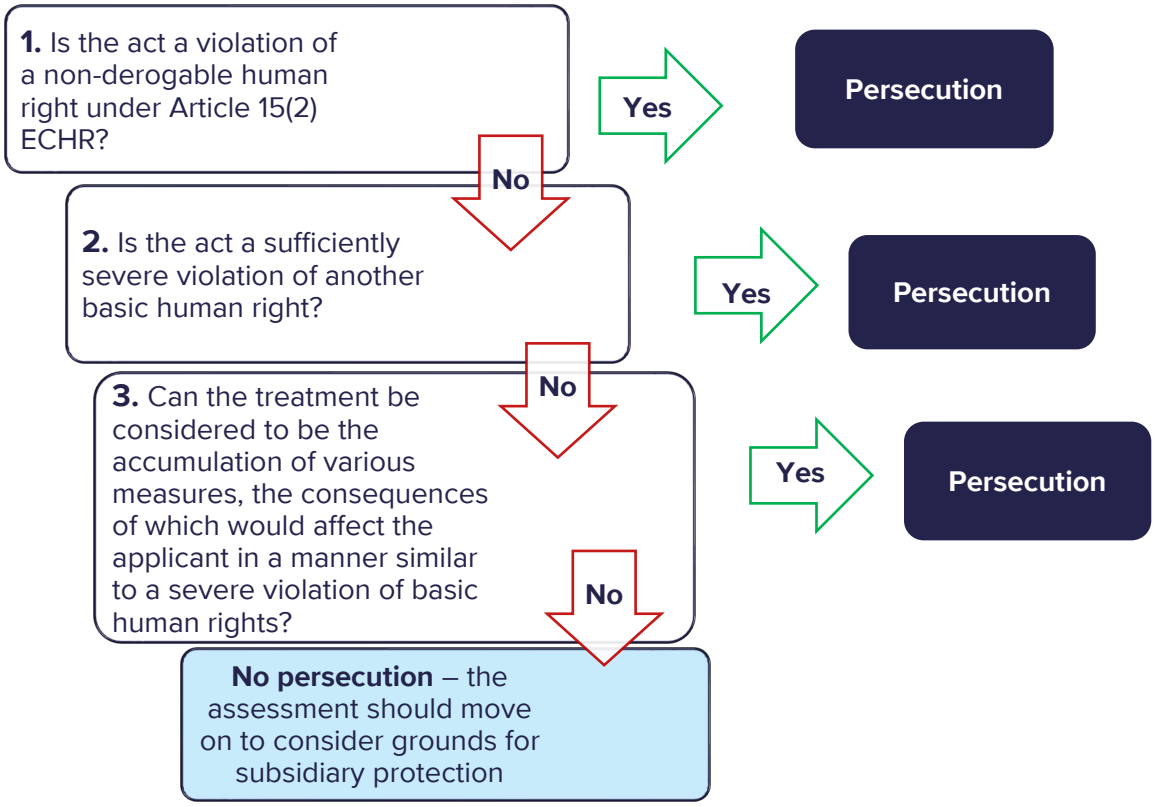
| | |
|---|---|
| **'a. Sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the ECHR' Article 9(1)(a) QR.** | **'b. An accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner to that mentioned in point (a)' Article 9(1)(b) QR.** |

Therefore, not every form of mistreatment or discrimination constitutes persecution. The elements that should be taken into account in order to assess whether an act constitutes persecution are shown below.




Case officers should follow a practical three-step approach, as shown in Figure 5, to assess whether a particular form of treatment amounts to persecution.

**Figure 5. Decision tree for the assessment of persecution**




These steps of the decision tree are detailed further below using guiding questions. To establish that a treatment constitutes persecution, it must always be established that the threshold of severity set out in Article 9(1) QR is reached.

1. **Is the act a violation of a non-derogable human right under Article 15(2) ECHR?**

Non-derogable human rights are rights that are absolute and cannot be subject to any derogation, even in times of war or emergency.

Article 15(2) ECHR ([32]) provides a list of rights that cannot be suspended under any circumstances. They are listed in Figure 6.

([32]) Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, https://www.echr.coe.int/documents/d/echr/convention_ENG.

**Figure 6. Non-derogable human rights**

**Right to life** (except in respect of deaths resulting from lawful acts of war)

**Prohibition of torture and inhuman or degrading treatment or punishment**

**Prohibition of slavery and forced labour**

**Principle of legality in criminal law** (no crime can be considered committed, nor punishment imposed, without a pre-existing penal law)

If the act is not a violation of a non-derogable right under Article 15(2) ECHR, the case officer should move to the next question and step of the decision tree (no 2).

**2. Is the act a sufficiently severe violation of another basic human right?**

**(a) What rights are relevant?**

Other **basic human rights** are derived from relevant human rights instruments, such as those listed below.

- The Universal Declaration of Human Rights.
- The International Covenant on Civil and Political Rights ([33]).
- The International Convention on the Elimination of all Forms of Racial Discrimination.
- The Convention on the Elimination of all Forms of Discrimination against Women.
- The Convention on the Rights of the Child.
- The Convention on the Rights of Persons with Disabilities.

Assessing whether the human rights listed in these instruments can be considered to qualify as basic human rights is a matter of analysing whether they are rights that are of fundamental importance and inherently belong to each individual.

([33]) The International Covenant on Civil and Political Rights also lists certain rights as non-derogable. In addition to the rights granted under Article 15(2) ECHR, it also lists: prohibition of imprisonment because of inability to fulfil a contractual obligation; recognition everywhere as a person before the law; freedom of thought, conscience and religion – the freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**(b) What level of severity is required?**

In order to assess whether the violation of the applicant's basic rights is sufficiently severe, the case officer should look at whether and to what extent the mistreatment affects the applicant's possibility to enjoy the relevant right(s).

If the act does not severely affect the applicant's possibility to enjoy basic rights, the case officer should move to the next step and question of the decision tree (no 3).

**3. Can the treatment be considered to constitute an accumulation of various measures, the consequences of which would affect the applicant in a similar manner?**

The treatment may also amount to persecution if it constitutes an accumulation of various measures that, when taken together, and sometimes in combination with other adverse personal circumstances and/or when taking into account the general context, affect the individual in a similar way to a violation of their basic rights.

'A similar way' does not mean 'the same way', and a lower threshold of severity of the various measures taken individually may suffice as long as the effect of the measures taken cumulatively is similar. The assessment should be made on a case-by-case basis. It should take into account the individual circumstances of the applicant as well as other adverse factors including, for example, a general atmosphere of insecurity in the country of origin.

These various measures may, for example, violate the applicant's economic, social and cultural rights, such as their right to education, health, work, social security or to take part in cultural life.

An example of the accumulation of discriminatory measures amounting to persecution is the cumulation of discriminatory measures towards women that undermine their human dignity, where adopted or tolerated by an actor of persecution. Such measures could consist:

> *inter alia, in depriving them of any legal protection against gender-based and domestic violence and forced marriage, requiring them to cover their entire body and face, restricting their access to healthcare and freedom of movement, prohibiting them from engaging in gainful employment or limiting the extent to which they can do so, prohibiting their access to education, prohibiting them from taking part in sports and excluding them from political life [...] since those measures, by their cumulative effect, undermine human dignity as guaranteed by Article 1 of the Charter [of Fundamental Rights of the European Union]* ([34]).

**Article 9(2) QR**

Article 9(2) QR specifically mentions a non-exhaustive list of acts that, where the threshold required under Articles 9(1)(a) or (b) QR is met, can qualify as persecution. These are:

([34]) *AH and FN*, see footnote 31, paragraph 46.

(a) *acts of physical or mental violence, including acts of sexual violence;*

(b) *legal, administrative, police or judicial measures that are in themselves discriminatory or which are implemented in a discriminatory manner;*

(c) *prosecution or punishment that is disproportionate or discriminatory;*

**Specific considerations**

**Can prosecution qualify as persecution?** Since international protection is not intended to enable persons to escape justice in their country of origin, prosecution or punishment for an offence would not normally mean that a person qualifies as refugee.

However, disproportionate or discriminatory prosecution or punishment can constitute persecution ([35]). In particular, prosecution and punishment could qualify as persecution if one or more of the following applies and the consequences reach the threshold of severity:

- the prosecution is conducted in violation of the due process of law;
- the prosecution is discriminatory (a clear example would be prosecution for reasons of race, religion, nationality, membership of a particular social group or political opinion);
- the punishment is implemented on a discriminatory basis;
- the punishment is disproportionate ([36]).

In these cases, particular attention should be paid to considerations potentially relevant for the exclusion from refugee status. On the examination of potential exclusion cases, consult the EUAA's practical guide on exclusion ([37]).

(d) *denial of judicial redress resulting in a disproportionate or discriminatory punishment;*

(e) *prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion;*

([35]) Article 9(2)(c) QR.

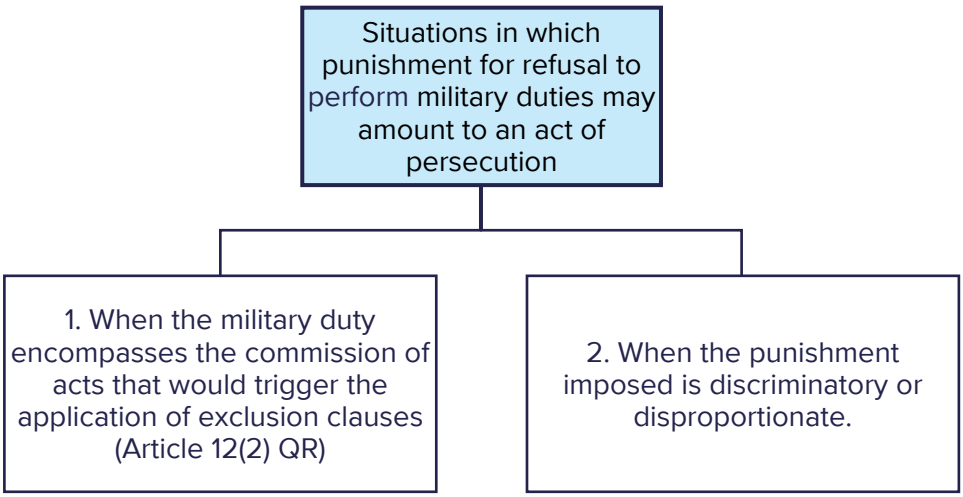
([36]) On the meaning of 'disproportionate' in this context, the EUAA, *Qualification for International Protection Judicial analysis*, Second edition, January 2023, https://www.euaa.europa.eu/publications/judicial-analysis-qualification-international-protection-directive-201195eu, p.66 notes the following: 'The term 'disproportionate' may raise difficult issues as to the applicable standards for assessing proportionality in different legal systems and cultures. Article 9 – indeed all the refugee provisions of the QD (recast) [the 2011 qualification directive] – must be interpreted in accordance with the Refugee Convention as 'the cornerstone of the international legal regime for the protection of refugees' to which all EU Member States are parties (see recital [2 QR]). Recourse to the EU Charter, generally recognised human rights treaties and general principles of public international law can be used to provide further guidance to assess the proportionality of criminal sanctions.'

([37]) EUAA, *Practical Guide on Exclusion from International Protection*, 2026, https://euaa.europa.eu/publications/practical-guide-exclusion-international-protection.

**Specific considerations**

**Can a punishment for refusal to perform military service qualify as persecution?** There are two situations where punishment for refusing to perform military duties may amount to an act of persecution.

**Figure 7. Punishment for refusal to perform military service amounting to persecution**




The first situation is specifically listed as a possible form of persecution under Article 9(2)(e) QR. It covers situations where there is a reasonable risk that the applicant would be directly or indirectly involved in any of the excludable acts listed in Article 12(2) QR.

An example of a situation of indirect involvement in excludable acts relevant to Article 9(2)(e) QR is where the applicant 'would participate only indirectly in the commission of war crimes if it is reasonably likely that, by the performance of [their] tasks, [they] would provide indispensable support to the preparation or execution of those crimes' ([38]). Depending on the circumstances in the country of origin, there are instances where the knowledge by the applicant of their future field of military operation would be irrelevant. For example, 'in the context of all-out civil war characterised by the repeated and systematic commission of the crimes and acts referred to in Article 12(2) [QD] by the army using conscripts, it should be assumed that the performance of [the applicant's] military service will involve committing, directly or indirectly, such crimes or acts, regardless of [their] field of operation' ([39]). Moreover, it does not exclusively concern situations in which it has been established that war crimes have already been committed, but also applies to situations

([38]) Judgment of the Court of Justice of 26 February 2015, *Andre Lawrence Shepherd* v *Bundesrepublik Deutschland*, C-472/13, ECLI:EU:C:2015:117, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CJ0472, ruling point 1, second bullet point. Summary available in the EUAA Case Law Database: https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2728.

([39]) Judgment of the Court of Justice of 19 November 2020, *EZ* v *Bundesrepublik Deutschland*, C-238/19, ECLI:EU:C:2020:945, paragraph 38, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62019CJ0238. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1360.

where 'it is highly likely that such crimes will be committed' ([40]). The assessment should also take into account whether there was an available alternative to refusal to perform military service by means of which the applicant could have avoided participating in the alleged war crimes. If there was an available procedure for obtaining conscientious objection status and the applicant did not avail themselves of such procedure, persecution would not be substantiated under Article 9(2)(e) QR ([41]).

The second situation occurs where disproportionate or discriminatory punishment or prosecution is imposed for refusing to perform military service. Disproportionate punishment or prosecution are actions that go beyond what is necessary for the state concerned to exercise its legitimate right to maintain an armed (42).Discriminatory punishment or prosecution are actions that are imposed or applied differently depending on individual or group characteristics, such as race, religion, gender, etc. with no legitimate reason for such unequal treatment. It can present itself in situations, among others, where the applicant refuses to perform military service on moral, religious or political grounds or due to their belonging to a particular ethnic group or holding a particular citizenship ([43]).

Additional guidance on the evasion of military service is provided in the Section 4.5 Political opinion.

(f) *Acts of a gender-specific or child-specific nature* ([44]).

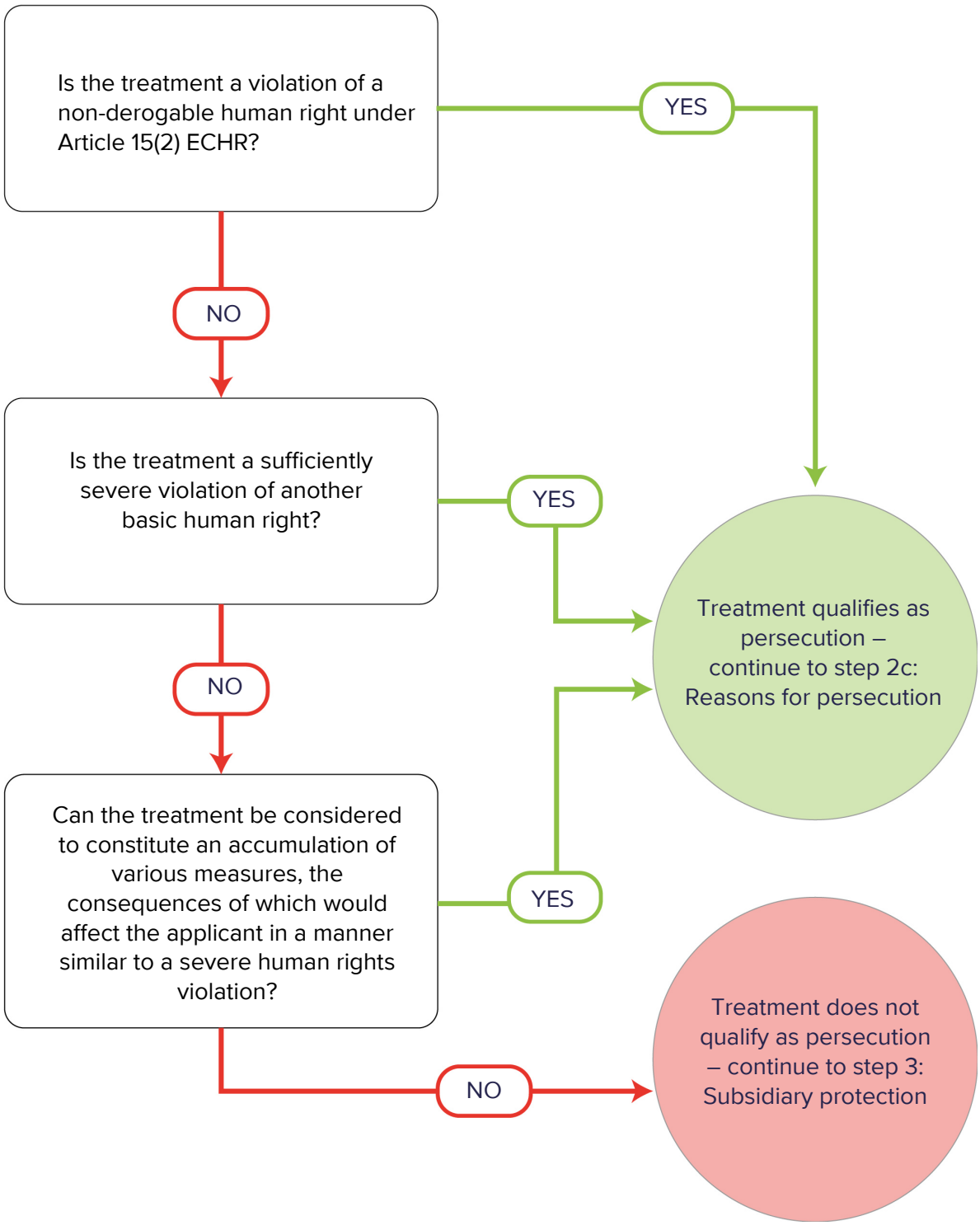
Acts of persecution of a gender-specific or child-specific nature could involve, for example, and depending on the circumstances, 'under-age recruitment, genital mutilation, forced marriage, child trafficking and child labour, and trafficking for sexual exploitation' ([45]). Acts of persecution of a child-specific nature involve the infringement of the specific rights of the child, such as those laid down in the Convention on the Rights of the Child ([46]) and its optional protocols ([47]).

Such acts could be committed for different reasons, including in connection to race, religion,

([40]) *Shepherd*, see footnote 38, paragraph ruling point 1, third bullet point.
([41]) *Shepherd*, see footnote 38, paragraph 46. Regarding the availability of alternative service, note that for such service to constitute a legitimate alternative, it should not be punitive in nature and implementation, and its availability should not me merely theoretical. On this, see UNHCR, *Guidelines on International Protection No. 10*, 2014, https://emergency.unhcr.org/sites/default/files/Guidelines%20on%20International%20Protection%20No.%2010.pdf.
([42]) See, in this respect, *Shepherd*, see footnote 38. This judgement also specifies that it is for the national authorities assessing the disproportionate or discriminatory nature of the punishment or prosecution to carry out an examination of all the relevant facts concerning the country of origin of the applicant for refugee status, including the laws and regulations of that country and the manner in which they are applied.
([43]) Recital 38 QR and Article 9(2)(c) QR.
([44]) Articles 9(2)(d) and (e) QR.
([45]) Recital 37 QR.
([46]) UNGA, Convention on the Rights of the Child, New York, 20 November 1989, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.
([47]) UNGA, *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, 25 May 2000, https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child; UNGA, *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, 25 May 2000, https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children; UNGA, *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, 19 December 2011, https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications.

nationality or political opinion. They could also be gender-based and committed because of the applicant's membership in a particular social group (see the 'Specific considerations' box in the Section 4.4 Membership of a particular social group).

# Step 2b. Persecution



# 4. Refugee status: reasons for persecution

| Refugee Convention | QR |
|---|---|
| Article 1A(2) | Article 10 |

The Refugee Convention and the QR set out an exhaustive list of five reasons for persecution on the basis of which refugee status is recognised: race, religion, nationality, membership of a particular social group and political opinion. These are not mutually exclusive and more than one may be relevant in a given case.

It is also important to note that the reason for persecution may not be an actual characteristic of the applicant but a characteristic that is imputed to them by the actor of persecution ([48]).

> *When assessing if an applicant has a well-founded fear of being persecuted, it is irrelevant whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.* ([49])

Moreover, all the reasons for persecution could be triggered by an action or omission of the applicant. They could also be triggered by association (e.g. due to actions or omissions by family members, social connections, etc.).

> *When assessing if an applicant has a well-founded fear of being persecuted, the determining authority cannot reasonably expect that applicant to adapt or change [their] behaviour, convictions or identity, or to abstain from certain practices, where such behaviour, convictions or practices are inherent to [their] identity, to avoid the risk of persecution in [their] country of origin* ([50]).

Where the relevant individual circumstances and material facts are established through the evidence assessment, the case officer should also consider the applicant's 'convictions, beliefs or orientations' that were concealed fully or in part while in the country of origin and assess if a well-founded fear exist because of them ([51]).

([48]) Article 10(1)(d)(i) and (2) QR.
([49]) Article 10(2) QR.
([50]) Article 10(3) QR.
([51]) Recital 29 QR.

## 4.1 Race

According to the QR ([52]), the concept of **race** must include, in particular, considerations of at least one of the following aspects.

- Colour
- Descent
- Membership of a particular ethnic group

**Colour** relates to physical features and appearances.

**Descent** refers to groups bound by common ancestry, such as members of a tribe, clan, caste or particular hereditary community.

There is no commonly agreed definition of **ethnic group**, but it is generally viewed as a community (including a minority and/or an indigenous people) with common characteristics such as language, religion, common history, culture, customs and mores, way of life or place of residence.

Ethnicity is an element that can be considered both under race and nationality as reasons for persecution (see Section 4.3 Nationality).

## 4.2 Religion

According to the QR ([53]), the concept of **religion** must include, in particular, the forms shown below.

- The holding of theistic, non-theistic and atheistic beliefs
- Participation in, or abstention from, formal worship in private or in public, either alone or in community with others
- Participation in, or abstention from, other religious acts or expressions of view
- Participation in, or abstention from, forms of personal or communal conduct based on or mandated by any religious belief

The forms shown above do not present an exhaustive list and 'religion' has a broad and flexible definition under the QR. The definition 'encompasses all its constituent components,

([52]) Article 10(1)(a) QR.
([53]) Article 10(1)(b) QR.

be they public or private, collective or individual' ([54]). It covers religion as a belief; as an identity, including community customs and mores; and as a way of life, including day-to-day behaviour ([55]). It includes beliefs that emphasise a disbelief or lack of belief in god or gods, 'traditional' religions and one's conversion to a(nother) religion. The definition also covers the possibility of practising the religion in public, including through the propagation of the faith or proselytisation.

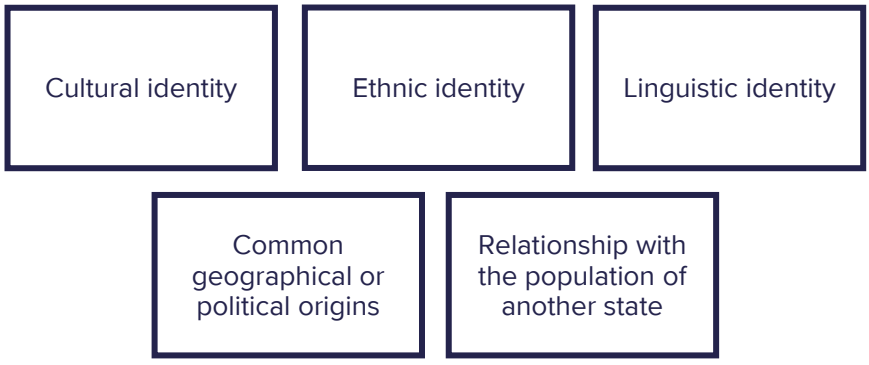
However, it should be noted that the exercise of harmful religious practices that may affect a person's physical or psychological integrity does not fall under international protection within the meaning of the QR.

**Related EUAA publication**

For more guidance on religion-based claims, see the EUAA, *Practical Guide on Interviewing Applicants with Religion-based Asylum Claims*, November 2022, https://euaa.europa.eu/publications/practical-guide-interviewing-applicants-religion-based-asylum-claims.

## 4.3 Nationality

According to the QR ([56]), the concept of **nationality** is not to be confined to **citizenship** or a lack thereof but must, in particular, include **membership of a group determined** by at least one of the elements shown below.




Therefore, nationality as a reason for persecution does not refer to nationality only in the legal sense. It has a broader sociological and socio-political meaning that encompasses the elements shown in the forms above, which does not present an exhaustive list.

([54]) Judgment of the Court of Justice of 4 October 2018, *Bahtiyar Fathi v Predsedatel na Darzhavna agentsia za bezhantsite*, C-56/17, ECLI:EU:C:2018:803, paragraphs 78, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CJ0056.Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=505.

([55]) See EUAA, *Practical Guide on Interviewing Applicants with Religion-based Asylum Claims*, 2022, https://euaa.europa.eu/publications/practical-guide-interviewing-applicants-religion-based-asylum-claims; UNHCR, *Guidelines on International Protection No 6: Religion-based refugee claims under Article 1A(2) of the 1951 Convention and/ or the 1967 Protocol Relating to the Status of Refugees*, 28 April 2004, HCR/GIP/04/06, https://www.refworld.org/policy/legalguidance/unhcr/2004/en/32412.

([56]) Article 10(c) QR.

When it comes to ethnic identity, the grounds of nationality and race often overlap (see the Section 4.1 Race).

It should be noted that persecution of a person for reason of their being stateless is to be considered persecution based on nationality.

**Related EUAA publication**

For more guidance on nationality as a ground for persecution, see the EUAA, *Practical Guide on Nationality*, March 2025, Chapter 6, https://euaa.europa.eu/publications/practical-guide-nationality-concepts-related-nationality-and-statelessness-context-international-protection.

## 4.4 Membership of a particular social group

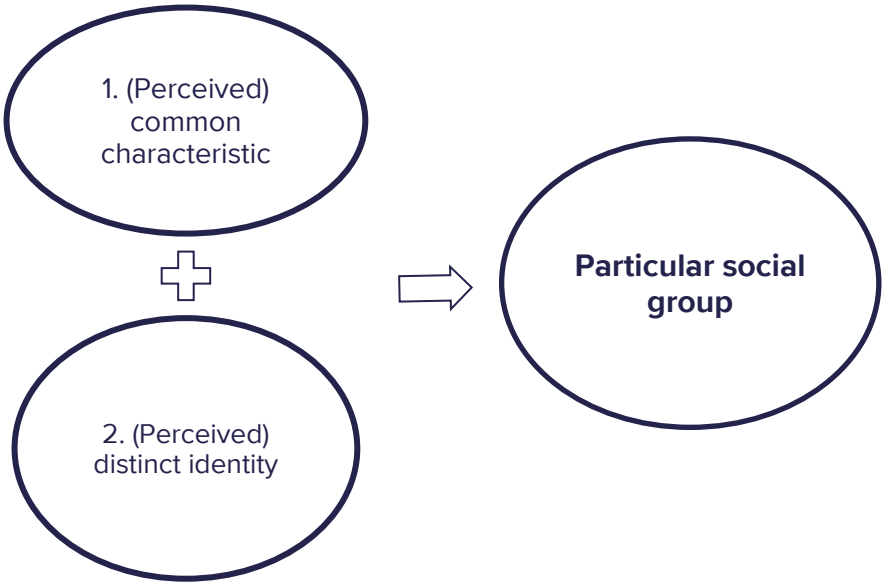
The concept of a 'particular social group' is a flexible construct that can change over time.

> *The concept of membership in a particular social group shall include, in particular, membership of a group:*
>
> *(i) whose members share or are perceived to share an innate characteristic or a common background that cannot be changed, or a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and*
>
> *(ii) which has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society'* ([57]).

For a group to be considered a particular social group, these two conditions must be cumulatively met.

([57]) Article 10(1)(d) QR. See also Judgment of the Court of Justice of 7 November 2013, *X, Y and Z* v *Minister voor Immigratie en Asiel*, C-199/12 to C-201/12, ECLI:EU:C:2013:720, paragraph 40, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0199. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1432; See also Judgment of the Court of Justice of 4 October 2018, *Nigyar Rauf Kaza Ahmedbekova and Rauf Emin Ogla Ahmedbekov* v *Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite*, C-652/16, ECLI:EU:C:2018:801, paragraph 89, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016CJ0652. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=519.

**Figure 8. The elements of a particular social group**




These two elements are further explained in the following section.

### 4.4.1. Common characteristic

The applicant does not need to actually possess the common characteristic. This condition is also satisfied if the common characteristic is attributed or imputed to them by the actor of persecution ([58]).

The common characteristic, including a perceived common characteristic, must fall into one of the following categories.

- **An innate characteristic.** This refers to a trait that is inherent or intrinsic to the individual. Usually, this is a characteristic the person is born with (e.g. sex, gender, congenital conditions and disabilities), but it should be noted that the characteristic does not need to be immutable or unchangeable.
- **A common background that cannot be changed**, such as hereditary status, social or educational background or past experiences.
- A characteristic or belief that is so **fundamental to identity or conscience** that a person should not be forced to renounce it (e.g. sexual orientation); this type of characteristic is typically related to a fundamental human right.

These three categories are complementary and may overlap.

([58]) Article 10(d)(i) QR.

The common characteristic cannot be defined only through the fear of persecution itself. Membership of a particular social group is to be established independently of the acts of persecution of which the members of that group may be victims in the country of origin ([59]).

It is not necessary that the members of the group who share the common characteristic know each other or are cohesive or connected in any way ([60]). The size of the group is also irrelevant ([61]).

### 4.4.2. Perception of a distinct identity

The perception of a group as distinct does not in itself imply a negative view of the group.

The surrounding society's perception may be influenced by culture, customs or traditions. This means that, in assessing this criterion, case officers must duly consider relevant COI. The relevant surrounding society may be the entirety of the applicant's country of origin or be more restricted, for example to part of the territory or population of that country ([62]). The perception of distinct identity must be shared by a substantial proportion of the individuals of that society and not only by single perpetrators of acts ([63]). The 'distinct identity' criterion may be fulfilled in one country and not another. The case officer therefore needs to determine whether the group possesses a distinct identity in the country of origin of the individual applicant, including based on available COI.

The existence of criminal law that specifically targets persons with certain characteristics would support a finding that those persons should be regarded as forming a separate group which is perceived by the surrounding society as being different ([64]). Practices of discrimination, exclusionary practices or general stigmatisation determining the marginalisation of the members of the group may also demonstrate that the 'distinct identity' criterion is fulfilled ([65]).

([59]) Judgment of the Court of Justice of 16 January 2024, *WS* v *State Agency for Refugees under the Council of Ministers (SAR)*, C-621/21, ECLI:EU:C:2024:47, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62021CJ0621. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3956.

([60]) See also Judgment of the Court of Justice of 11 June 2024, *K, L* v *Staatssecretaris van Justitie en Veiligheid*, C-646/21, ECLI:EU:C:2024:487, paragraph 44, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62021CJ0646. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4321.

([61]) UNHCR, *Guidelines on International Protection No. 2: 'Membership of a particular social group' within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, https://www.unhcr.org/media/guidelines-international-protection-no-2-membership-particular-social-group-within-context, point 18.

([62]) *WS*, see footnote 59. Summary available in the EUAA Case Law Database.

([63]) Judgment of the Court of Justice of 27 March 2025, *A.N.* v *Bundesamt für Fremdenwesen und Asyl* (*Laghman*), C-217/23, ECLI:EU:C:2025:218, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62023CJ0217.Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=4946.

([64]) *X, Y and Z*, see footnote 57, paragraph 48. Summary available in the EUAA Case Law Database.

([65]) *WS*, see footnote 59, paragraph 53. Summary available in the EUAA Case Law Database; *A.N. (Laghman)*, see footnote 63. Summary available in the EUAA Case Law database.

**Specific considerations**

**Gender, gender identity, sexual orientation and gender expression** ([66]).

> *Depending on the circumstances in the country of origin, the concept of membership of a particular social group … [must] include membership of a group based on a common characteristic of sexual orientation. Gender related aspects, including gender identity and gender expression, [must] be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group* ([67]).

Circumstances in the applicant's country of origin such as, for example, the existence and application of criminal laws specifically targeting lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals, is an indication that these individuals may be perceived as having a distinct identity in their country of origin ([68]).

Being female is an innate characteristic and the fact of being female is enough to satisfy the 'common characteristic' requirement for membership of the particular social group of women ([69]).

Groups of women who share an additional common characteristic beyond the fact of being women, would also satisfy the 'common characteristic' requirement.

The fact that women, including girls, have genuinely come to identify with the fundamental value of equality between women and men during their stay in a Member State can be also considered as a 'common characteristic' relevant to the identification of a particular social group ([70]).

Depending on the circumstances in the country of origin, the fact that a woman identifies with the fundamental value of equality between women and men may be considered 'a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it' ([71]). And 'the fact that the applicant does not consider that she forms a group with other third-country nationals or all women who identify with that fundamental value, is irrelevant' ([72]).

([66]) For definitions of terms related to sexual orientation, gender identity and gender expression, see EUAA, *Practical guide on applicants with diverse sexual orientations, gender identities, gender expression and sex characteristics – Information note*, November 2024, Chapter 1, https://euaa.europa.eu/publications/practical-guide-SOGIESC-information-note.
([67]) Article 10(1), second paragraph, QR.
([68]) *X, Y and Z*, see footnote 57, paragraph 49. Summary available in the EUAA Case Law Database.
([69]) *WS*, see footnote 59, paragraph 62. Summary available in the EUAA Case Law Database.
([70]) *K, L*, see footnote 60, paragraph 64. Summary available in the EUAA Case Law Database.
([71]) *K, L*, see footnote 60, paragraph 44. Summary available in the EUAA Case Law Database.
([72]) *K, L*, see footnote 60, paragraph 44. Summary available in the EUAA Case Law Database.

To determine whether women as a whole, or women who share additional common characteristics, constitute a particular social group in a given country of origin, the case officer must also assess whether they are perceived as different by the surrounding society. This assessment involves a comprehensive evaluation of the social and moral norms, the legal frameworks as well as cultural attitudes towards women and how these shape their collective identity ([73]).

Issues arising from an applicant's sexual orientation or gender, including their gender identity and gender expression should also be given due consideration. Relevant issues may be related to certain legal traditions and customs and result in, for example, genital mutilation, forced sterilisation or forced abortion ([74]). They are indicators of the perception of these groups by the surrounding society and require further examination in the context of the country of origin ([75]).

**Disability.** Depending on the circumstances, disability could be a characteristic used to define a particular social group ([76]). For example, some mental and physical disabilities may be regarded as innate characteristics, particularly when they are present from birth. Individuals living with other disabilities may be considered to share a common background that cannot be changed. The existence of a distinct identity due to the societal perception of disability must also be examined. Indications of a distinct identity can come from discrimination and stigmatisation, which can take different forms and stem from laws, customs, traditions or myths.

### Related EUAA publications

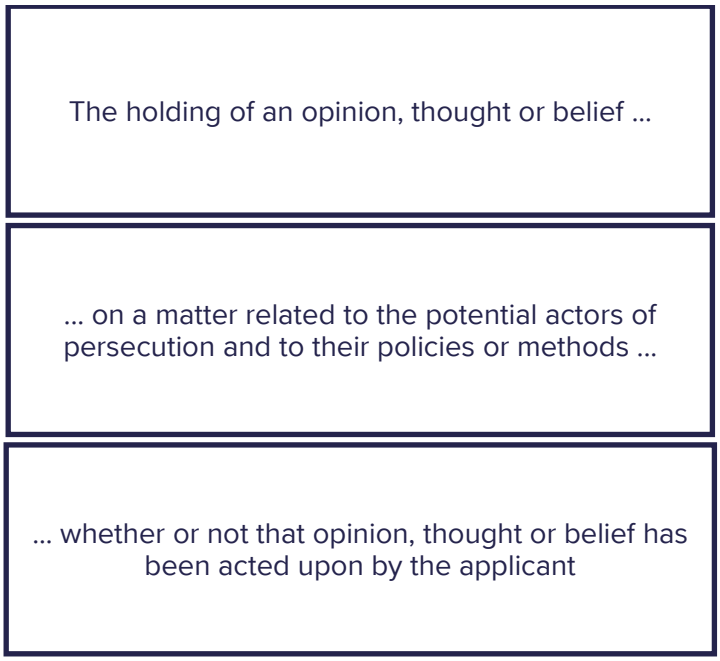
For more guidance on assessing membership of a particular social group as a reason for persecution, see the EUAA, *Practical Guide Membership of a Particular Social Group*, May 2025, https://euaa.europa.eu/publications/practical-guide-membership-particular-social-group.

For more guidance on examining asylum claims based on sexual orientations, gender identities and expressions and sex characteristics, see the EUAA, *Practical Guide on applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics – Examination procedure*, November 2024, https://euaa.europa.eu/publications/practical-guide-SOGIESC-examination-procedure.

([73]) *WS*, see footnote 59, paragraph 52–56. Summary available in the EUAA Case Law Database. See also EUAA, *Practical Guide on Membership of a Particular Social Group*, Second edition, May 2025, Section 4.2.1(b), https://euaa.europa.eu/publications/practical-guide-membership-particular-social-group.
([74]) Recital 40 QR.
([75]) *WS*, see footnote 59, paragraph 57. Summary available in the EUAA Case Law Database.
([76]) Recital 40 QR. For more information, see EUAA, *Practical Guide on Membership of a Particular Social Group*, May 2025, Sections 3.2 and 4.5, https://euaa.europa.eu/publications/practical-guide-membership-particular-social-group.

## 4.5 Political opinion

According to the QR ([77]), the concept of **political opinion** must include, in particular, the following aspects.




An important aspect of the definition provided by the QR is that political opinion, similarly to the other reasons for persecution, may be a reason for persecution not only by the state but also by non-state actors. It is broader than one's views on official government policy. The opinion may relate to the policies of any potential actor of persecution (including non-state actors), the content of such policies and their methods of implementation. While the determining authority 'must take into account ... in particular the degree of conviction of the political opinions relied on by the applicant and whether [they engage] in activities to promote those opinions', it is as such not required that the political opinions are so fundamental or 'deeply rooted in the applicant that ... [they] could not refrain from manifesting them' in order to avoid potential persecution ([78]).

**Specific considerations**

**Imputed political opinion**

Persecution for reason of political opinion is relevant even if the political opinion is only attributed to the applicant where they in fact do not hold this opinion. Below are examples of imputed political opinions that may form grounds for persecution.

([77]) Article 10(1)(e) QR.

([78]) Judgment of the Court of Justice of 21 September 2023, *S, A* v *Staatssecretaris van Justitie en Veiligheid* (State Secretary for Justice and Security), C-151/22, ECLI:EU:C:2023:688, paragraphs 48, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62022CJ0151. Summary available in the EUAA Case Law database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3689.

**Refusal to perform military service.** A political opinion may be imputed where someone has refused to perform military service. For example,

> *in the context of armed conflict, particularly civil war, and where there is no legal possibility of avoiding military obligations, it is highly likely that the authorities will interpret the refusal to perform military service as an act of political opposition, irrespective of any more complex personal motives of the person concerned* ([79]).

In situations where the law of the country of origin does not provide for the possibility of refusing to perform military service, it is possible to establish such refusal in a situation where the applicant has not formalised their refusal through a procedure and has instead fled their country of origin without presenting themself to the military authorities ([80]).

**Civil servants.** In certain contexts, civil servants may be perceived by actors of persecution to hold a political opinion in favour of the government.

**Leaving the country.** In some cases, the mere fact of leaving the country of origin irregularly or staying abroad could be perceived by the authorities in the country of origin as holding a particular political opinion.

**Bringing a complaint against the country before an international court.** In some situations, the involvement of an applicant in filing a complaint against their country of origin before an international court, such as the European Court of Human Rights (ECtHR), can be perceived as an act of political dissent against the government in their country of origin ([81]).

**Defence of personal material and economic interests in a highly corrupt state.** In some instances, the applicant's attempts to defend their material and economic interests through legal action against non-state actors who are linked to the state through corruption can be perceived by those actors of persecution as opposition or resistance to those actors or their policies or methods ([82]).

([79]) *EZ*, see footnote 39, paragraph 60. Summary available in the EUAA Case Law Database.
([80]) *EZ*, see footnote 39, paragraphs 29–32. Summary available in the EUAA Case Law Database. The judgement, in paragraph 31, further specifies that '*the question of whether that refusal was genuine is, like the other elements put forward in support of an application for international protection, to be assessed by taking into account all the relevant facts as they relate to the country of origin at the time of taking a decision on the application, the relevant statements and documentation presented by the applicant, and his or her individual position and his or her personal circumstances.*'
([81]) *Ahmedbekova*, see footnote 57, paragraph 90. Summary available in the EUAA Case Law Database; Judgment of the Court of Justice of 12 January 2023, *P.I.* v *Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos*, C-280/21, ECLI:EU:C:2023:13, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62021CJ0280. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3022.
([82]) *P.I.*, see footnote 81, paragraph 40. Summary available in the EUAA Case Law Database.

**Related EUAA publication**

For more guidance on examining asylum claims based on political opinion, see the EUAA, *Practical Guide on Political Opinion*, December 2022, https://euaa.europa.eu/publications/practical-guide-political-opinion.

## 4.6 The nexus ('for reasons of …')

| Refugee Convention | QR |
|---|---|
| Article 1A(2) | Article 9(3) |

The risk of acts of persecution does not automatically mean a person qualifies as a refugee. There must be a connection between (one of) the reasons for persecution and the acts of persecution or the absence of protection against such acts ([83]). (On actors of persecution and actors of protection see Chapter 7. Actors of persecution or serious harm and Section 8.1 Actors of protection, respectively).

The causal link could therefore be one of the two listed below.

- **A connection to the acts of persecution.** In this case, the feared persecution is linked to the applicant's (actual or imputed) race, religion, nationality, membership of a particular social group or political opinion.
- **A connection to the lack of protection.** In this case, the persecution may be for reasons unrelated to the definition of a refugee, but it is tolerated, encouraged or not prevented by the actors of protection for one of the five reasons given above. The nexus requirement would therefore be satisfied by the lack of protection. This means that

> *where an applicant claims a fear of being persecuted in [their] country of origin by non-State actors, it is not necessary to establish a link between one of the reasons for persecution … and such acts of persecution, if such a link can be established between one of th[e] reasons for persecution and the absence of protection against those acts by the actors of protection* ([84]).

It is for the determining authority 'to assess, in the light of all the circumstances adduced by the applicant for international protection, the plausibility of the connection between the reasons' and the acts of persecution to which they would be exposed upon return ([85]). It is not for the applicant for international protection to prove the connection between the reasons and persecution (or lack of protection) ([86]). An applicant may not be able to demonstrate persecutory intentions or motives on the part of the actor of persecution. It may be unrealistic to expect that the persecutors have clearly identified themselves, have claimed responsibility

([83]) Article 9(3) QR; See also *WS*, see footnote 59, paragraph 66. Summary available in the EUAA Case Law Database.
([84]) *WS*, see footnote 59, paragraph 70. Summary available in the EUAA Case Law Database.
([85]) *EZ*, see footnote 39, paragraphs 56. Summary available in the EUAA Case Law Database.
([86]) *EZ*, see footnote 39, paragraphs 54-55. Summary available in the EUAA Case Law Database.

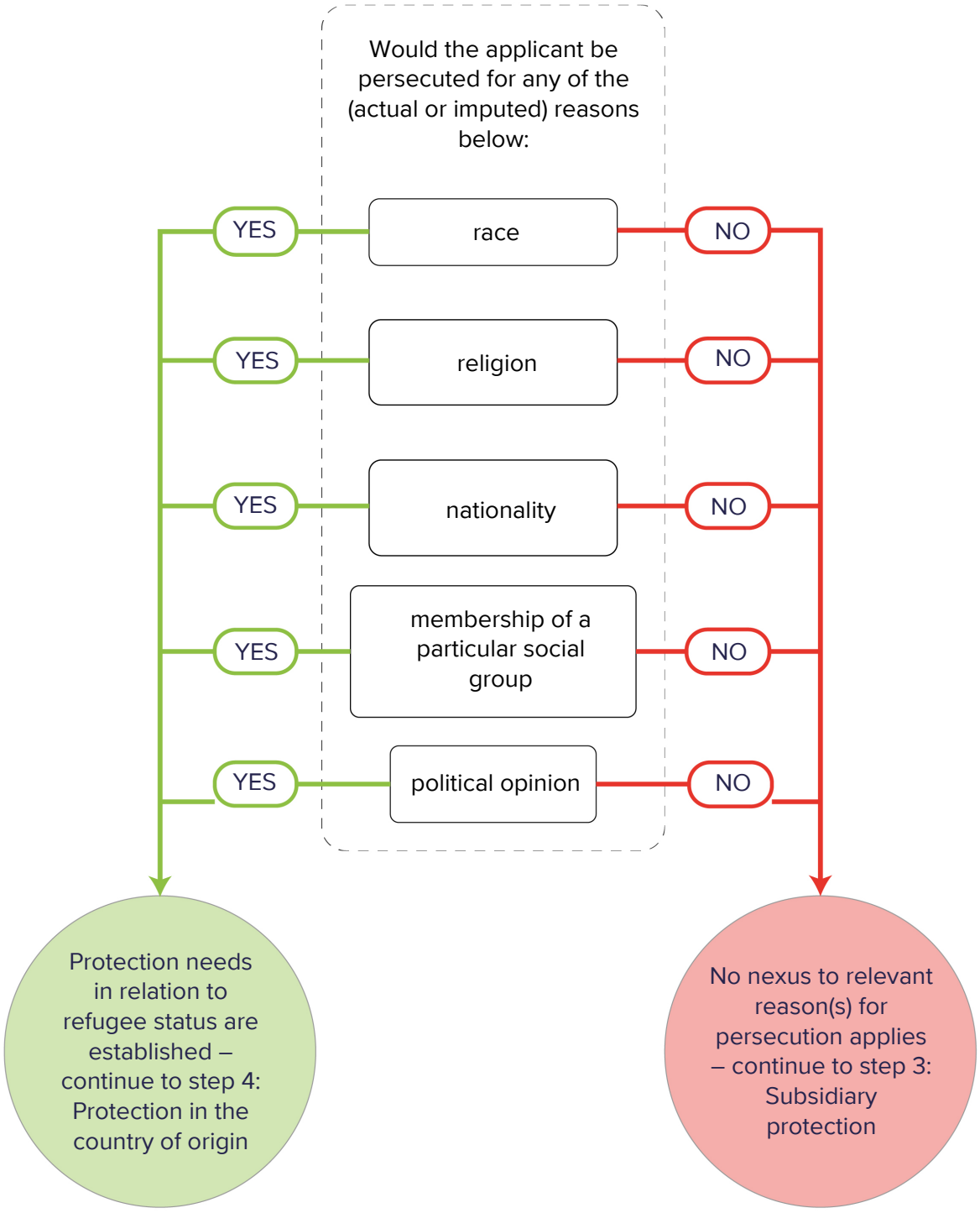
for their actions or have specified their motives. However, it may be possible to draw such an inference from circumstantial elements.

**Specific considerations**

**Plurality of motives.** There may be other reasons why a persecutory act has been or might be performed in addition to the grounds of race, religion, nationality, membership of a particular social group or political opinion. It is important to note that, in order to establish the required causal link, the acts do not need to be solely motivated by (one of) the five grounds.

The five reasons are not mutually exclusive and may overlap. The application of one of the five reasons for persecution is sufficient. Depending on national practice, when more than one of the five reasons apply, refugee status can be granted on the basis of one or more of the reasons.

# Step 2c. Reasons for persecution



# 5. Subsidiary protection

| QR |
| --- |
| Article 3(6) and Article 15 |

As the name suggests, subsidiary protection status should serve as an additional form of international protection that is complementary to refugee status. The determining authority must assess whether the applicant qualifies for subsidiary protection status if the requirements for refugee status are not satisfied ([87]).

As a starting point, there are two elements that need to be clarified with regard to subsidiary protection: 'real risk' and 'serious harm'.

'**Real risk'** refers to the standard of proof that must be met in the risk assessment conducted to assess qualification for subsidiary protection status. It is a factual assessment and 'real risk' is interpreted as corresponding to a **'reasonable degree of likelihood'** that the person is at risk ([88]). The principles of a forward-looking factual risk assessment, based on the situation at the time the decision is made, apply also here. For more details on these, see Section 3.1 Well-founded fear.

**Specific considerations**

**Experience of serious harm in the country of origin.** The fact that the applicant has already suffered serious harm or direct threats of serious harm does not in itself mean that there is a risk of suffering serious harm also in the future. However, having been subjected to serious harm or the threat of it in the past, must be considered as a serious indication of a real risk of suffering serious harm also in the future. In this circumstance, the case officer, if refusing to grant international protection, must demonstrate that there are good reasons to consider that the serious harm will not be repeated if the applicant returns to their country or country of former habitual residence ([89]).

**'Serious harm'** refers to the nature and intensity (gravity) of the interference in the rights of the person. For that interference to be serious it must be of sufficient severity. Moreover, it cannot be any type of harm, discrimination or breach of rights. Article 15 QR specifies the scope of 'serious harm' as shown in Figure 9. The following types of harm imply in themselves sufficient severity.

([87]) Article 39(2) APR.
([88]) EUAA, *Practical Guide on Evidence and Risk Assessment*, January 2024, Section 3.3.1., https://www.euaa.europa.eu/publications/practical-guide-evidence-and-risk-assessment.
([89]) Article 4(4) QR; Judgment of the Court of Justice of 24 April 2018, *MP v Secretary of State for the Home Department,* C-353/16, ECLI:EU:C:2018:276, paragraphs 30-33, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62016CJ0353. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=72.

**Figure 9.The types of serious harm**


Each of the types of serious harm referred to in Article 15(a) to (c) QR constitutes an autonomous ground for granting subsidiary protection status. The conditions of each ground must be fully satisfied in order for subsidiary protection to be granted under that respective ground. In an individual case, a real risk of several types of serious harms may simultaneously exist. Furthermore, certain elements present in a case can be simultaneously relevant to more than one form of serious harm ([90]). In this situation, the elements must be taken into account in assessing all the forms of serious harm that may be at issue ([91]). In order to identify the type of serious harm the applicant may face, the case officer must first assess all factors relating both to the applicant's individual position and personal circumstances and to the general situation in their country of origin ([92]).

There is no established hierarchical or chronological order between the different types of serious harm nor an obligation to follow a particular order in the assessment of the existence of a real risk of suffering one of those types of serious harm ([93]).

Serious harm can be caused either by a state actor, parties or organisations controlling the state or a substantial part of the territory of the state, or by a non-state actor ([94]).

These types of harm require an individualisation of the risk as detailed below.

- The harm relating to the risk of the death penalty or execution or of torture or inhuman or degrading treatment or punishment, referred to in Article 15(a) and (b) QR, covers situations in which the applicant is exposed specifically and individually to the risk of that particular type of harm ([95]).

([90]) Judgment of the Court of Justice of 9 November 2023, *X and Others v Staatssecretaris van Justitie en Veiligheid*, C-125/22, ECLI:EU:C:2023:469, paragraph 44, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022CJ0125. Summary available in EUAA Case Law Database https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3786.
([91]) Opinion of Advocate General Pikamäe of 8 June 2023*, X and Others v Staatssecretaris van Justitie en Veiligheid*, C-125/22, ECLI:EU:C:2023:469, paragraph 40, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CC0125.
([92]) *X and Others*, see footnote 90, ruling point 1.
([93]) 'Opinion of Advocate General Pikamäe of 8 June 2023 in *X and Others*', see footnote 91, paragraph 30.
([94]) Article 6 QR; *WS,* see footnote 59, paragraph 75. Summary available in the EUAA Case Law Database.
([95]) *X and Others*, see footnote 90.

- By contrast, 'the harm defined in Article 15(c), as consisting of a "serious and individual threat to [the applicant's] life or person" covers a more general risk of harm' ([96]). The individualisation required under Article 15(c) does not require that the applicant proves that they are specifically affected by reason of factors particular to their personal circumstances. It requires instead the presence of factors that are specific to the applicant's individual position or circumstances and that would expose them to the risk of harm in the context of indiscriminate violence (that is violence not necessarily directed individually at them). The level of individualisation of the risk required though depends on the level of indiscriminate violence present ([97]). This is addressed more in detail in the Section 5.3.4 Serious and individual threat.

## 5.1 Death penalty or execution

| QR |
| --- |
| Article 15(a) |

The death penalty is, in all circumstances, considered a form of serious harm under Article 15 QR. The sentence does not need to have already been imposed. The mere existence of a real risk that, on return, the death penalty may be imposed on an applicant can be considered sufficient to substantiate the need for subsidiary protection.

Article 15(a) QR encompasses the intentional killing of a person by non-state actors, including members of their family or community, irrespective of the reasons underlying the act ([98]). The term may also include extrajudicial killing.

In line with the CJEU ruling in *WS*, 'where a woman runs a real risk of being killed by a member of her family or community because of the alleged transgression of cultural, religious or traditional norms, such serious harm must be classified as "execution"' ([99]). Note that this is only applicable when all requirements for refugee status are not met.

([96]) Judgment of the Court of Justice of 17 February 2009*, Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie*, C-465/07, ECLI:EU:C:2009:94, paragraph 33, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62007CJ0465. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1409. See also *X and Others*, footnote 90, paragraph 40.

([97]) *X and Others*, see footnote 90, paragraphs 40–42; *Elgafaji*, see footnote 96, paragraphs 35–39. Summary available in the EUAA Case Law Database.

([98]) *WS*, see footnote 59, paragraph 76. Summary available in the EUAA Case Law Database; *A.N. (Laghman)*, see footnote 63, paragraph 43. Summary available in the EUAA Case Law Database.

([99]) *WS*, see footnote 59, paragraph 76. Summary available in the EUAA Case Law Database.

**Specific considerations**

**Moratorium on the death penalty.** Where a moratorium on the death sentence is in place, but the death penalty as such is not abolished, there may still be a real risk of the applicant facing the death penalty or execution ([100]).

**Alternatives to the death penalty.** Alternatives to the death penalty such as life imprisonment, especially where there is no prospect of release, should furthermore be assessed in relation to potential protection needs under Article 15(b) QR.

**Exclusion considerations.** If the death penalty has been imposed for crimes committed by the applicant, exclusion considerations need to be taken into account. See the EUAA's practical guide on exclusion for more details ([101]).

## 5.2 Torture or inhuman or degrading treatment or punishment

| QR |
| --- |
| Article 15(b) |

Article 15(b) QR corresponds in essence to Article 3 ECHR ([102]). The jurisprudence of the ECtHR, therefore, provides relevant guidance on assessing whether treatment may qualify as harm under Article 15(b) QR.


([100]) In this context, it is worthwhile noting that the ECtHR in 2010 held that the intense psychological suffering that can be derived from a well-founded fear of execution is of such a nature and degree to constitute inhuman treatment within the meaning of Article 3 ECHR, which can be relevant under Article 15(b) QR. In the case at stake, the individuals concerned had been under trial for offences which carried the risk of death penalty. The court considered, in particular in paragraph 144, that

> *the applicants have been subjected [...] to the fear of execution by the Iraqi authorities. The Court has held above that causing the applicants psychological suffering of this nature and degree constituted inhuman treatment. It follows that there has been a violation of Article 3 of the Convention.*

ECtHR, 2 March 2010, *Al-Saadoon and Mufdhi v. the United Kingdom*, ECLI:CE:ECHR:2010:0302JUD006149808, https://hudoc.echr.coe.int/eng?i=001-97575, paragraphs 115-144.

([101]) EUAA, *Practical Guide on Exclusion from International Protection*, 2026, https://euaa.europa.eu/publications/practical-guide-exclusion-international-protection.

([102]) *Elgafaji*, see footnote 96, paragraph 28. Summary available in the EUAA Case Law Database; ECtHR, *Guide on Article 3 of the Convention – Prohibition of torture*, 28 February 2025, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_3_eng-pdf.

Jurisprudence often does not distinguish clearly between torture and inhuman or degrading treatment, but in any case, requires that the ill treatment attains a minimum level of severity ([103]).

The evaluation depends on all the circumstances of the case, such as the duration of the ill treatment, its physical and mental effects and, in some cases, the gender, age and state of health of the applicant. The purpose for which the treatment was inflicted and the intention of the perpetrator may also be relevant factors.

As mentioned above, serious harm, as defined under Article 15(b) QR, must be the result of the conduct of an actor of serious harm in accordance with Article 6 QR.

### 5.2.1. Torture

Torture is an aggravated and deliberate form of cruel, inhuman or degrading treatment to which a special stigma is attached.

According to relevant international instruments, such as Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([104]), torture is understood to be an act that:

i. is **intentional**;
ii. inflicts '**severe pain or suffering**, whether **physical** or **mental**';
iii. is committed 'for such **purposes** as obtaining from [the person subjected to torture] or a third person information or a confession, punishing [the former] for an act [they] or a third person has committed or is suspected of having committed, or intimidating or coercing [them] or a third person, or for any reason based on discrimination of any kind'.

While this convention further requires that the act of torture be inflicted by or at the instigation of a public agent, the QR makes it clear that the agents of serious harm may also be non-state actors (see the Chapter 7. Actors of persecution or serious harm ). For example, in *WS* and in *Laghman*, the CJEU ruled that the concept of serious harm under Article 15(b) covers a real threat to the applicant of being subjected to acts of violence inflicted by a member of their family or community, irrespective of the reasons underlying those acts ([105]).

### 5.2.2. Inhuman or degrading treatment or punishment

The terms cover a wide range of forms of ill treatment that reach a certain level of severity.

([103]) ECtHR, *Guide on Article 3 of the Convention – Prohibition of torture*, 28 February 2025, paragraph 5, https://ks.echr.coe.int/documents/d/echr-ks/guide_art_3_eng-pdf.
([104]) UNGA, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, General Assembly resolution 39/46, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.
([105]) *WS*, see footnote 59, paragraph 80. Summary available in the EUAA Case Law Database; *A.N. (Laghman)*, see footnote 63, paragraph 43. Summary available in the EUAA Case Law Database.

**Inhuman** refers to treatment or punishment that deliberately causes intense mental or physical suffering.

**Degrading** refers to treatment or punishment that arouses in the victim feelings of fear, anguish and inferiority capable of humiliating or debasing them ([106]).

It should be stressed that the specific purpose to degrade or to humiliate by the actor of serious harm is not required ([107]). The assessment of whether a treatment or punishment is inhuman or degrading needs to take into account, among other aspects, the individual circumstances of the person, including any vulnerability, who suffers that treatment or punishment ([108]).

**Specific considerations**

**Unavailability of appropriate healthcare**. In *MP,* the CJEU held that, *'[t]he risk of deterioration in the health of a third country national who is suffering from a serious illness, as a result of there being no appropriate treatment in his country of origin, is not sufficient, unless that third country national is intentionally deprived of health care, to warrant that person being granted subsidiary protection […]'*. Consequently, the potential harm that an applicant suffering from a serious illness may experience if returned to their country of origin would not fall under Article 15(b) QR, unless such an applicant were intentionally deprived of healthcare ([109]). Thus, while the unavailability of appropriate healthcare is an important consideration in the context of *non-refoulement* under Article 3 ECHR, it does not fall within the scope of the inhuman or degrading treatment addressed under Article 15(b) QR. As noted above, qualification for international protection under the QR requires the existence of an actor of serious harm ([110]).

**Prosecution and punishment for ordinary crimes.** Prosecution and punishment for ordinary crimes would not normally be characterised as inhuman or degrading treatment or punishment. However, they may constitute inhuman or degrading treatment where there are special aggravating circumstances supporting the assumption that the prosecution or punishment would be grossly unfair or disproportionate. The assessment should also take into account whether the right to a fair trial has been observed.

It is worth noting that inhuman or degrading treatment or punishment can be established even in the case of wrongdoing by the applicant. In the context of prosecution or

([106]) ECtHR, 21 January 2011, *M.S.S. v. Belgium and Greece,* paragraph 220, ECLI:CE:ECHR:2011:0121JUD003069609, https://hudoc.echr.coe.int/fre?i=001-103050.
([107]) *M.S.S.*, see footnote 106, paragraph 220.
([108]) *M.S.S.*, see footnote 106, paragraph 219; see also ECtHR, 15 December 2016, *Khlaifia and others v. Italy*, ECLI:CE:ECHR:2016:1215JUD001648312, paragraph 160, https://hudoc.echr.coe.int/fre?i=001-170054.
([109]) Judgment of the Court of Justice of 24 April 2018, *MP* v *Secretary of State for the Home Department,* C-353/16, ECLI:EU:C:2018:276, paragraphs 51 and 58, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62016CJ0353. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=72. See also Judgment of the Court of Justice of 18 December 2014, *Mohamed M'Bodj* v *État belge,* C-542/13, ECLI:EU:C:2014:2452, paragraphs 40-41, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CJ0542. Summary available in Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2256.
([110]) Article 6 QR.

punishment for ordinary crimes, exclusion considerations need to be taken into account. See the EUAA's practical guide on exclusion ([111]).

**Deprivation of liberty.** The state must ensure that a detained person is accommodated in conditions that are compatible with respect for human dignity. The manner and methods of the implementation of this measure must not subject the person to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent to the deprivation of liberty ([112])

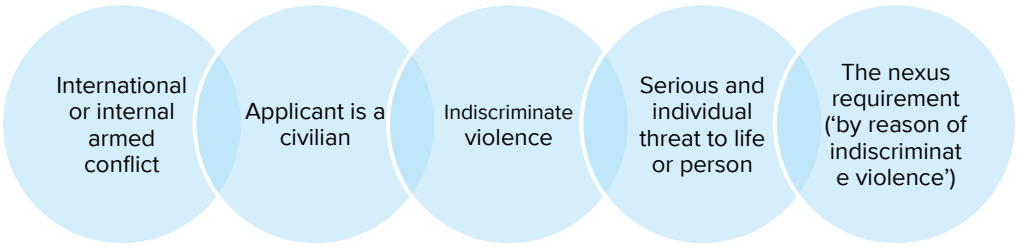
When assessing the conditions of detention, the following elements may be taken into consideration (cumulatively): the number of detained persons in a limited space, the adequacy of their sanitation facilities, heating, lighting, sleeping arrangements, food, recreation and contact with the outside world. The fact that the deprivation of liberty was the outcome of a fair trial is not a relevant element in the assessment of the conditions of detention.

Where critical prison conditions are merely an expression of the humanitarian circumstances in the country of origin, a thorough assessment regarding the existence of an actor of serious harm according to Article 6 QR is necessary. Only when such an actor is established, can subsidiary protection status be granted ([113]).

## 5.3 Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict

| QR |
| --- |
| Article 15(c) |

The elements that need to be established for Article 15(c) QR to apply are shown below.




These elements are addressed one by one in the sections that follow. However, in the examination they should not be assessed each in isolation from the other. They should be

([111]) EUAA, *Practical Guide on Exclusion from International Protection*, 2026, https://euaa.europa.eu/publications/practical-guide-exclusion-international-protection.

([112]) ECtHR, 'Knowledge Sharing platform, Key theme – Article 5: The notion of deprivation of liberty', 28 February 2025, https://ks.echr.coe.int/documents/d/echr-ks/the-notion-of-deprivation-of-liberty.

([113]) See M'Bodj, see footnote 109, paragraphs 35-37. Summary available in EUAA Case Law Database; *MP*, see footnote 109, paragraphs 38, 48-49, 51, 57-58. Summary available in the EUAA Case Law Database.

read together to assess if Article 15(c) as a whole is applicable. It should, furthermore, be noted that the applicability of Article 15(c) QR is highly dependent on the general situation in the applicant's country of origin. Therefore, assessing objective and up-to-date country of origin information is a crucial element in this regard.

### 5.3.1 International or internal armed conflict


The meaning and scope of the phrase 'internal armed conflict' 'must…be determined by considering its usual meaning in everyday language' ([114]).

To establish that an armed conflict is taking place within the meaning of Article 15(c) QR, the following two elements are sufficient:

- two or more armed groups – whether or not they include the state's armed forces – are involved;
- a confrontation is occurring between those armed groups.

To assess whether an (international or internal) armed conflict is taking place, it is not necessary to satisfy the criteria under international humanitarian law ([115]). Nor is it necessary to carry out 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 ([116]). For example, situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, may not be an armed conflict.

Furthermore, in the context of Article 15(c) QR, there is no need to ascertain if an armed conflict that is taking place is international or internal, as the provision is equally applicable in situations of both international and internal armed conflict.

Finally, an armed conflict may be taking place only in parts of the territory of the applicant's country of origin.

([114]) Judgment of the Court of Justice of 30 January 2014, *Aboubacar Diakité* v *Commissaire général aux réfugiés et aux apatrides*, C-285/12, ECLI:EU:C:2014:39, paragraphs 27 and 28, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0285. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2067.

([115]) Recital 51 QR; *Diakité*, see footnote 114, paragraph 35. Summary available in the EUAA Case Law Database.

([116]) Recital 51 QR; *Diakité*, see footnote 114, paragraph 32 and 35. Summary available in the EUAA Case Law Database.

### 5.3.2 Applicant is a civilian


Being a civilian is a prerequisite for being able to benefit from protection under Article 15(c) QR, as the purpose of the provision is to protect only those who are not taking part in the conflict.

The assessment of protection needs is a forward-looking assessment. The term **'civilian'** is considered to refer to a person who would not be a member of any of the parties in a conflict and would not be taking part in the hostilities if they returned. Former combatants who have genuinely and permanently renounced armed activity may qualify as civilians too. When assessing the applicability of Article 15(c) QR with regard to an applicant who has previously taken part in hostilities, it could be relevant to examine whether their participation was voluntary or under duress. In the case of former combatants, exclusion considerations have to be taken into account ([117]).

It should be noted that actively taking part in hostilities is not limited to openly carrying arms, but could also include providing substantial logistical and/or administrative support to combatants.

Where there is doubt regarding the civilian status of a person, a protection-oriented approach should be taken and the person should be considered a civilian ([118]).

### 5.3.3 Indiscriminate violence


The term 'indiscriminate' implies that the violence **'might extend to people irrespective of their personal circumstances'** ([119]). 'Indiscriminate', therefore, refers to the nature of the violence and not to its level.

([117]) See EUAA, *Practical Guide on Exclusion from International Protection*, 2026, https://euaa.europa.eu/publications/practical-guide-exclusion-international-protection.

([118]) United Nations, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 50(1), https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-additional-geneva-conventions-12-august-1949-and; EASO, *Article 15(c) Qualification Directive (2011/95/EU) – A judicial analysis*, 2014, Section 1.5.9, p. 21, https://www.euaa.europa.eu/publications/judicial-analysis-article-15c-qualification-directive.

([119]) Recital 50 QR; *Elgafaji*, see footnote 96, paragraph 34. Summary available in the EUAA Case Law Database.

### 5.3.4 Serious and individual threat to life or person


Compared with the provisions established under Article 15(a) and (b) QR which 'cover situations in which the applicant for subsidiary protection is specifically exposed to the risk of a particular type of harm' ([120]), the harm defined in Article 15(c) QR covers a 'more general risk of harm' to the applicant ([121]). 'Reference is thus made, more generally, to a "threat to a civilian's life or person" rather than to specific acts of violence. Furthermore, that threat is inherent in a general situation of an armed conflict giving rise to "indiscriminate violence", which implies that [the violence] may extend to people irrespective of their personal circumstances.' ([122])

The CJEU has further clarified that – contrary to Article 15(b) which 'corresponds, in essence, to Article 3 of the ECHR' – the content of Article 15(c) is different in scope ([123]). Article 15(c) has to be interpreted 'independently, although with due regard for fundamental rights, as they are guaranteed under the ECHR' ([124]).

This element of Article 15(c) QR must be considered in light of the sliding scale, which was introduced by the CJEU in *Elgafaji* ([125]).

#### The sliding scale

The sliding scale distinguishes two types of situations, related to two types of levels of indiscriminate violence:

1. territories where the degree of indiscriminate violence '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 [their] presence** on the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) [QR]' ([126]);
2. territories where indiscriminate violence takes place but does not reach such a high level, with regard to which **additional individual elements** would have to be substantiated ([127]).

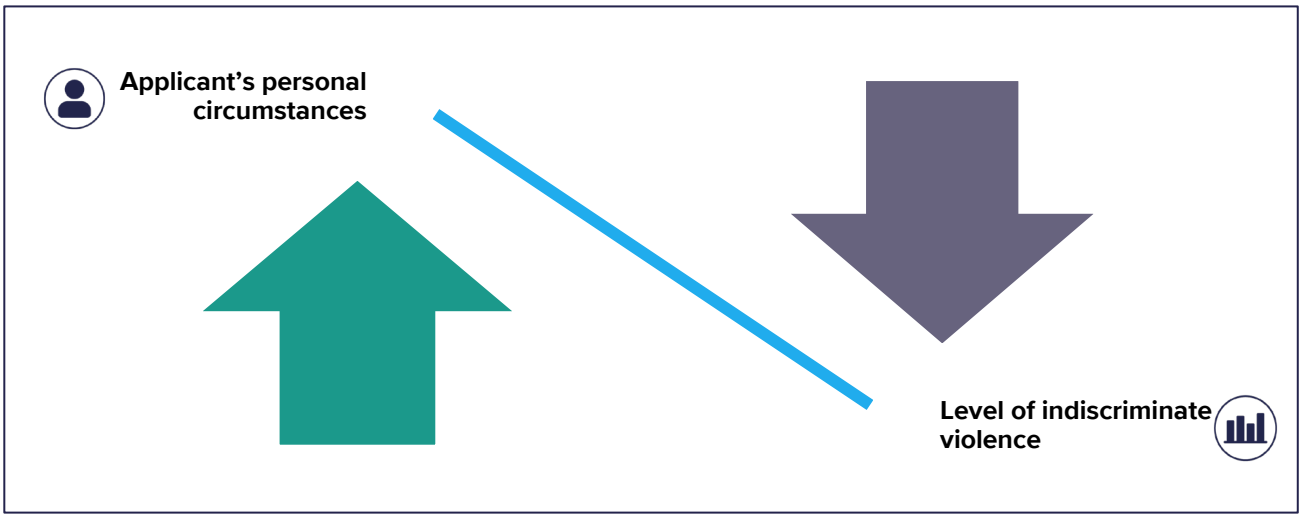
In territories in the first category, the applicant's mere presence would exceptionally be considered sufficient to consider that they would face a real risk of being subject to the

([120]) *Elgafaji*, see footnote 96, paragraph 32.
([121]) *Elgafaji*, see footnote 96, paragraph 33. Summary available in the EUAA Case Law Database; *X and Others*, see footnote 90, paragraph 32-33.
([122]) Judgment of 10 June 2021, *CF, DN* v *Bundesrepublik Deutschland*, C-901/19, ECLI:EU:C:2021:472, paragraph 26, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62019CJ0901. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1834; recital 50 QR.
([123]) *Elgafaji*, see footnote 96, paragraph 28. Summary available in the EUAA Case Law Database.
([124]) *Elgafaji*, see footnote 96, paragraph 28. Summary available in the EUAA Case Law Database.
([125]) *Elgafaji*, see footnote 96, paragraph 39. Summary available in the EUAA Case Law Database.
([126]) Recital 52, QR; *Elgafaji*, see footnote 96, paragraph 35. Summary available in the EUAA Case Law Database (emphasis added); *X and Others*, see footnote 90, paragraph 40.
([127]) Recital 52 QR; *Elgafaji*, see footnote 96, paragraph 39. Summary available in the EUAA Case Law Database.

serious threat, and no further individual elements would need to be substantiated. In this case, the applicant, solely on account of their presence there, faces a real risk of being subjected to serious harm ([128]).

In territories in the second category, the level of indiscriminate violence is not as high and the sole presence of a civilian in that territory would not automatically lead to a real risk sufficient to cause Article 15(c) QR to apply. In these cases, 'the more the applicant is able to show that [they are] specifically affected because of factors particular to [their] personal circumstances, the lower the level of indiscriminate violence required' for Article 15(c) QR to apply ([129]); the higher the level of indiscriminate violence that is taking place, the lower the number of additional factors related to the personal circumstances of the applicant required. This is referred to as the 'sliding scale' test.

**Figure 10. The 'Sliding scale' test (CJEU, *Elgafaji* v *Staatssecretaris van Justitie*)**




### The level of indiscriminate violence

Various indicators may be taken into account when determining the level of indiscriminate violence taking place within (part of) a territory, for example:

- the nature of the methods and tactics of warfare employed by the parties to the conflict ([130]);
- the number of incidents, including their frequency and density in relation to the local population ([131]);
- the number of civilian casualties (including those who have been injured) ([132]);

([128]) Recital 52 QR.
([129]) *Elgafaji*, see footnote 96, paragraph 39. Summary available in the EUAA Case Law Database; Recital 52 QR.
([130]) These include whether they are directly targeting civilians or increasing the risk of civilian casualties and whether the use of such methods and/or tactics are widespread among the parties to the conflict. ECtHR, 28 June 2011, *Sufi and Elmi v. the United Kingdom*, ECLI:CE:ECHR:2011:0628JUD000831907, paragraph 241, https://hudoc.echr.coe.int/eng?i=001-105434. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1682.
([131]) *Sufi and Elmi*, see footnote 130. Summary available in the EUAA Case Law Database.
([132]) *Sufi and Elmi*, see footnote 130, paragraph 241. Summary available in the EUAA Case Law Database; *CF DN*, see footnote 122, paragraphs 32 and 33.

- the intensity of armed confrontations ([133]);
- the presence of the actors in the conflict including whether the fighting between armed groups is localised or widespread ([134]);
- the geographical scope of the indiscriminate violence ([135]);
- potential intentional attacks against civilians carried out by the parties to the conflict ([136]);
- the number of civilians displaced as a result of the conflict ([137]).

Indicators that may be further taken into account to assess whether the indiscriminate violence results in serious and individual threats against civilians are the duration of the conflict and the level of organisation of armed forces ([138]).

*If the actual victims of the violence perpetrated by the parties to the conflict against the lives or persons of civilians in the region concerned constitute a high proportion of the total number of civilians living in that region, this is likely to lead to the conclusion that there might be further civilian casualties in that region in the future* ([139]).However, the absence of such a finding in the region concerned does not systematically exclude the existence of a risk of such a threat. Thus, it must be clearly stipulated that subsidiary protection in terms of Article 15(c) QR cannot exclusively depend on a minimum number of civilian casualties and deaths in the country of origin. ([140])

### Applicant's personal circumstances

The assessment of qualification for subsidiary protection status under Article 15(c) QR in relation to territories of the second category above must take into account any factors relating to the individual position and personal circumstances of the applicant that are likely to contribute to the materialisation of the risk in relation to the level of indiscriminate violence in the country or region concerned.

These factors can include elements specific to the applicant's **person** or their **private**, **family** or **professional life** that may reasonably be presumed to increase the risk of a serious threat to the applicant ([141]). Personal circumstances that may be relevant include age, gender, occupation and/or place of work, health, disability and geographical proximity to areas that are subject to violence ([142]). It needs to be assessed whether these factors would affect the level of exposure of the applicant to the indiscriminate violence.

([133]) *Diakité*, see footnote 114, paragraph 35. Summary available in the EUAA Case Law Database; *CF, DN*, see footnote 122, paragraph 43. Summary available in the EUAA Case Law Database.
([134]) *Sufi and Elmi*, see footnote 130, paragraph 241. Summary available in the EUAA Case Law Database.
([135]) *CF, DN*, see footnote 122, paragraph 43. Summary available in the EUAA Case Law Database.
([136]) *CF, DN*, see footnote 122, paragraph 43. Summary available in the EUAA Case Law Database.
([137]) *Sufi and Elmi*, see footnote 130, paragraph 241. Summary available in the EUAA Case Law Database.
([138]) *CF, DN*, see footnote 122, paragraph 43. To note that a request for a preliminary ruling under case number C-882/25 has been submitted to the Court of Justice on whether humanitarian circumstances are to be taken into account when determining the level of indiscriminate violence as referred to in Article 15(c) QR.
([139]) *CF, DN*, see footnote 122, paragraph 32.
([140]) *CF, DN*, see footnote 122, paragraph 33.
([141]) *X and Others*, see footnote 90, paragraph 67.
([142]) 'Opinion of the Advocate General in *X and Others*', see footnote 91, paragraphs 55-56.

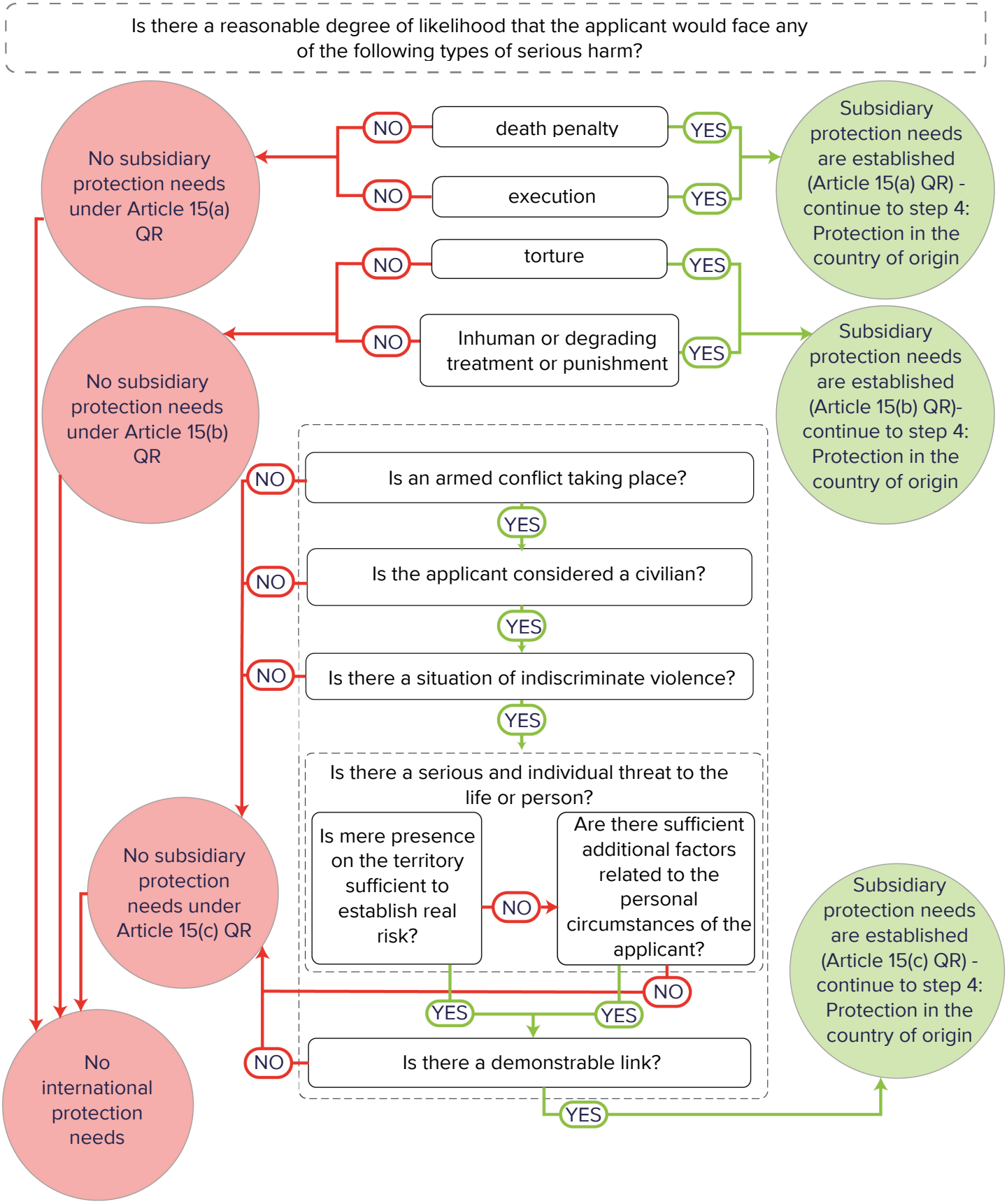
### 5.3.5 The nexus requirement ('by reason of indiscriminate violence')

The nexus requirement ('by reason of indiscriminate violence') refers to the need for a causal link between the indiscriminate violence and the harm (the serious threat to a civilian's life or person).


The interpretation of 'by reason of' may also include the indirect effect of indiscriminate violence in situations of armed conflict, as long as there is a demonstrable link with the indiscriminate violence. For example, certain indirect effects may be taken into account in the assessment, such as those resulting from a complete breakdown of law and order arising out of the conflict ([143]).

([143]) EASO, *Article 15(c) Qualification Directive (2011/95/EU) – A judicial analysis*, 2014, Section 1.4., p.18, https://www.euaa.europa.eu/publications/judicial-analysis-article-15c-qualification-directive. To note that a request for a preliminary ruling under case number C/882-25 has been submitted by the Netherlands to the Court of Justice on whether humanitarian circumstances are to be taken into account when determining the level of indiscriminate violence as referred to in Article 15(c) QR.

# Step 3. Subsidiary protection



# 6. International protection needs arising *sur place*

| Refugee Convention | QR |
|---|---|
| Article 1A(2) | Article 5 |

The condition that an applicant must be outside their country of origin does not mean that, in order to be recognised as a refugee or to be granted subsidiary protection status, they must have left their country of origin because of a well-founded fear of persecution or a real risk of suffering serious harm. The relevant circumstances may arise later and this situation is referred to as '*sur place*'.

*Sur place* claims relevant to international protection can arise from two main situations, which are explained below.

**(a) A well-founded fear of persecution or real risk of suffering serious harm based on events that have taken place since the applicant left their country of origin.**

This wording relates to circumstances, external to and independent of the applicant, that have a direct impact on the applicant's situation and create a well-founded fear of persecution or a real risk of suffering serious harm. These events could relate to a significant change in circumstances in the country of origin, including the intensification of pre-existing factors since the applicant's departure from their country of origin. However, it is not a requirement that these events take place in the country of origin. The actions of third parties may also have an impact on the applicant's individual situation (e.g. a divorce filed by the applicant's spouse or a revelation to the authorities of the country of origin made by an acquaintance stating that the applicant participated in activities demonstrating political dissent).

**(b) A well-founded fear of persecution or real risk of suffering serious harm based on activities that the applicant has engaged in since they left their country of origin, in particular where it is established that the activities in question constitute the expression and continuation of convictions, beliefs or orientations they held in the country of origin.**

When addressing *sur place* situations related to the applicant's actions, case officers must evaluate whether the actors of persecution or serious harm are likely to be aware of and unfavourably disposed towards the applicant's convictions or activities such that the applicant would have a well-founded fear of persecution or face a real risk of suffering serious harm.

The '[e]xpression and continuation of convictions or orientations held in the country of origin' ([144]) does not mean that they must have been previously expressed in the applicant's country of origin. The convictions, beliefs or orientations of the applicant – which are the basis of the activities that could give rise to a well-founded fear of persecution or a real risk of suffering

([144]) Recital 29 QR.

serious harm – need to be taken into account even where they were fully or partially concealed in the applicant's country of origin ([145]).

It is not required that the applicant's activities are the result of convictions or orientations previously held in their country of origin, as they could be relevant even if they derive from convictions that developed or orientations that emerged after the applicant left their country of origin (e.g. when the applicant comes to genuinely identify with the fundamental value of equality between men and women during their stay in a Member State) ([146]).

Where it is established that, since leaving their country of origin, the applicant has deliberately created the necessary *sur place* circumstances

> *for the sole or main purpose of creating the necessary conditions for applying for international protection, the determining authority may refuse to grant international protection, provided that any decision taken on the application for international protection respects the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the 'Geneva Convention'), the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union* ([147]).

The possibility of such an exception aims at avoiding abuses of the international protection regime. However, it should be noted that the assessment of whether the applicant has a well-founded fear of being persecuted or faces a real risk of suffering serious harm always remains forward-looking. The principle of *non-refoulement* should be respected in all cases.

The case officer should pay attention to the situation mentioned in recital 36 QR

> *When assessing a* sur place *application, the fact that the risk of persecution or serious harm is based on circumstances that do not constitute an expression or continuation of convictions or orientations held in the country of origin could serve as an indication that the sole or main purpose of the applicant was to create the necessary conditions for applying for international protection* ([148]).

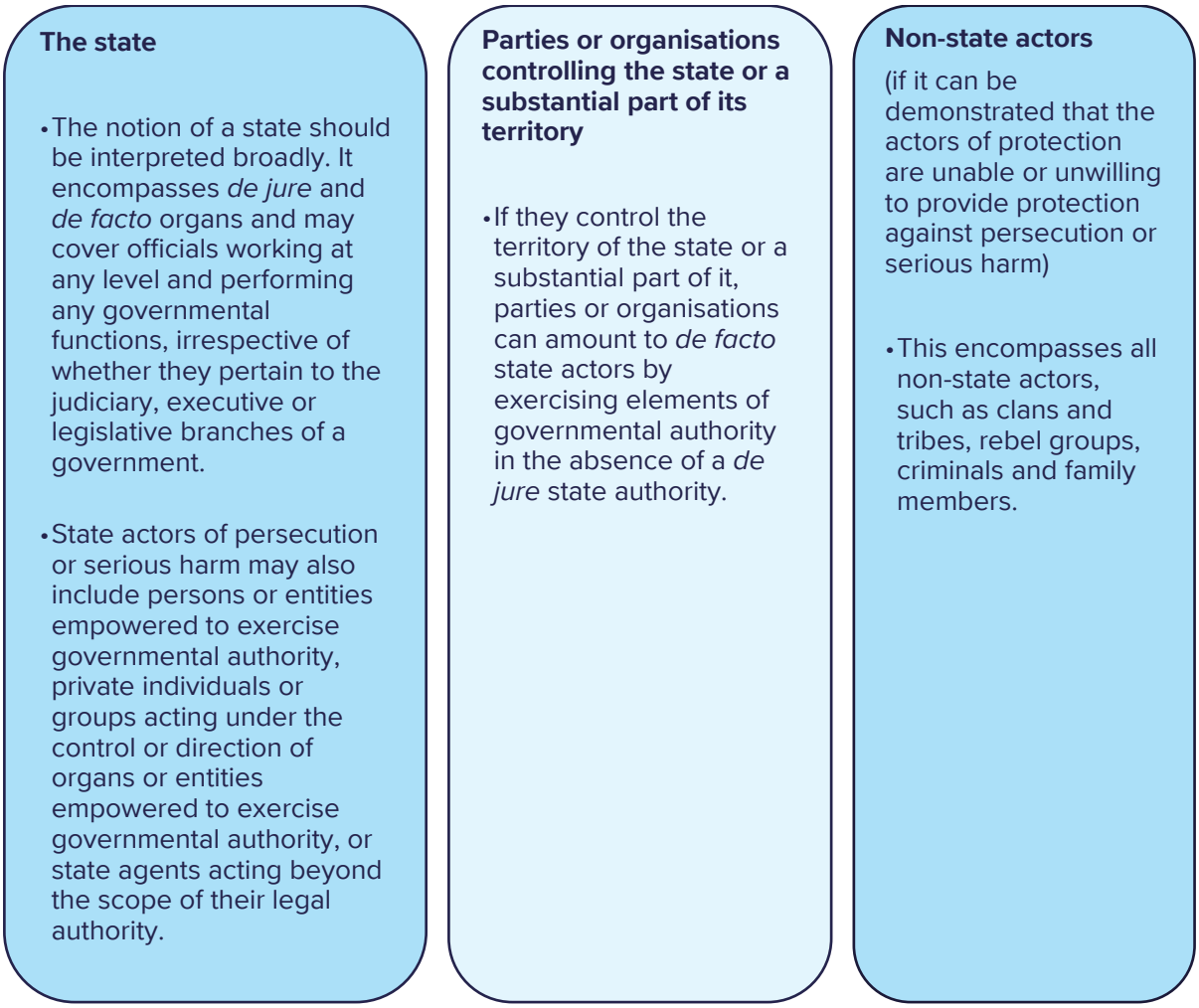
([145]) Recital 29 QR.
([146]) Article 5(2) QR; *K, L*, see footnote 60, paragraph 62. Summary available in the EUAA Case Law Database.
([147]) Article 5(2) QR.
([148]) Recital 36 QR.

# 7. Actors of persecution or serious harm

| Refugee Convention | QR |
|---|---|
| Article 1A(2) | Article 6 |

Potential actors of persecution or serious harm include the following.

**Figure 11. Actors of persecution or serious harm**




Actors of persecution are a key element in the qualification for international protection. The persecution or serious harm must always take the form of conduct on the part of a specific actor.

# 8. Protection in the country of origin

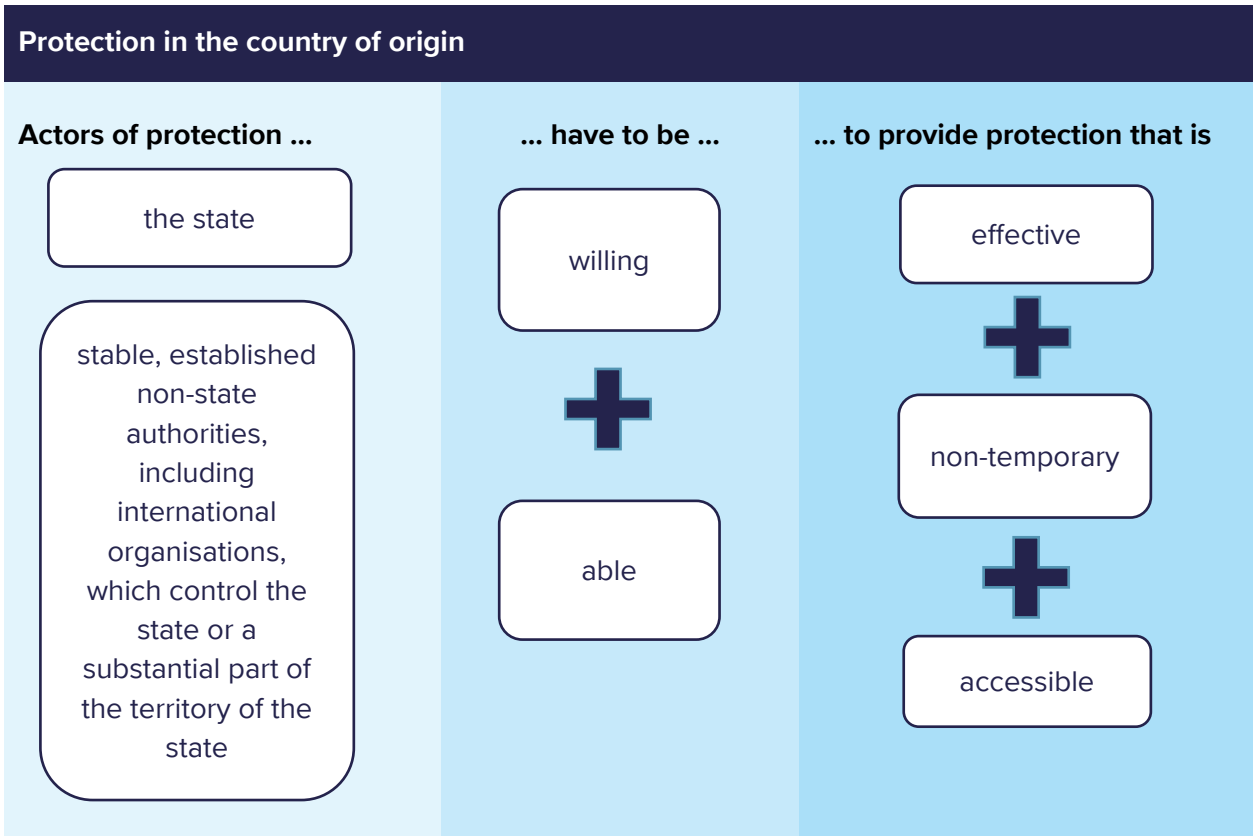
| Refugee Convention | QR |
|---|---|
| Article 1A(2) | Article 7 |

International protection is secondary to the protection available in the applicant's country of origin. For this reason, the assessment of the availability of protection in the applicant's country of origin is a mandatory step in the analysis of the need for international protection. It has to be undertaken if the case officer has previously established that there is a real risk of persecution or serious harm in the event of the applicant's return to their country of origin.

The availability or unavailability of protection against persecution or serious harm does not need to be linked to the reasons for persecution ([149]). A plain failure or inability to sufficiently protect individuals against acts of persecution or serious harm demonstrates a lack of protection; motives or discriminatory reasons on the part of the actors of protection are not a prerequisite.

The table below illustrates the mandatory elements to consider when assessing the availability of protection against the feared persecution or serious harm.

**Figure 12. The elements to assess the availability of protection in the country of origin**




([149]) Article 9(3) QR.

## 8.1 Actors of protection

The list of actors of protection shown in Figure 12 is **exhaustive**.

### 8.1.1 The state

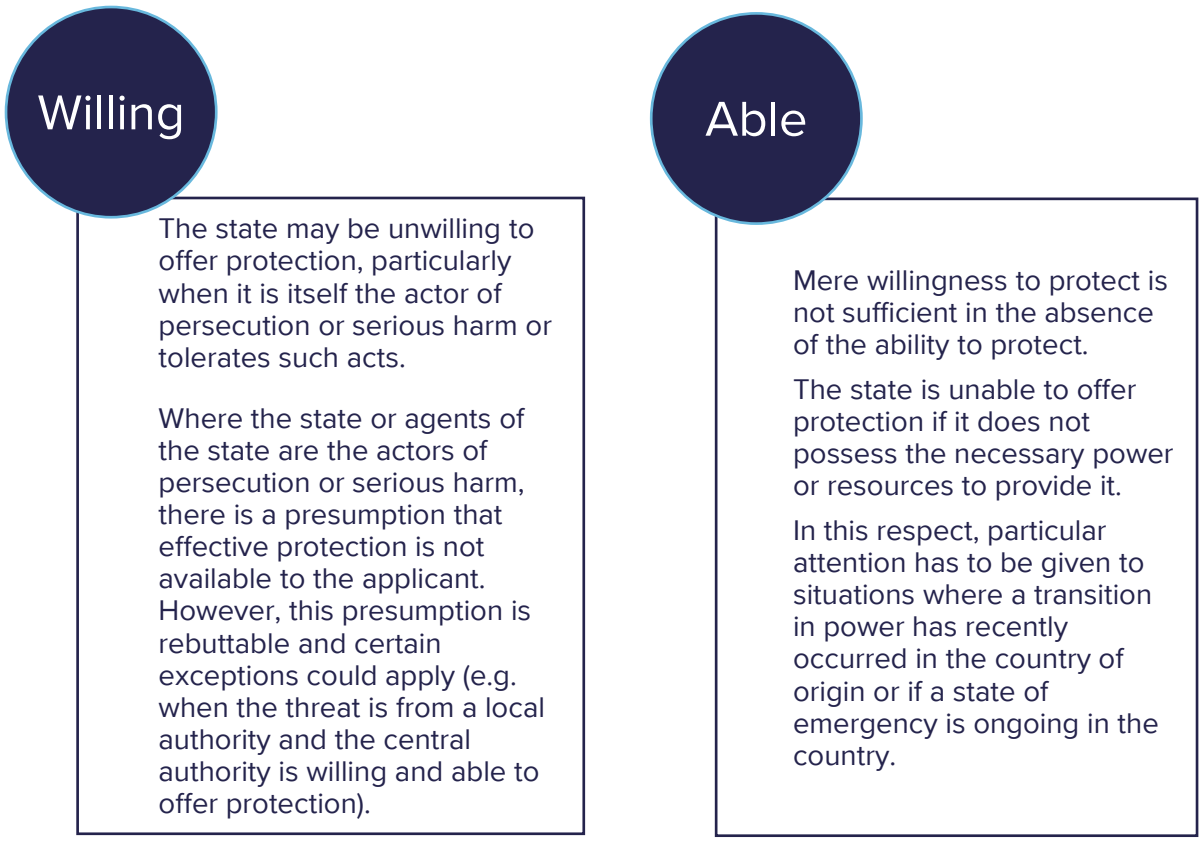
Usually, the state is the primary actor of protection. The term 'state' encompasses any organ performing legislative, executive, judicial or any other functions and acting at any level, be it central, federal, regional, provincial or local.

In some cases, private entities may also be given state powers and made responsible for providing protection that is under the control of the state. This should be pursuant to a measure adopted by the state.

In order to be considered an actor of protection, the state has to control the entire territory of the country of origin or at least a substantial part of it. In some cases, the state may be receiving assistance from parties and organisations, including international organisations, in order to fulfil its protective role. This, however, should be without prejudice to the state having control over the territory or a substantial part of it.

The state must also be both willing and able to provide protection, as explained in Figure 13.

**Figure 13. Protection by the state**



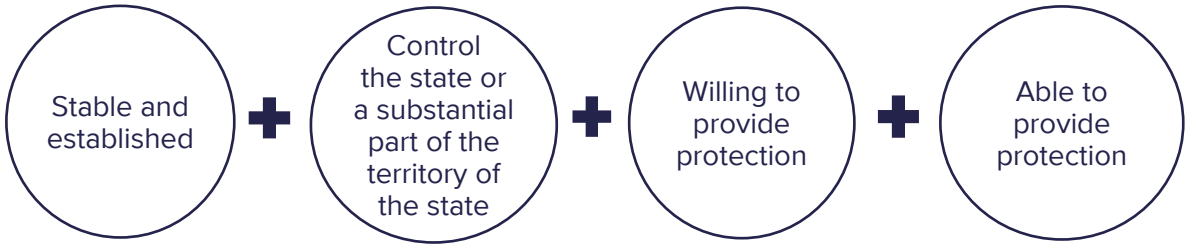
Both conditions have to be satisfied. Protection cannot be considered to be afforded to the applicant where the state is willing but unable to offer protection or able but unwilling to offer it.

The inability and/or unwillingness of the state to provide protection may be particular to the applicant's individual case or of such a general nature that it also applies to the applicant.

### 8.1.2 Stable, established non-state authorities, including international organisations

Non-state authorities may be considered actors of protection provided they meet the following cumulative requirements.

**Figure 14. Protection by stable, established, non-state authorities**




In order to determine that non-state authorities control the state or a substantial part of the territory of the state, they should be established and stable and perform relevant governmental functions. They should also have the actual ability to provide protection that is effective and of a non-temporary nature in order for them to qualify as an actor of protection. Depending on the situation in the country of origin, international organisations may be relevant actors of protection, for example, when they ensure protection through the presence of a multinational force in the territory of the third country ([150]).

The willingness and the ability of stable, established, non-state authorities to provide protection have to be assessed according to the same standards as those applicable to state protection.

*When assessing whether stable, established, non-State authorities, including international organisations, control a state or a substantial part of its territory and provide protection [against persecution or serious harm that is effective and of a non-temporary nature], the determining authority shall take into account precise and up-to-date information on [the relevant] countr[y] of origin obtained from*

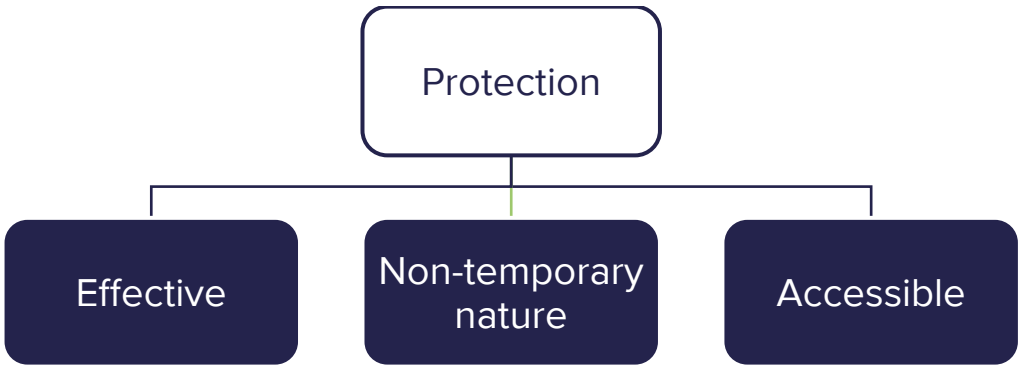
([150]) Judgment of the Court of Justice of 2 March 2010, *Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi and Dler Jamal v Bundesrepublik Deutschland* (*Abdulla*), Joined cases C-175/08, C-176/08, C-178/08 and C-179/08, ECLI:EU:C:2010:105, paragraph 76, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62008CJ0175. Summary available in the EUAA Case Law Database, https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1445.

*relevant and available national, Union and international sources and, where available, [EUAA country guidance documents]* ([151]).

## 8.2 Quality of protection

Protection in the country of origin has to have the following three cumulative qualities.

**Figure 15. The qualities of protection**




### 8.2.1 Effective

Protection is generally considered to be provided where the actors of protection take reasonable steps to prevent persecution or the suffering of serious harm. This can be considered to be provided, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and where the applicant has access to such protection.

The assessment of whether the actor of protection takes **'reasonable steps'** is a practical issue and refers to what measures they can reasonably be expected to take in order to prevent the persecution or serious harm feared by the applicant. What qualifies as reasonable steps depends also on the severity of the feared harm. Certain levels of ill treatment cannot be ruled out even if reasonable steps are taken to prevent persecution or the suffering of serious harm ([152]).

Acts of persecution or acts that cause serious harm normally fall within the ambit of criminal law due to their severity. The actors of protection have to take reasonable steps to prevent these harmful acts and to diminish the risk of their occurrence.

Elements such as the human-rights record, corruption, the sufficiency of resources, the capacity and responsiveness of the law-enforcement system, the capacity and independence

([151]) Article 7(3) QR; The EUAA country guidance documents are available at https://www.euaa.europa.eu/asylum-knowledge/country-guidance.

([152]) For more information on the authorities' positive obligations under international instruments, see also ECtHR, 14 December 2021, *Tunikova and Others v. Russia*, ECLI:CE:ECHR:2016:1215JUD001648312, paragraphs 78 and 135, https://hudoc.echr.coe.int/eng?i=001-213869.

of the judiciary, discriminatory practices with respect to access to protection, may be taken into account when assessing whether effective protection can be provided.

### 8.2.2 Non-temporary nature

Since the examination of the need for international protection is forward-looking, the assessment of whether or not the protection available in the applicant's country of origin is of a non-temporary nature is essential.

Particular care should be taken when assessing this element in relation to protection provided by stable, established, non-state authorities, including international organisations, controlling the state or a substantial part of the territory of the state, given that their control would normally be of a temporary nature.

### 8.2.3 Accessible

The applicant's access to protection in their country of origin has to be assessed in light of both legal and practical obstacles to protection. These obstacles may be related to the personal situation of the applicant, discrimination, cultural barriers, the position of the actor of persecution or serious harm, etc.

Where the state is the actor of persecution or serious harm, it can be presumed that protection is not accessible. This is linked to the requirement of willingness on the part of the state. This presumption can be rebutted as there can be exceptions. (For example, when the actor of persecution is the local branch of the state, but the applicant could access protection by the central state authorities, it would be for the determining authority to demonstrate that the applicant would have access to protection in case of return, despite the state being the actor of persecution. This should be done through an individual assessment. The protection should be effective and non-temporary.)

In order to determine that protection is not accessible in cases where the applicant has already suffered persecution or serious harm, the case officer should consider whether:

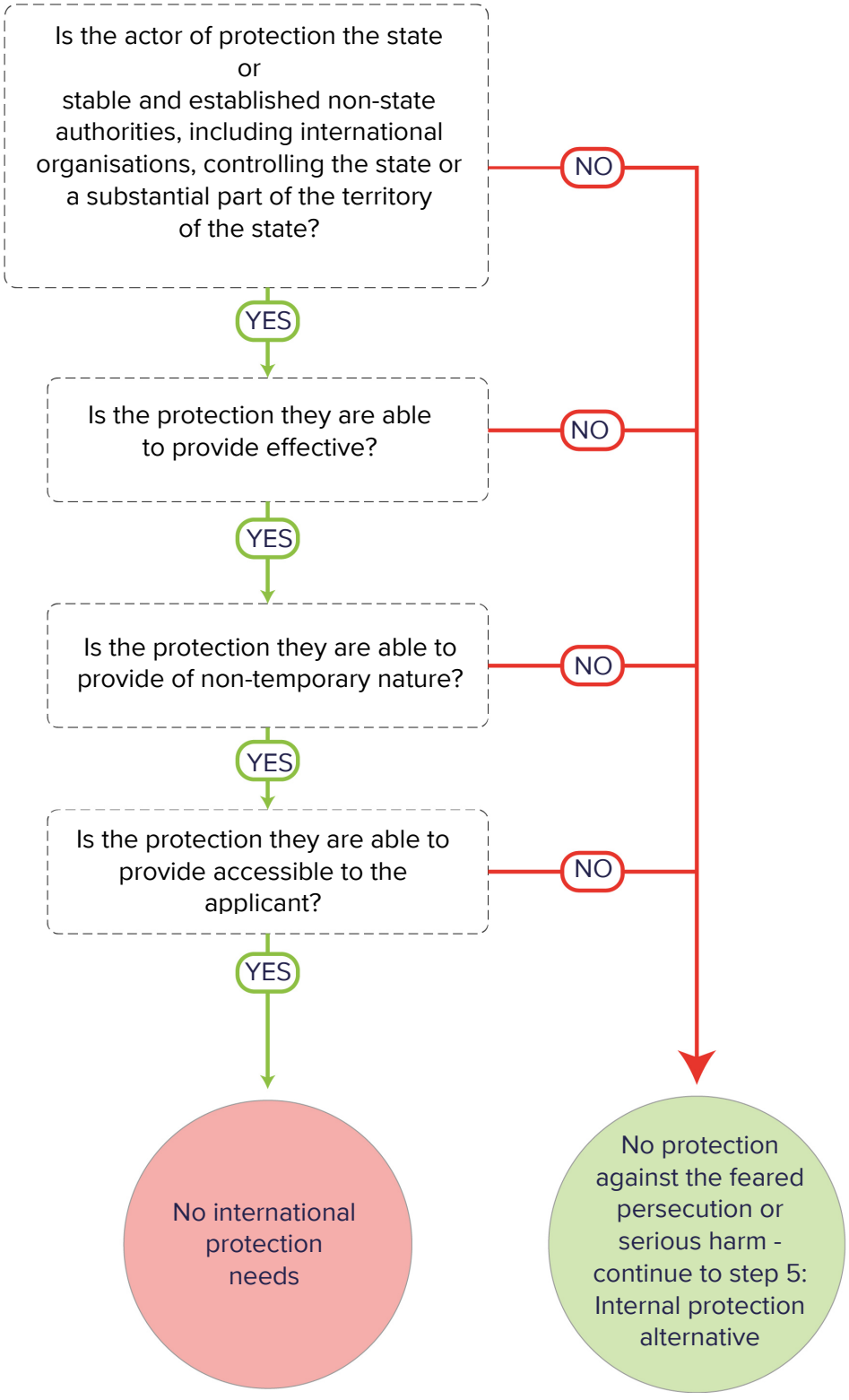
- the applicant unsuccessfully sought protection from the competent authorities in their country of origin; or
- the applicant would not have obtained protection if they had requested it, for example because protection is generally not available or a request would be ineffective or even dangerous.

However, the exhaustion of domestic remedies in the country of origin is not a prerequisite for determining that there is a lack of access to protection against persecution or serious harm.

Due consideration has to be given to the personal circumstances of the applicant. The fact that they have experienced ill treatment by the actor of protection or the actor of protection had previously failed to protect them from persecution or serious harm may be indications of the inaccessibility of protection.

The assessment of the accessibility of protection needs to be forward looking in any case.

# Step 4. Protection in the country of origin



## 8.3 Internal protection alternative

| Refugee Convention | QR |
|---|---|
| Article 1A(2) | Article 8 |

Once it is established that the qualification criteria for the recognition of an international protection status to the applicant would otherwise apply, the case officer must examine if there is a part in the country of origin that is safe, accessible and where the applicant can reasonably be expected to settle ([153]).

Where the state or agents of the state are the actors of persecution or serious harm, it must be presumed that effective protection is not available to the applicant and the case officer does not need to examine whether there is a part of the country of origin to which the applicant could relocate ([154]) The determining authority may only carry out an examination of the possibility of an internal protection alternative (IPA) 'where it is clearly established that the risk of persecution or serious harm stems from an actor whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country' ([155]).

The burden of demonstrating that an IPA is available to the applicant is on the determining authority ([156]). The case officer has a duty to demonstrate that internal protection is available in a particular area of the country of origin (IPA location). This area has to be identified by the case officer. The applicant must be given the opportunity to present evidence and submit any element that indicates that such an alternative is not available to them. The case officer must take into account all evidence presented and submitted by the applicant ([157]).The case officer must also 'take into account precise and up-to-date information obtained from relevant and available national, Union and international sources and, where available, [the EUAA country guidance documents]' ([158]).

For unaccompanied children, additional factors need to be considered when examining the IPA: the best interests of the child must be taken into account and, in particular, the availability of sustainable and appropriate care and custodial arrangements ([159]).

([153]) Article 8(3) QR
([154]) Article 8(2) first paragraph QR.
([155]) Article 8(2) second paragraph QR.
([156]) Article 8(3) QR.
([157]) Article 8(3) QR.
([158]) Article 8(4) QR.
([159]) Article 8(6) QR.

**Figure 16. The criteria for assessing the internal protection alternative**

In order to determine that internal protection is available in **a particular part** of the applicant's country of origin, three cumulative criteria have to be met.

| This part of the country is **safe** for the applicant. | The applicant has **access** to this part of the country. | The applicant can **reasonably be expected to settle** there. |
|---|---|---|

There is no requirement that, before seeking international protection, the applicant should have exhausted all possible avenues for obtaining protection in a different part of their country of origin. The assessment focuses on whether such an alternative is available at the time the decision is made.

### 8.3.1 Safety in a part of the country of origin

An area is safe for the applicant either because there they have no well-founded fear of persecution or serious harm or because in that part of the country they have access to effective and non-temporary protection against persecution or serious harm.

| | |
|---|---|
| **Absence of *a well-founded fear* of persecution or serious harm** | • **There must be no well-founded fear of persecution or real risk of suffering serious harm in the safe area. The reach of the actor of persecution or serious harm has to be examined in this regard**.<br>• There must be **no potential new forms of persecution or real risk of suffering serious harm** that are reasonably likely to arise in the safe area.<br>• Note that, if the state or agents of the state is the actor of persecution or serious harm, there is a presumption that there is no safe area of the country of origin, as generally the state has competence throughout its territory. |
| **Or** | |
| ***Availability of* effective and non-temporary *protection against persecution or serious harm*** | • Protection in the area in question must meet the same requirements as those required for protection against feared persecution or serious harm in the country of origin (see the Section 8.2 Quality of protection).<br>• If the state or agents of the state are the actor(s) of persecution or serious harm, there is a presumption that effective protection is not available to the applicant, as generally the state has competence throughout its territory. As an exception, the determining authority may carry out an examination of the possibility of an IPA where it is clearly established that the risk of persecution or serious harm stems from an actor whose power is clearly limited to a specific |

| | |
|---|---|
| | geographical area or where the state itself only has control over certain parts of the country.<br>• If the persecution or serious harm inflicted by non-state actors is condoned or tolerated by the state, the influence of the non-state actors in the area considered for internal protection has to be examined. |

### 8.3.2 Access to part of the country of origin

In order to determine that an IPA is available in the applicant's country of origin, it is not enough for the case officer to identify a safe part of the country. The applicant must be able to safely and legally travel to that part of the country and gain admittance thereto. The relevant travel route that needs to be assessed is the one from the country of application for international protection to the IPA location in the country of origin.

**Figure 17. Elements of the accessibility of the identified relocation area**


- **Safely travel.** There must be a safe route that the applicant can travel through practically and without risks or undue difficulty to access the safe area of their country of origin
- **Legally travel.** There must be no legal obstacles that prevent the applicant from travelling to the safe area. Obstacles can include legal restrictions or the necessity to possess specific documentation or authorisation to access specific areas of the country. Or, if the applicant needs to pass through a third country to access the safe area, they must be legally able to do so.
- **Gain admittance.** The applicant must be allowed to access the safe area by the actors controlling it.

### 8.3.3 The reasonableness of the applicant settling in that part of their country of origin

The test of reasonableness is focused on whether it is reasonable for the applicant to live in the IPA location, considering both general conditions and relevant personal circumstances. It must be taken into account 'whether the applicant would be able to cater for [their] own basic needs' ([160]) 'in relation to access to food, hygiene and shelter in the context of the local

([160]) Article 8(5)(c) QR.

circumstances in their country of origin' ([161]). This may also include, for example, the opportunities available to the applicant to ensure their own and their family's subsistence, basic healthcare for them and their family and education for their children. The assessment of whether it is reasonable for the applicant to settle in that part of the country must also take into account the individual circumstances of the applicant, such as their 'health, age, gender, including gender identity, sexual orientation, ethnic origin and membership of a national minority' ([162]).

### 8.3.4 Unwillingness of the applicant to avail themselves of the protection of their country of origin

If protection is available in the country of origin, there may be instances where the applicant is unwilling to avail themselves of such protection for justified reasons.

The applicant's unwillingness to avail themselves of the protection of their country of origin (including protection available in another safe part of their country of origin) has to be linked to their fear of persecution or the risk of suffering serious harm ([163]).

Experiences of traumatic events and their lasting consequences could constitute compelling reasons for the applicant's unwillingness to avail themselves of the protection of their country of origin.

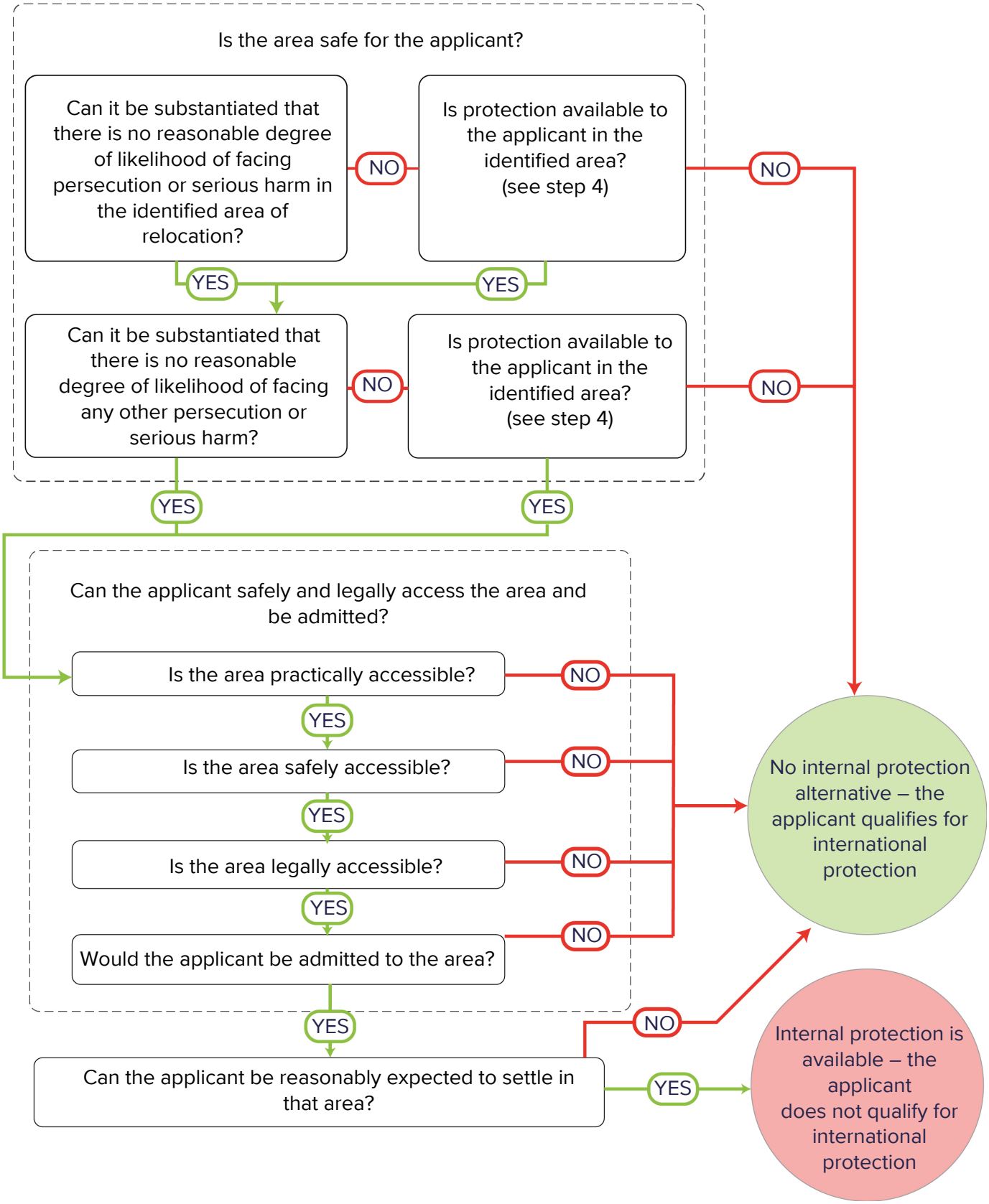
When examining whether an applicant has a well-founded fear of persecution or faces a real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin identified as possible area of relocation, the case officer must, at the time of making a decision on their application for international protection, take into consideration the general circumstances prevailing in that part of the country and the personal circumstances of the applicant. To that end, the case officer must 'take into account precise and up-to-date information obtained from relevant and available national, Union and international sources, and, where available, [the EUAA country guidance documents] ([164]).

**Related EUAA publication**

For more information and guidance on the assessment of the internal protection alternative, see EASO, *Practical guide on the application of the internal protection alternative*, May 2021, https://euaa.europa.eu/publications/practical-guide-internal-protection-alternative.

([161]) Recital 34 QR
([162]) Article 8(5)(b) QR.
([163]) Article 11(1)(2) and Article 16(3) QR.
([164]) Article 8(4) QR. The EUAA country guidance documents are available at https://www.euaa.europa.eu/asylum-knowledge/country-guidance.

# Step 5. Internal protection alternative



Publications Office
of the European Union

euaa
EUROPEAN UNION
AGENCY FOR ASYLUM