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EASO Practical Guide: Qualification for international protection

EASO Practical Guides Series

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EASO Practical Guide: Qualification for international protection

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Introduction to the *EASO Practical Guide: Qualification for international protection*

Why was this practical guide created? The *EASO Practical Guide: Qualification for international protection* is intended as a practical tool accompanying case officers across the European Union and beyond in their daily work.

The purpose of the practical guide is to assist 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.

The starting point for this guide is the legal provisions of the 1951 Geneva Convention and the qualification directive (Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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). The guide goes a step further and translates those legal requirements into guidance for practitioners.

What is the scope of this practical guide? This guide focuses on who qualifies for international protection, referring to both refugee status and subsidiary protection. The term ‘qualification’ is preferred for consistency with the terminology used in the qualification directive. It is understood as being equivalent to terms such as ‘eligibility’ and ‘inclusion’, used in other relevant European Asylum Support Office (EASO) products.

The guide was developed in the context of ongoing negotiations on a proposed qualification regulation. However, its content is based on and refers to the provisions of the current qualification directive. At any time, the user should read it in relation to and be informed by the corresponding provisions of the respective legal instrument in force.

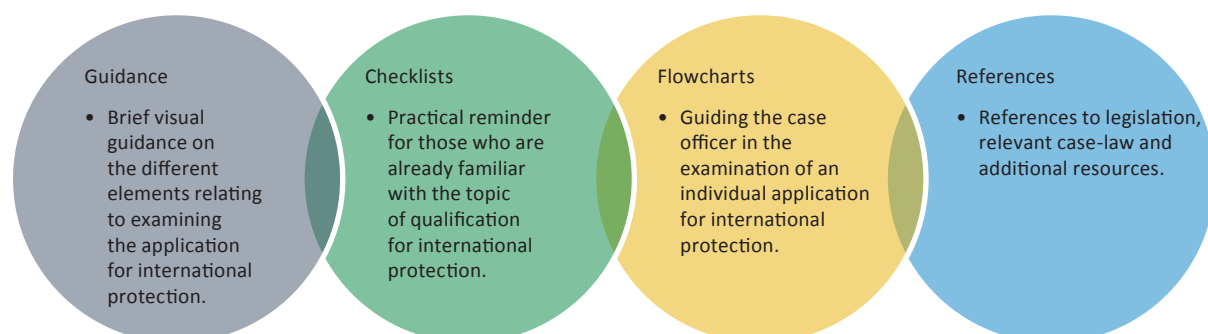
The guide looks at the legal requirements for qualification for international protection and does not consider issues of factual analysis and assessment. For guidance on those issues, the user should see the *EASO Practical Guide: Personal interview* and, in particular, the *EASO Practical Guide: Evidence assessment*.

Moreover, the issue of the exclusion of those found not to be deserving of international protection is outside the scope of the present practical guide. Guidance in this respect can be found in the *EASO Practical Guide: Exclusion*. Exclusion and refugee status protection under Article 1D of the Geneva Convention and Article 12(1) of the qualification directive are also not addressed in detail within the scope of this guide.

Who should use this practical guide? This guide is primarily intended for case officers, interviewers and decision-makers in the national determining authorities. Additionally, it could be a useful tool for policymakers, quality officers and legal advisers, along with anyone interested in the topic of qualification for international protection in the EU context.

The practical guide aims to cater to the needs of case officers with various degrees of experience: from new case officers to those with years of experience. Its layers and content could be used in different ways depending on the needs of the user.

How to use this practical guide. The practical guide is structured in four layers that could be used independently or in an interlinked manner.



In addition to providing structured guidance, this practical guide can be seen as a tool for self-evaluation. It could also be used as a quality supervision and/or coaching tool.

How was this practical guide developed? The guide was created by experts from EU+ states and with valuable input from the European Commission and the United Nations High Commissioner for Refugees. The development was facilitated and coordinated by EASO. Before its finalisation, a consultation on the guide was carried out with all EU+ states.

How does this practical guide relate to national legislation and practice? This is a soft convergence tool that reflects the common standards and incorporates dedicated space for national variances in legislation, guidance and practice.

Each national authority can include relevant pieces of legislation and guidance in the practical guide in the designated spaces in order to provide case officers with one-stop guidance on qualification for international protection.

How does this practical guide relate to other EASO support tools? EASO's mission is to support Member States through, inter alia, common training, common quality and common country-of-origin information. As with all EASO support tools, the *EASO Practical Guide: Qualification for international protection* is based on the standards of the Common European Asylum System. It is built upon the same framework and should be seen as a complement to other available EASO tools. Its consistency with those tools has been a primary consideration, especially in relation to the closely related EASO training curriculum modules on 'Inclusion' and 'Inclusion advanced'. *Qualification for international protection (Directive 2011/95/EU) — A judicial analysis* (produced by IARLJ-Europe under contract from EASO) was also a valuable source in the development of this tool.

This is a practical guide developed within the EASO Quality Matrix process and it should be used in conjunction with other available practical tools: <https://www.easo.europa.eu/practical-tools>

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CHECKLISTS

- ▶ *Practical reminder for those who are already familiar with the topic of qualification for international protection.*
- ▶ *Use the hyperlinks to get additional guidance on a particular topic.*

General principles

- ☐ Apply the legal provisions to the accepted material facts and the results of the risk assessment.
- ☐ Remember that qualification for refugee status should always be examined first.
- ☐ Remember that protection needs may also arise *sur place*.
- ☐ Examine each case individually, objectively and impartially.

'Outside the country of origin': personal and territorial scope

- ☐ Determine the country of nationality or the country of former habitual residence of the applicant.

Refugee status: well-founded fear of persecution

Persecution

Assess whether a particular treatment would amount to persecution by considering the following.

- ☐ Is the act a sufficiently severe violation of human rights, taking one of the forms mentioned, *inter alia*, in Article 9(2) of the qualification directive?
- ☐ Is the act a violation of a non-derogable human right or a sufficiently severe violation of another basic human right?
- ☐ Can the treatment be considered as the accumulation of various measures, the consequences of which would affect the applicant in a similar manner?

Well-founded fear

- ☐ Assess if the applicant has a well-founded fear.
 - Consider all material facts that have been accepted and establish whether there was past persecution or threats thereof.
 - If applicable according to national practice, consider if the past persecution has been of such an atrocious character that the harm, although it would not be repeated, is deemed to be continuous.
 - Analyse whether the threshold of 'well-founded (fear)' is met (reasonable degree of likelihood).

Refugee status: reasons for persecution

Examine if the persecution feared by the applicant is related to one of the following (actual or imputed) reasons.

☐ Race	■ colour ■ descent ■ membership of a particular ethnic group
☐ Religion	■ 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
☐ Nationality	■ citizenship or lack thereof ■ cultural identity ■ ethnic identity ■ linguistic identity ■ common geographical or political origins ■ relationship with the population of another state
☐ Membership of a particular social group	■ sharing or being perceived to share a common characteristic and ■ having or being perceived to have a distinct identity

Refugee status: reasons for persecution

- | | |
|--|--|
| ☐ Political opinion | <ul style="list-style-type: none"> holding an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods whether or not that opinion, thought or belief, has been acted upon by the applicant |
|--|--|
- ☐ Confirm that there is nexus between the (actual or imputed) characteristic and the feared persecution.

Subsidiary protection

Real risk

- Consider all material facts that have been accepted and establish whether there was past serious harm or threats thereof.
- If applicable according to national practice, consider whether the past serious harm has been of such an atrocious character that the harm, although it would not be repeated, is deemed to be continuous.
- Analyse whether the threshold of 'real risk' is met (reasonable degree of likelihood).

Serious harm

Assess if there is a real risk of:

- ☐ death penalty or execution;
- ☐ torture or inhuman or degrading treatment or punishment of an applicant in the country of origin;
- ☐ serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Actors of persecution or serious harm

- ☐ Determine the actor of persecution or serious harm.

Protection in the country of origin

Actors of protection

- ☐ Consider who could be a potential actor of protection:
- the state;
 - parties or organisations, including international organisations, controlling the state or a substantial part of the territory of the state.

Establish whether this actor is:

- able** to provide protection which is:
 - ☐ effective;
 - ☐ non-temporary;
 - ☐ accessible;
- willing** to provide such protection to the applicant.

Internal protection alternative

- ☐ Consider whether there is a specific part of the country of origin where the applicant has no well-founded fear of being persecuted and is not at real risk of suffering serious harm or has access to protection against persecution and serious harm.
- Analyse** whether this part of the country is:
 - ☐ safe;
 - ☐ accessible;
 - ☐ a reasonable place for the applicant to settle.

GUIDANCE

- ▶ *Brief and visual guidance through the different elements in examining an application for international protection.*
- ▶ *Use the writeable spaces to add references to national legislation, guidance and practice.*

General principles [\[back to checklist\]](#)

Legal framework: Geneva Convention and qualification directive

It should be underlined that international protection only comes into consideration where there is no protection by the country of origin; it is thus a substitute for national protection.

The 1951 Geneva Convention relating to the status of refugees and its 1967 Protocol are the main international legal instruments in the field of international protection, in particular with regard to refugee status and the principle of non-refoulement. Subsequently, and through the adoption of the qualification directive (QD), a new form of protection, subsidiary protection, was introduced in the EU. The QD stipulates the legal criteria for qualification for subsidiary protection and further develops the criteria for refugee status. With regard to the latter, the implementation of the provisions of the QD should be based on the full and inclusive application of the Geneva Convention.

Refugee status and subsidiary protection in accordance with the QD.

'Refugee' means:

a third-country national or a stateless person 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 or former habitual residence and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country or, being outside his country of formal habitual residence, is unable or unwilling to return to it, and to whom Article 12 [exclusion] does not apply.

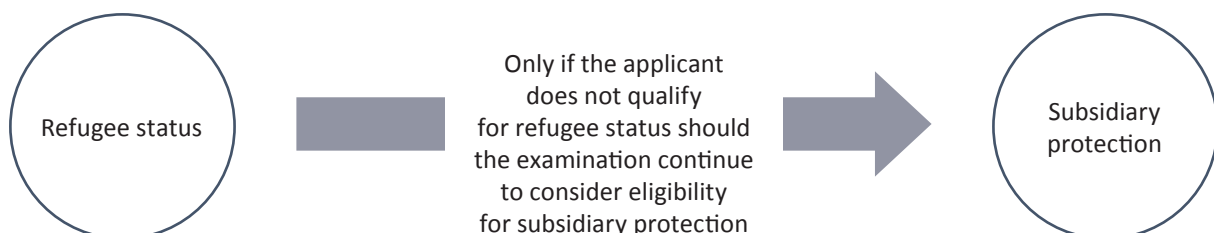
- Article 2(d) QD

'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 the person concerned, 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 [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 2(f) QD

Qualification for refugee status should always be examined first. [\[back to checklist\]](#)



Individual circumstances [\[back to checklist\]](#)

Qualification directive
Article 4

Applications for international protection should always be examined and decisions should always be made individually, objectively and impartially.

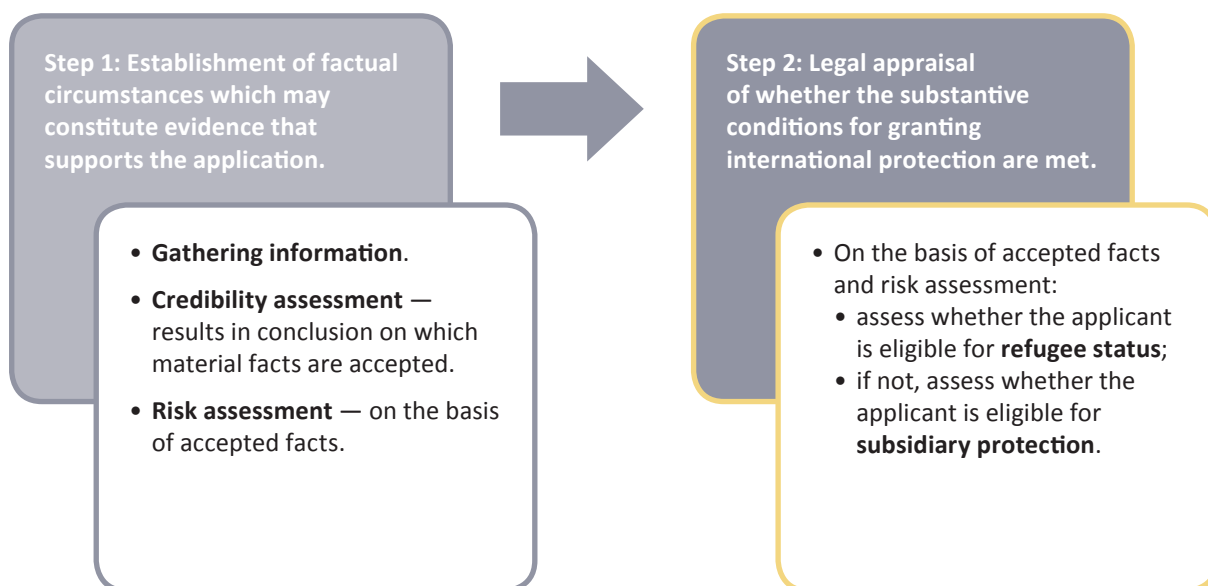
Case-by-case analysis should take into account the following key elements:

- all relevant elements as they relate to the country of origin at the time of making a decision on the application;
- the acts and threats to which the applicant has been or could be exposed;
- the individual situation of the applicant, including factors such as background, gender and age;
- the availability and accessibility of protection in the country of origin.

Protection needs are firstly assessed with regard to the applicant's home area in the country of origin. The home area in the country of origin is identified on the basis of the strength of the applicant's connections with a particular area in that country. The home area may be the area of birth or upbringing or a different area where the applicant settled and lived, and therefore has close connections to it.

Decision-making process [\[back to checklist\]](#)

The decision-making process can be viewed as a two-step process: evidence assessment (establishing the facts) and legal assessment (applying the law). After establishing the factual circumstances (see *EASO Practical Guide: Evidence assessment*), the case officer shall assess whether the substantive conditions laid down in the QD for granting international protection are met. This practical guide focuses on the second step.



Stages of decision-making, in accordance with CJEU judgment in *M.M.* (Case C-277/11).

Step 1 should result in clear understanding as to which material facts are accepted (credibility assessment) and, based on those facts, the degree of likelihood for the applicant to be subjected to treatment which could amount to persecution or serious harm (risk assessment).

In **step 2**, the case officer should take the accepted material facts and the results of the risk assessment and apply the respective legal provisions as explained in this guide.

‘Outside the country of origin’: personal and territorial scope [\[back to checklist\]](#)

- | | | |
|-------------------|---|--|
| Personal scope | { | <ul style="list-style-type: none"> • According to the definitions of the terms ‘refugee’ and ‘person eligible for subsidiary protection’, the personal scope of the QD is limited to third-country nationals or stateless persons. |
| Territorial scope | { | <ul style="list-style-type: none"> • ‘Country of origin’ refers to the country or countries of nationality or, for stateless persons, to the country of former habitual residence. The person should be outside the country of origin. |

Third-country national

The reference to ‘third-country national’ entails that nationals of EU Member States would not fall under the personal scope of the QD.

It should be clear that everyone has the right to apply for international protection. However, in accordance with Protocol (No 24) on asylum for nationals of Member States of the European Union, part of the consolidated version of the Treaty on the Functioning of the European Union, ‘Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, 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.’



Specific considerations

Examining applications by nationals of EU Member States. Although this would rarely arise in practice, the protocol provides that applications by EU Member States’ nationals may be ‘taken into consideration or declared admissible for processing by another Member State’ in some specific circumstances. See full text [here](#).

Stateless persons with former habitual residence in another EU Member State. It should be noted that stateless persons with (former) habitual residence in an EU Member State are not specifically included within the scope of Protocol No 24.

Stateless person

The Convention Relating to the Status of Stateless Persons defines a ‘stateless person’ as a ‘person who is not considered as a national by any state under the operation of its law’. The principles governing determination of statelessness are to be drawn from international law.

The protection provided to stateless persons in accordance with the QD is the same as the protection provided to third-country nationals.



Specific considerations

Article 1D of the Geneva Convention and Article 12(1) QD, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR), may be relevant to take into account.

When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall *ipso facto* be entitled to the benefits of the QD.

In some national legal frameworks, individuals are also able to receive protection based solely on the fact of their statelessness.

National legislation and practice

Importance of determining the country of origin [\[back to checklist\]](#)

Determining the country of nationality or the country of former habitual residence is of decisive importance.

While in many cases the country of origin of the applicant is not a matter of dispute, there are cases where this is at the core of the examination. In this regard, case officers may take the following elements into consideration.

- Every state determines who its nationals are under its own law.
- Establishing nationality is not, however, a simple matter of referring to the nationality legislation of the relevant country of origin.
- Country-of-origin information on both legislation and practice should be consulted.

Country of nationality

- When it has been established that the applicant for international protection is stateless, the country of former habitual residence must be determined.
- 'Habitual residence' implies that the person has resided, whether lawfully or not, in that country.
- The assessment should take into account the duration of the stay in that country, how recent it was and the connection of the person to the country.
- A stateless person can have more than one country of former habitual residence.

Country of habitual residence



Specific considerations

Dual or multiple nationalities. In case of dual or multiple nationalities, it has to be assessed whether the applicant can be protected by any of the countries of his or her nationalities. If protection is available for the applicant in any of the countries of his or her nationalities, he or she is not found to be in need of international protection.

Nationals with residence in a different country. Another possibility is that an applicant holds the nationality of a certain country but has resided in a different country over a prolonged period of time. In such cases, the case officer should assess whether the applicant qualifies as a refugee or is in need of subsidiary protection with regard to the country of his or her nationality.

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

Renouncing nationality. If the applicant states that he or she has renounced his or her nationality, the case officer should assess what rules apply regarding renunciation of nationality in the country concerned, and whether the applicant's actions could have resulted in actual loss of nationality. In the latter case, and if the applicant has no other nationality, he or she should be considered as a stateless person.

Outside the country of origin

'Outside the country of origin' is a purely physical criterion of non-presence.

Directive 2013/32/EU on common procedures for granting and withdrawing international protection (asylum procedures directive — APD) further specifies that its provisions apply to applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States.

This entails that a person who applies for protection at a foreign embassy whilst still in his or her country of origin, for example, would not fall within the territorial scope of the QD and the APD.

Refugee status: well-founded fear of persecution [\[back to checklist\]](#)

Persecution

Geneva Convention	Qualification directive	National legislation
Article 1A(2)	Article 9 Article 4(4)	

'Persecution' is not defined in the Geneva Convention. The notion is flexible, adaptable and sufficiently open in order to reflect ever-changing forms of persecution.

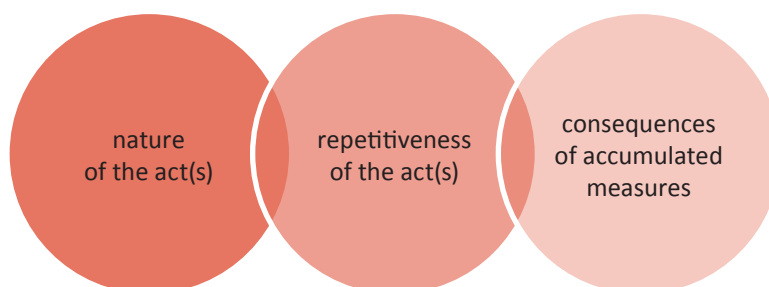
In order to be regarded as persecution within the meaning of the QD, an act must be:

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

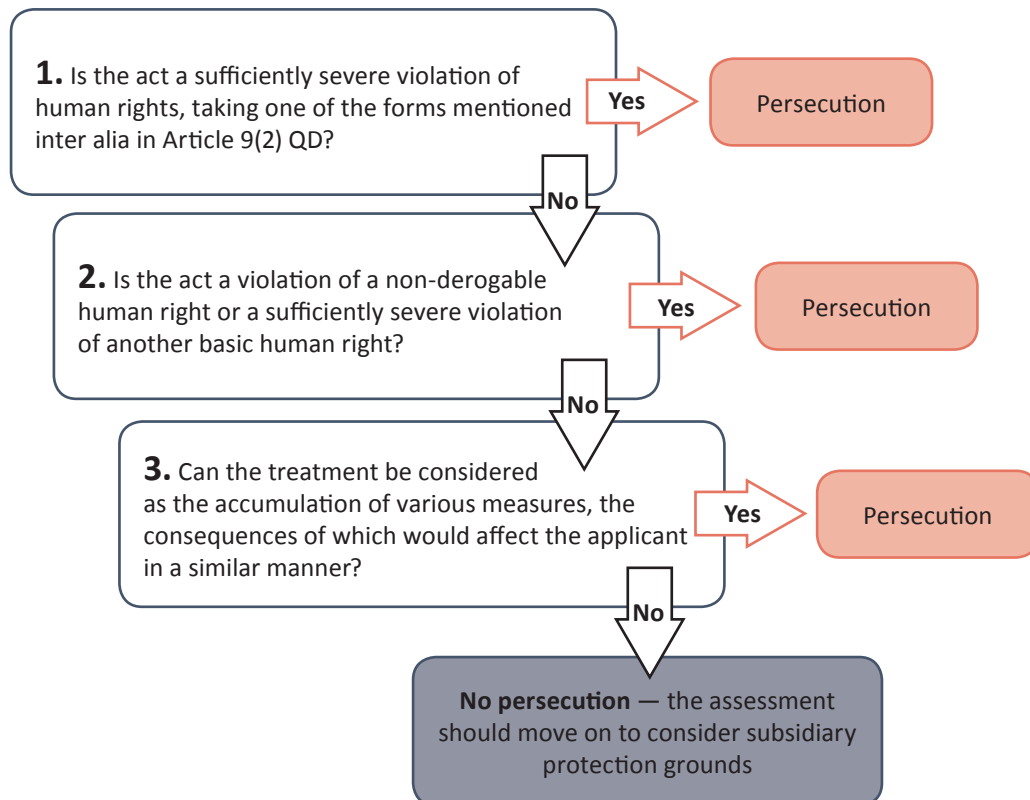
or

b. **An accumulation of various measures**, including violations of human rights, which is sufficiently severe as to affect an individual **in a similar manner** as mentioned in the first point

Therefore, not every form of mistreatment constitutes persecution. The elements that should be taken into account in order to assess whether the level of persecution is reached are:



Case officers can follow a three-step practical approach in order to assess whether a particular form of treatment amounts to persecution, as follows.



These steps are further developed below. They aim to provide practical assistance to the case officer. In order to establish that the treatment would constitute persecution, the threshold of severity in accordance with Article 9(1) QD should always be reached.

1. Is the act a sufficiently severe violation of human rights, taking one of the following forms? [\[back to checklist\]](#)

Article 9(2) QD specifically mentions certain forms which can inter alia qualify as persecution where the required threshold of Article 9(1)(a) or (b) QD is met.

a. Acts of physical or mental violence, including acts of sexual violence. Acts of physical or mental violence qualify as persecution if they are of such intensity that they substantially infringe an individual's physical integrity or mental capacity of independent decision-making.

b. Legal, administrative, police and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner.

c. Prosecution or punishment which 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 entail that a person qualifies as refugee.

However, prosecution could qualify as persecution and result in the qualification of the person as a refugee if one or more of the following applies and the consequences reach the threshold of severity.

- It is conducted in violation of due process of law.
- It 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.
- The punishment amounts to persecution.

It should also be noted that in addition to fearing prosecution, the applicant may have a well-founded fear of persecution on other grounds. In such cases, particular attention should be given to potential exclusion consideration.

d. Denial of judicial redress resulting in a disproportionate or discriminatory punishment.

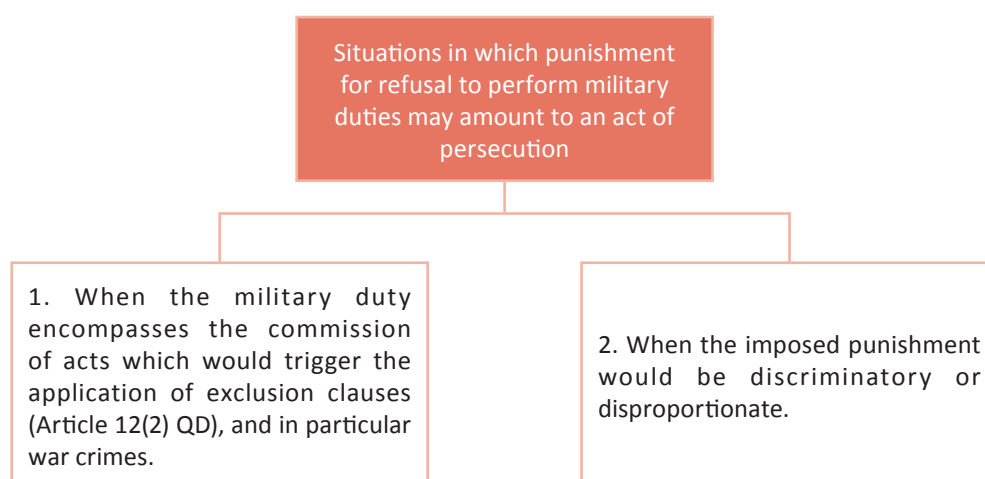
e. Prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion.



Specific considerations

Can punishment for refusal to perform military service qualify as persecution?

There are two situations in which punishment for refusing to perform military duties may amount to an act of persecution.



The first scenario is specifically included as a possible form of persecution under Article 9(2) QD.

It includes situations in which the applicant would have participated only indirectly in the commission of war crimes, such as through providing support of substantial effect to the preparation or execution of those crimes. Moreover, it does not exclusively concern situations in which it is established that war crimes have already been committed, but also where there is a sufficient degree of likelihood to give rise to a real risk of being involved in the commission of such crimes.

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.

Additional guidance on evasion of military service is provided in the section 'Refugee status: reasons for persecution' (subsection 'Political opinion') below.

f. Acts of a gender-specific or child-specific nature.

Acts of a gender-specific nature could involve, for example, sexual violence, genital mutilation, forced abortion or forced sterilisation. Such acts could be committed for different reasons, including with a nexus to race, religion, nationality or political opinion. They could also be gender based and for reasons of membership in a particular social group (see the specific considerations in the section 'Refugee status: reasons for persecution' (subsection 'Membership of a particular social group') below).

Acts of a child-specific nature could include, for example, underage recruitment in the armed forces, child trafficking or child prostitution. They could involve the infringement of specific rights of the child, such as those laid down in the [Convention on the Rights of the Child](#) and its optional protocols.

If the act does not fall under one or more of the above, the case officer should still move to consideration under step 2.

2. Is the act a violation of a non-derogable human right or a sufficiently severe violation of another basic human right? [\[back to checklist\]](#)

a. Which rights?

‘Non-derogable human rights’ refers to rights that are absolute and may not be subject to any derogation, even in time of war or emergency. Article 15(2) of the European Convention on Human Rights (ECHR) provides a list of rights that may not be suspended under any circumstances.

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 servitude

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

Other ‘basic human rights’ could be derived from relevant human rights instruments, such as the following.

- Universal Declaration of Human Rights.
- International Covenant on Civil and Political Rights (ICCPR): It can be noted that this covenant also mentions certain rights as non-derogable. In addition to the rights under Article 15(2) ECHR, those include:
 - prohibition of imprisonment because of inability to fulfil contractual obligation;
 - recognition everywhere as a person before the law;
 - freedom of thought, conscience and religion — 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.
- International Convention on the Elimination of all Forms of Racial Discrimination.
- Convention on the Elimination of all Forms of Discrimination against Women.
- Convention on the Rights of the Child.
- Convention on the Rights of Persons with Disabilities.

Whether the human rights listed in these instruments can be considered to qualify as ‘basic’ will be a matter of analysis of whether they are rights which are of fundamental importance and inherently belong to each individual.

b. What severity?

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

If the act does not fall under the above, the case officer should move to step 3.

3. Can the treatment be considered as the accumulation of various measures, the consequences of which would affect the applicant in a similar manner? [\[back to checklist\]](#)

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

A 'similar' way does not mean the 'same' way, and a lower threshold of severity may suffice. The assessment should be made on a case-by-case basis and taking into account the individual circumstances of the applicant.

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

Well-founded fear [\[back to checklist\]](#)

Within the framework of asylum, the notion of 'well-founded fear' can be viewed as encompassing two aspects, often referred to as its 'subjective' and 'objective' elements. The focus of the assessment is on whether or not the fear is 'well-founded' (i.e. on the objective element).

'Fear'

Fear can be defined as a distressing emotion aroused by impending harm, whether the threat is real or imagined.

The subjective aspect, therefore, relates to the fear that is felt by the applicant.

It should be underlined that psychological reactions differ between individuals, including when faced with the same situation. The experience of fear is intrinsically linked to factors such as the personality, age, sociocultural background and previous experiences of the applicant. Case officers should take into account the applicant's personal situation as well as the expression of fear that emerges from his or her statements.

As the fear of returning to his or her country may emanate from numerous different causes, it is not necessary for all of them to be related to persecution within the meaning of the QD. Moreover, it is not necessary to establish that the fear of persecution is a predominant motive for the applicant, as long as such fear can be identified.



Specific considerations

When the applicant does not express fear. In some cases, the applicant may not explicitly state that he or she experiences fear. In other cases, they may even state that they do not. However, the absence of fear could be considered irrelevant when circumstances would objectively justify that anyone in such circumstances would be facing a risk.

'Well-founded'

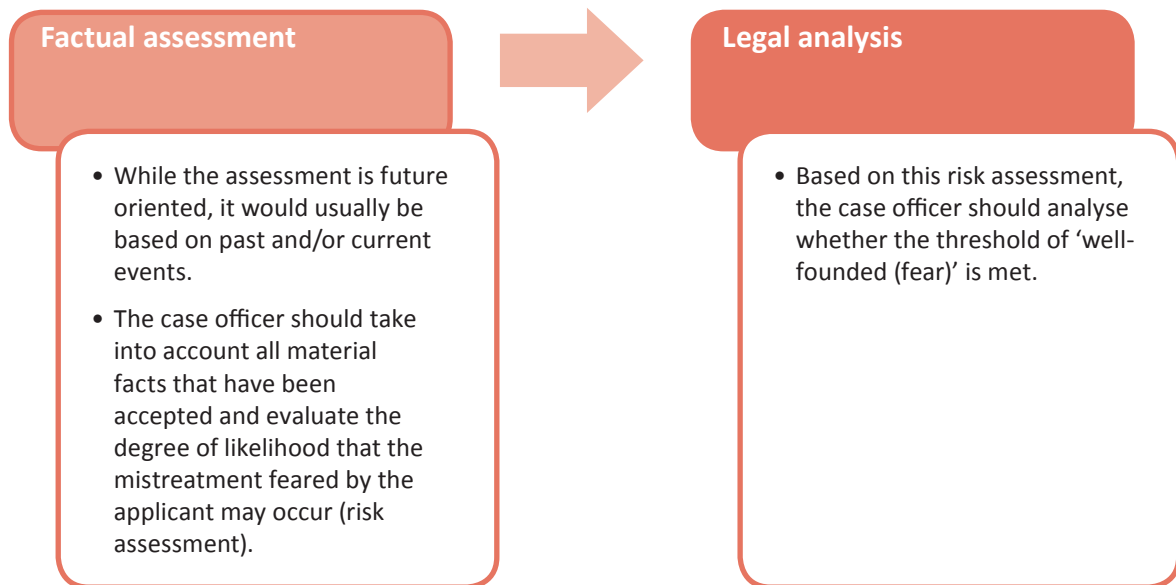
An applicant's subjective fear should be objectively substantiated in order to be considered 'well-founded'.

Since the 'well-founded' element of the refugee definition deals with the degree of likelihood of the applicant facing persecution, it is mainly a matter of factual risk assessment (see *EASO Practical Guide: Evidence assessment*). In this assessment, the case officer should consider the individual situation of the applicant in light of information regarding the general situation in the country of origin (e.g. the political, religious, social or security situation). Information about persecution of family members or persons in a similar situation to that of the applicant could be pertinent in this regard.

In order to assess 'well-founded' as a legal requirement, the following should be taken into consideration.

- ✓ Firstly, it should be noted that the assessment focuses on whether such a fear is well founded **at the time when the decision on the application for international protection is made**, i.e. 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 through time, or conversely appear after his or her fleeing (see the section below on 'International protection needs arising *sur place*').

- ✓ Secondly, 'well-founded fear' is based on the risk assessment, which is **forward-looking**. Because of inherent difficulties in making a prognosis about what would happen if the applicant were to return, the risk of a subjective appreciation in this regard is high. It is, therefore, of utmost importance that the evaluation of well-founded fear is based on an objective methodology and that it avoids speculation. Such a methodology regarding the factual aspect of this assessment can be found in the [EASO Practical Guide: Evidence assessment](#).



Specific considerations

Experience of past persecution. The fact that the applicant has been subject to persecution previously does not in itself mean that there is a risk of future persecution. However, past persecution or threats would constitute serious indications of a well-founded fear. In that case, the case officer will have the burden to demonstrate that the persecution will not be repeated if the applicant returns to his or her country.

Moreover, depending on national practices, there may be instances where it is substantiated that the harm would not be repeated, however past persecution may have been of such an **atrocious character** that the harm is deemed to be continuous. In such a situation, the applicant could not be expected to go back to the place of the persecution because the return could place him or her in psychological distress reaching the same severity as persecution.

Case officers must keep in mind that **the absence of previous persecution, on the other hand, does not mean that there is no future risk of persecution**. The applicant's fear may be well founded independently of his or her own past and current experiences.

However, the risk of being subjected to persecution upon return should always be an individual risk.

Refugee status: reasons for persecution [\[back to checklist\]](#)

Geneva Convention	Qualification directive	National legislation
Article 1A(2)	Article 10	

The Geneva Convention provides for 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 ground 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 may be imputed to him or her.

Moreover, all grounds mentioned could be triggered in relation to an action, as well as an omission, of the applicant.

The assessment cannot rest on an assumption that the person could avoid persecution by abstaining from certain practices linked to these grounds, for example religious practices, expression of gender identity, sexual orientation or political opinion.

Race [\[back to checklist\]](#)

According to QD, the concept of **race** shall in particular include considerations of:

colour	descent	membership of a particular ethnic group
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Colour relates to the traditional definition of race, which is used to refer to major groups of humankind according to physical features and appearance.

Descent refers to groups bound by common ancestry such as members of a tribe, a clan, a caste or a 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 a ground which can be considered both under race and under nationality (see the subsection 'Nationality' below).

Religion [\[back to checklist\]](#)

According to QD, the concept of **religion** shall in particular include considerations of:

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	

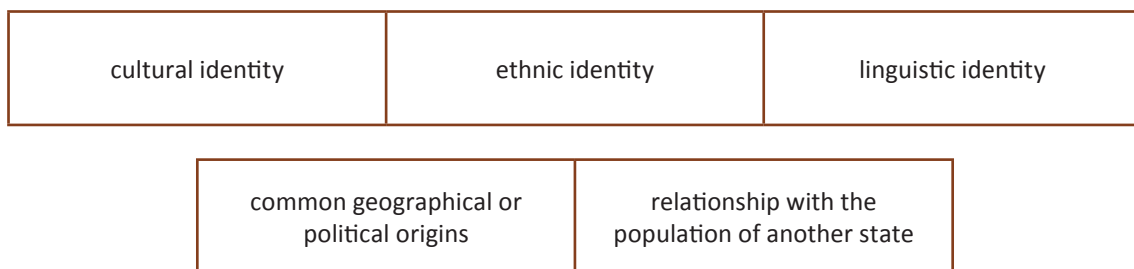
The ground of religion has a broad and flexible definition in accordance with the QD, including the conduct based on or mandated by any religious belief, which may cover day-to-day behaviour, way of life, and community customs and mores.

Essential to this ground is also the assessment of the right not to practise a religion, to atheism or to change one's religion. It also includes the possibility to practise the religion in public, including the right to propagate the faith through proselytisation.

However, it should be noted that the exercise of harmful religious practices, which may affect a person's physical or psychological integrity, does not fall under the protection of international human rights and refugee law.

Nationality [\[back to checklist\]](#)

According to the QD, the concept of **nationality** shall not be confined to **citizenship** or lack thereof but shall, in particular, include **membership of a group determined by its**:



In the aspect of ethnic identity, the grounds of nationality and race often overlap (see the subsection 'Race' above).

It should be noted that persecution of a person for reasons of him or her being stateless is to be considered under this ground.

Membership of a particular social group [\[back to checklist\]](#)

The concept of 'particular social group' is understood as a flexible construct, prone to evolve with time. However, in order to preserve the integrity of the Geneva Convention and the QD and to ensure it will not make other grounds superfluous, this ground cannot be interpreted as a 'catch-all' category.

According to the QD, a group shall be considered to form a particular social group where:

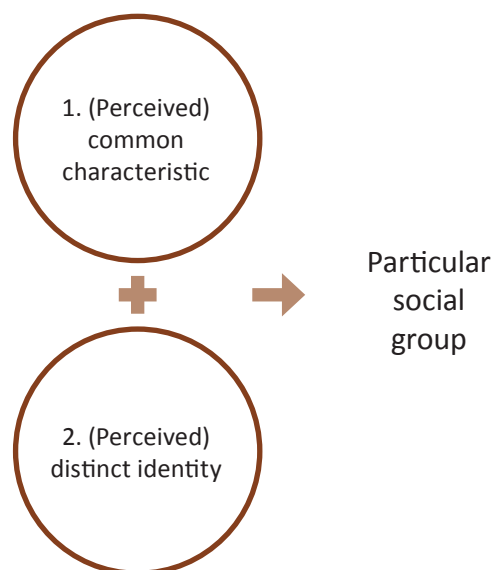
- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and
- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

These elements are further explained below.

Common characteristic

The common characteristic must be:

- **an innate characteristic** — usually, these are characteristics the person is born with (e.g. sex and gender), but it should be noted that the characteristics do not need to be immutable or unchangeable; or



- **a common background that cannot be changed**, such as hereditary status, social or educational background or past experiences; or
- a characteristic or belief that is so **fundamental to identity or conscience** that a person should not be forced to renounce it.

The mere fact of persecution cannot be the only element that gives content to ‘particular social group’, as that would be to deprive this ground of any meaningful content.

It is not necessary that the members of the group who share common characteristics know each other, have cohesiveness or are connected in any way. The size of the group is also irrelevant.

Perception of distinct identity

Perceiving the group as a distinct one does not in itself imply a negative connotation.

Perception by the surrounding society may be influenced by culture, customs or traditions. This means that to assess this criterion, case officers must take into due consideration the relevant country-of-origin information. The ‘distinct identity’ criterion may be fulfilled with regard to one country and not another.

The existence of criminal law, which specifically targets certain persons, would support a finding that those persons should be regarded as forming a particular social group. Practices of discrimination may also demonstrate that the criterion of ‘distinct identity’ is fulfilled.



Specific considerations

Gender, gender identity and sexual orientation

For the purposes of defining a particular social group, issues arising from an applicant’s **gender, including gender identity and sexual orientation**, which may be related to certain legal traditions and customs, resulting in, for example, genital mutilation, forced sterilisation or forced abortion, should be given due consideration insofar as they are related to the applicant’s well-founded fear of persecution.

Sexual orientation/sexual identity. This refers to a person’s capacity for profound emotional, affectional and/or sexual attraction to and/or intimate and sexual relations with individuals of a different gender, the same gender or more than one gender. It may be understood as a continuum between exclusive heterosexuality at one end and exclusive homosexuality at the other, with bisexuality in between. The understanding of sexual orientation varies significantly in different countries and cultures.

Sexual orientation is an intrinsic characteristic of the individual and there is no doubt that it may be a common characteristic for the definition of a particular social group.

It should be noted that sexual orientation cannot be understood to include acts considered criminal in accordance with national law of the Member States.

Gender identity. This refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Gender goes beyond the biological sex of a person. It is the social, cultural and psychological construct that societies build on the basis of sex and refers to the ‘roles’ prescribed to the two sexes.

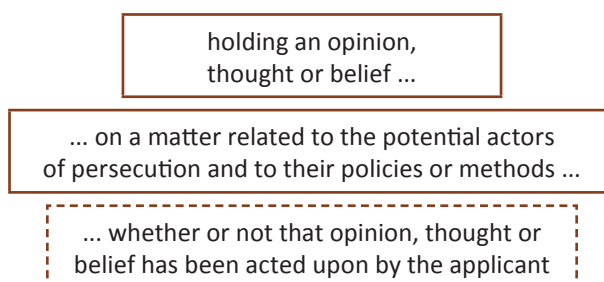
Persecution based on gender, gender identity and sexual orientation often involves non-state actors, including the family of the applicant.

Additional guidance on what groups constitute particular social groups may exist at national level.

National guidance

Political opinion [\[back to checklist\]](#)

According to the QD, the concept of **political opinion** shall, in particular, include:



An important aspect of the definition provided by the QD is that political opinion may be a ground for persecution not only by the state, but also by non-state actors. It is wider than one's views on official government policy. It may relate to the policies of any potential actor of persecution (including non-state actors), their content and methods of advancement.



Specific considerations

Evasion of military service. A specific case under the ground of political opinion may be the evasion of military service. In order to consider this as a relevant ground for persecution, participation in military action should be contrary to the applicant's genuine political, religious or moral convictions. Guidance for the assessment of whether or not the punishment for such evasion would amount to persecution is provided above under the specific considerations in the subsection 'Persecution'.

Civil servants. Civil servants may be perceived by the actors of persecution to hold a political opinion in favour of the government.

The fact of 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.

Nexus/(for reasons of) [\[back to checklist\]](#)

Geneva Convention	Qualification directive	National legislation
Article 1A(2)	Article 9(3)	

Acts of persecution as such do not qualify a person as a refugee unless they are committed for one (or more) of the five reasons above. There must be a causal link between the reason and the persecution or the absence of protection against such persecution.

The nexus could be as follows.

- **Connection with the acts of persecution.** In this case, the applicant's fear of persecution is linked to his or her (actual or imputed) race, religion, nationality, membership of a particular social group or political opinion.

- **Connection with the lack of protection.** There are cases where persecution may be for reasons outside the definition of a refugee, but where it is tolerated, encouraged or not prevented by the actors of protection for reasons of one of the five grounds. The nexus requirement would therefore be satisfied in relation to the lack of protection.

An applicant may not be able to demonstrate the 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 for their actions or have specified their motives. However, it may be possible to draw an appropriate inference from circumstantial elements.



Specific considerations

Plurality of motives. There may be other reasons why a persecutory act has been 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.

Subsidiary protection [\[back to checklist\]](#)

Qualification directive	National legislation
Article 2(f)	

As the name suggests, subsidiary protection should serve as an additional form of international protection that is complementary to refugee status. It means that **a person should only be granted subsidiary protection if the requirements for refugee status are not satisfied.**

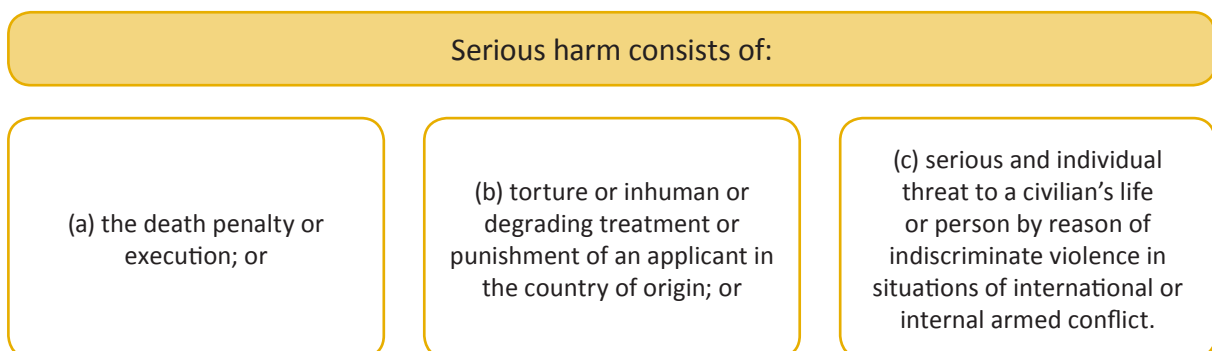
As a starting point, there are two elements which need to be clarified with regard to subsidiary protection: 'real risk' and 'serious harm'.

Real risk

'Real risk' refers to the standard of proof applied in the risk assessment in the case of subsidiary protection. It is a factual assessment and is interpreted as corresponding to **'reasonable degree of likelihood'** (see *EASO Practical Guide: Evidence assessment*).

Serious harm

'Serious harm' characterises the nature and intensity (gravity) of interference with 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 QD specifies the scope of the relevant 'serious harm' by the following provisions:



These types of harm imply in themselves sufficient severity.

There is no established hierarchical or chronological order between the different provisions. If more than one of the provisions of Article 15 QD appear to be applicable, the case officer should apply the one that best corresponds to the individual case. It cannot be excluded that in some cases subsidiary protection could be validly based on more than one ground.

Death penalty or execution [\[back to checklist\]](#)

Qualification directive	National legislation
Article 15(a)	

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

As the addition of the term ‘execution’ suggests, Article 15(a) also encompasses intentional killing of a person by non-state actors exercising some kind of authority. It may also include extrajudicial killing, but an element of intentional and formalised punishment needs to be present.



Specific considerations

Moratorium on the death penalty. In cases 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 death penalty or of execution for the applicant.

If the real risk of the death penalty or execution cannot be excluded, this may also be likely to cause fear and distress comparable to the serious harm described under Article 15(b) QD.

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) QD.

Exclusion considerations. In some cases, the death penalty could have been imposed for a serious crime committed by the applicant or other acts falling within the exclusion grounds (Articles 12 and 17 QD). Therefore, although the criteria of Article 15(a) QD would be met, exclusion considerations should be explored. See [EASO Practical Guide: Exclusion](#).

Torture or inhuman or degrading treatment or punishment [\[back to checklist\]](#)

Qualification directive	National legislation
Article 15(b)	

Article 15(b) QD corresponds in essence to Article 3 ECHR. The jurisprudence of the European Court of Human Rights (ECtHR) provides, therefore, relevant guidance in order to assess whether treatment may qualify under Article 15(b) QD and its concepts:



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

The evaluation depends on all 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 person. The purpose for which the treatment was inflicted and the intention of the perpetrator may also be relevant factors.

Where a specific treatment has already been assessed as amounting to persecution, it should be considered that the level of severity required by Article 15(b) QD is also substantiated.

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 the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), torture is understood as:

- ✓ an **intentional act**;
- ✓ that inflicts **severe pain or suffering**, whether **physical** or **mental**;
- ✓ for such **purposes** as obtaining from the person subjected to torture or from a third person information or a confession, punishing the former for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her 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, QD makes it clear that the agents of serious harm may also be non-state actors (see the section ‘Actors of persecution or serious harm’ below). No exception is made with regard to Article 15(b) QD.

Inhuman or degrading treatment or punishment

The distinction between torture and inhuman or degrading treatment or punishment is more a difference of degree than of nature.

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

Inhuman refers to treatment or punishment which deliberately causes intense mental or physical suffering (which does not reach the threshold of torture).

Degrading refers to treatment or punishment which arouses in the victim feelings of fear, anguish and inferiority capable of humiliating or debasing them.

It should be stressed that a specific purpose is not required. The assessment of whether a treatment or punishment is inhuman or degrading also implies a subjective consideration by the person who suffers such treatment/punishment.



Specific considerations

Unavailability of appropriate healthcare. Torture or inhuman or degrading treatment or punishment need to be inflicted deliberately. Consequently, the potential harm which an applicant suffering from a serious illness may experience if returned to his or her country of origin would not fall under Article 15(b) QD, unless such an applicant were intentionally deprived of healthcare. 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) QD. The qualification for international protection under the QD requires the existence of an actor of serious harm.

Prosecution and punishment for ordinary crimes. Prosecution and punishment for ordinary crimes would not be characterised as inhuman or degrading treatment or punishment unless there were special aggravating circumstances supporting the assumption that the prosecution or punishment were 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. If a protection need is established in such a case, exclusion considerations may still be relevant. See [EASO Practical Guide: Exclusion](#).

Deprivation of liberty. The state must ensure that a detained person is accommodated under conditions which are compatible with respect for human dignity. The manner and methods of the implementation of such a measure must not subject the person to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent to deprivation of liberty.

When assessing the conditions of detention, the following elements can, for example, be taken into consideration (cumulatively): number of detained persons in a limited space, adequacy of sanitation facilities, heating, lighting, sleeping arrangements, food, recreation or contact with the outside world.

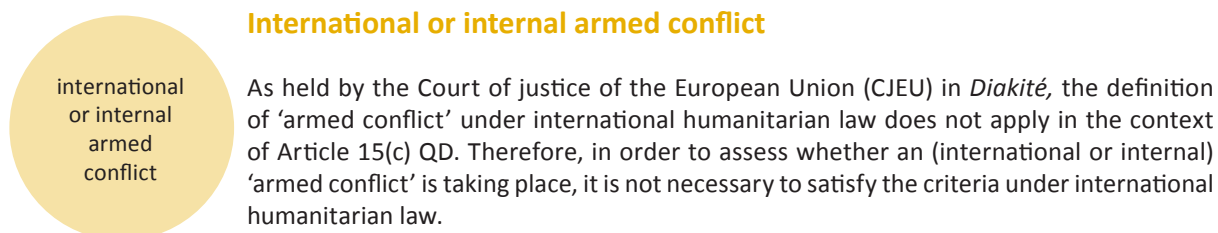
Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict [\[back to checklist\]](#)

Qualification directive	National legislation
Article 15(c)	

The elements which need to be established in order to apply Article 15(c) QD include:



It should, furthermore, be noted that the application of Article 15(c) QD is significantly dependant on the general situation in the country of origin. Therefore, assessing objective and up-to-date country-of-origin information is a crucial element in this regard.



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

- two or more armed groups — whether or not state armed forces are involved;
- confrontation between those armed groups.

It is not 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.

Furthermore, in the context of Article 15(c) QD, differentiation between ‘international’ or ‘internal’ armed conflict is not necessary, as the provision is equally applicable in situations of international and internal armed conflict.

An armed conflict can be taking place only in parts of the territory.

Guidance may exist qualifying the situation in certain countries, or parts of countries of origin, as an (international or internal) armed conflict.

National guidance



Civilian

Being a civilian is a necessary prerequisite to being able to benefit from protection under Article 15(c) QD, as the purpose of the provision is to protect only those who are not taking part in the conflict. This includes the potential application of Article 15(c) QD to former combatants who have genuinely and permanently renounced armed activity.

The assessment of protection needs is a forward-looking assessment. Therefore, the main issue at hand is whether the applicant will be a civilian upon return or not. The fact that the person took part in hostilities in the past would not necessarily mean that Article 15(c) QD would not be applicable to them.

The term ‘civilian’ is, therefore, considered to refer to a person who would not be a member of any of the parties in the conflict and would not be taking part in the hostilities. When assessing the applicability of Article 15(c) QD with regard to an applicant who has previously taken part in the hostilities, it could, for example, be relevant to examine whether participation was voluntary or under duress. In the case of former combatants, exclusion considerations may also be relevant (see [EASO Practical Guide: Exclusion](#)).

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

In case of doubt regarding the civilian status of a person, a protection-oriented approach should be taken and the person should be considered a civilian.

Further national guidance may be in place with regard to who would qualify as a civilian or non-civilian in a particular armed conflict.

National guidance



Indiscriminate violence

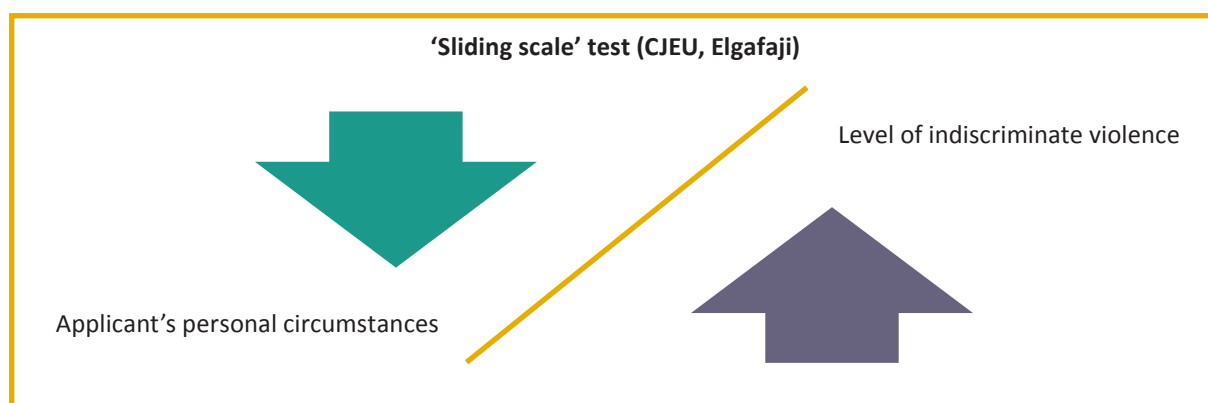
As held by CJEU in *Elgafaji*, the term ‘indiscriminate’ implies that the violence ‘**may extend to people irrespective of their personal circumstances**’. ‘Indiscriminate’, therefore, refers to the nature of the violence and not to its level.

Furthermore, differentiation of the level of indiscriminate violence can be made as follows:

- I. 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 his or her presence** on the territory of that country or region, face a real risk of being subject to the serious threat referred in Article 15(c) QD; and
- II. territories where indiscriminate violence takes place, however it does not reach such a high level, and with regard to which **additional individual elements** would have to be substantiated.

In the first category, ‘mere presence’ would exceptionally be considered sufficient, and no further individual elements would need to be substantiated.

In the second category, the level of indiscriminate violence does not reach such a high level and the mere presence of a civilian would not automatically lead to a real risk sufficient to apply Article 15(c) QD. In those cases, the more the applicant is able to show that he or she is specifically affected by reason of factors particular to his or her personal circumstances, the lower the level of indiscriminate violence required in order to apply Article 15(c) QD; and the higher the level of indiscriminate violence that takes place, the lower the level of additional factors related to the personal circumstances of the applicant required. This is referred to as the ‘sliding scale’.



Different indicators may be taken into account when determining whether indiscriminate violence is taking place within (a part of) the territory:

- number of incidents, including their frequency and density in relation to local population;
- nature of methods and tactics, including targets;
- number of civilian casualties (including those who have been injured);
- presence and capacity of different actors in the conflict;
- geographical scope of violence;
- conflict-induced displacement.

Other significant impacts on daily life, including freedom of movement, access to basic services, healthcare, education and the situation of displaced persons upon return, can also be taken into account.

Serious and individual threat

serious
and
individual
threat

Compared to the provisions under Article 15(a) and (b) QD, the harm defined in Article 15(c) QD covers a more general risk for the applicant. What is required is a 'serious and individual threat (to a civilian's life or person)' rather than specific acts of violence.

This element of Article 15(c) QD should be considered in light of the 'sliding scale' and the possible differentiation between certain levels of indiscriminate violence.

The existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his or her presence on the territory of that country or region, face a real risk of being subject to that threat. Where such a high level of indiscriminate violence is not reached, elements of individualisation would be necessary as suggested by the wording of Article 15(c) QD. In this regard, certain applicants may be considered more likely to become victims of indiscriminate violence due to their personal circumstances.

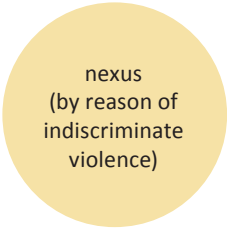
Factors such as age, gender, health condition and disabilities, the lack of a family network, economic situation and geographical proximity to areas which are subject to violence may be relevant personal circumstances to be taken into account.

Life or person

(to) life
or person

As held by CJEU in *Elgafaji*, Article 15(c) QD has additional scope to that of Article 3 ECHR and, therefore, has to be interpreted independently, but with due regard to human rights as they are guaranteed under the ECHR.

The harm that could affect an applicant's life or person is not restricted to the physical, but may also include severe psychological harm where such harm would be clearly conflict induced.



nexus
(by reason of
indiscriminate
violence)

Nexus (by reason of)

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

The interpretation of the causation 'by reason of' may not be limited to harm which is directly caused by the indiscriminate violence or by acts which emanate from the actors in the conflict.

To a certain extent, it 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, certain indirect effects may be taken into account in the assessment, for example widespread criminal violence as a result of a complete breakdown of law and order, destruction of the necessary means to survive, problems related to food supply and healthcare accessibility.

International protection needs arising *sur place* [\[back to checklist\]](#)

Geneva Convention	Qualification directive	National legislation
Article 1A(2)	Article 5	

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

Sur place situations.

<i>A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin.</i>	This wording relates to circumstances, external to and independent of the applicant, which have direct consequences on the applicant's situation and create a well-founded fear of persecution or real risk of serious harm. These events could refer to a significant change of circumstances in the country of origin, including the intensification of pre-existing factors since the departure of the applicant from the country of origin. However, it is not a requirement that these events take place in the country of origin. Actions of third parties may also have an impact on the applicant's individual situation.
<i>A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.</i>	When addressing <i>sur place</i> situations related to the applicant's actions, case officers must evaluate whether the actors of persecution are likely to be aware of and unfavourably disposed towards the applicant's convictions or activities to the effect that the applicant would have a well-founded fear of persecution or face a real risk of serious harm. 'Expression and continuation of convictions or orientations held in the country of origin' does not require that the latter have been previously expressed in the country of origin. However, this would clearly assist in substantiating whether the convictions or orientations were previously held.

Without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall not normally be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his or her own decision since leaving the country of origin (Article 5(3) QD). The possibility to introduce such an exception aims at avoiding abuses of the international protection regime. However, it should be noted that the assessment of whether the fear of the applicant is well founded always remains forward-looking, and the principle of non-refoulement should in all cases be respected.

National legislation and guidance

Actors of persecution or serious harm [\[back to checklist\]](#)

Geneva Convention	Qualification directive	National legislation
Article 1A(2)	Article 6	

The actors of persecution or serious harm include:

The state

- The notion of the state should be broadly interpreted. It encompasses *de jure* and *de facto* organs and may cover any officials exercising governmental functions, irrespective of whether they pertain to the judiciary, executive or legislative branches of a government, and working at any level.
- State actors of persecution or serious harm may also include: persons or entities empowered to exercise governmental authority; private individuals or groups acting under the control or direction of organs or entities empowered to exercise governmental authority; or state agents acting beyond the scope of their legal authority.

Parties or organisations controlling the state or a substantial part of its territory

- When controlling the territory of the state or a substantial part of it, parties or organisations could amount to *de facto* state actors by exercising elements of governmental authority in the absence of a *de jure* state authority.
- The dividing line between parties or organisations controlling the state, or a substantial part of its territory, and non-state actors is not always a sharp one.

Non-state actors

- This notion encompasses all non-state actors, such as clans and tribes, rebel groups, criminals and family members.

Actors of persecution are a key element in the status determination process. Persecution or serious harm must always take the form of conduct on the part of a specific actor.

Protection in the country of origin [\[back to checklist\]](#)

Geneva Convention	Qualification directive	National legislation
Article 1A(2)	Article 7	

International protection is secondary to the protection available in the country of origin. For this reason, the assessment of the availability of protection in the country of origin is a mandatory step in the analysis of the need for international protection that 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 his or her home area in the country of origin.

Firstly, the case officer has to consider whether protection will be available in the home area in the country of origin. If such protection is not available to the applicant, the existence of a different safe area in that country can be examined.

The availability or non-availability of protection does not need to be linked to the reasons for persecution. Plain failure and inability to sufficiently protect demonstrate lack of protection. Motives or discriminatory reasons on the part of the actors of protection are not a prerequisite. However, it should be noted that in cases where the lack of protection is intentional, this could amount to persecution or serious harm.

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

Protection in the country of origin		
Actors of protection	... have to be	... to provide protection which is
state	willing	effective
	+	+
parties or organisations, including international organisations, controlling the state or a substantial part of the territory of the state	able	non-temporary
		+
		accessible

Actors of protection [\[back to checklist\]](#)

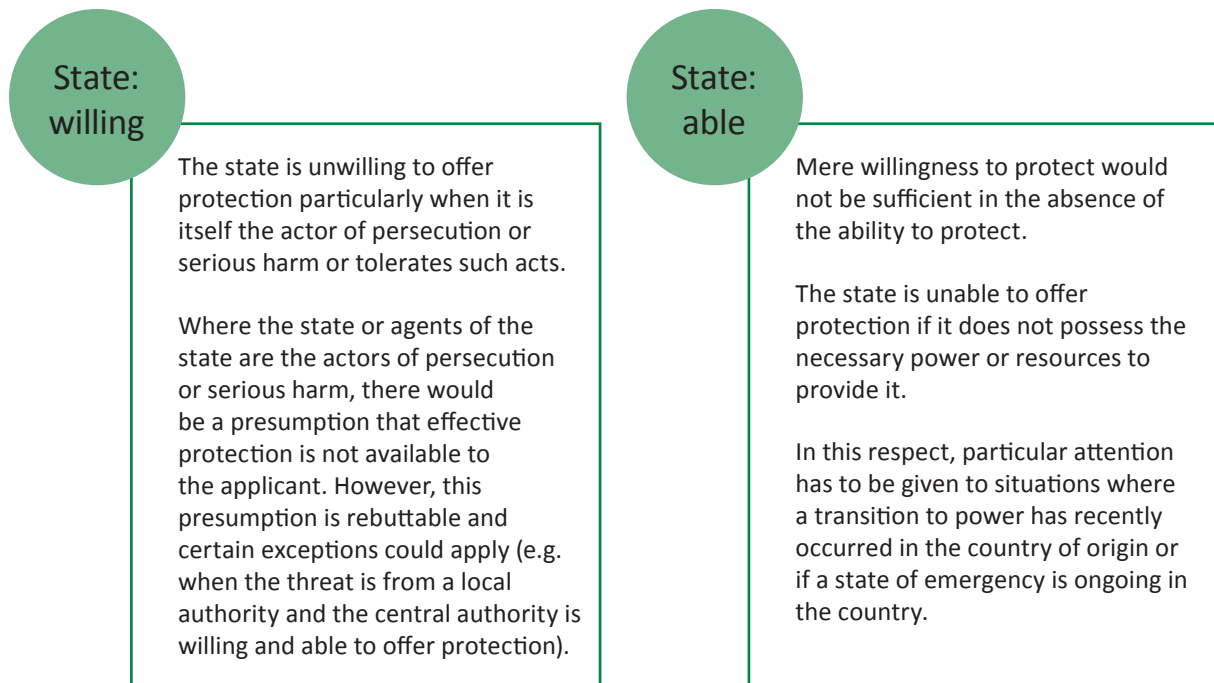
The list of actors of protection is **exhaustive**.

- **The state**

Usually, the state is the primary actor of protection. It encompasses any organ exercising 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 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 as an actor of protection may receive 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 substantial part of it.



Both conditions have to be satisfied. Protection cannot be considered to be afforded to the applicant in case 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 can be particular to the individual case of the applicant, or of general nature which also applies to the applicant.

- **Parties or organisations, including international organisations**

Parties and organisations may be considered actors of protection provided they meet the following cumulative requirements.

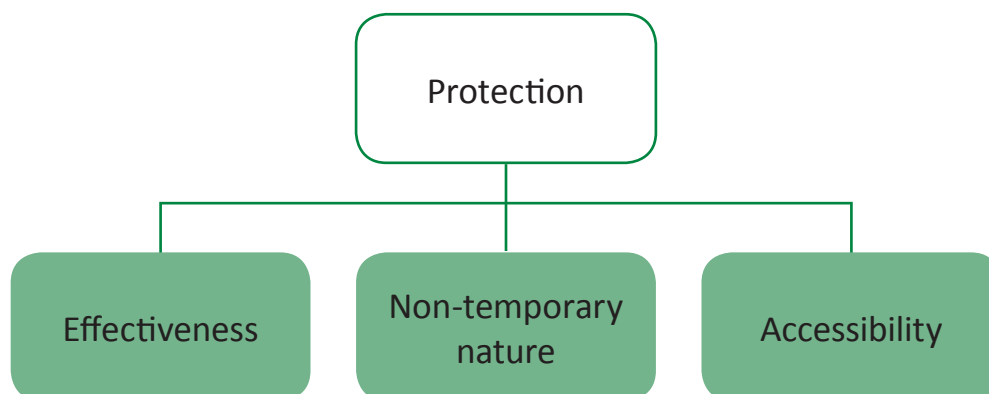


In order to consider that parties or organisations control the territory of a state or a substantial part of it, it should be established that they exercise relevant governmental functions. This should be seen in conjunction with their actual ability to provide protection, which is effective and of a non-temporary nature.

The willingness and the ability of the parties and organisations to provide protection have to be assessed according to the same standards as those applicable to state protection.

Quality of protection

Protection in the country of origin has to meet the following three cumulative conditions.



► Effectiveness [\[back to checklist\]](#)

Protection is generally provided when the actors of protection take reasonable steps to prevent persecution or suffering of serious harm, *inter alia* by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when 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 can reasonably be expected in order to prevent the persecution or serious harm feared by the applicant. What would qualify as reasonable steps depends also on the severity of the feared harm. Certain levels of ill treatment cannot be excluded even if reasonable steps are taken to prevent persecution or the suffering of serious harm.

The acts of persecution or the acts that cause serious harm normally fall within the ambit of criminal law due to their high severity. Mere detection, prosecution and punishment of acts constituting persecution or serious harm, after they have taken place, does not meet the requirement of effective protection. The actors of protection have to take reasonable steps to prevent such harmful acts and to diminish the risk of them occurring.

Elements such as human-rights records, corruption, sufficiency of resources, law-enforcement practices and independence of the judiciary can be taken into account when assessing whether effective protection can be provided.

► Non-temporary nature [\[back to checklist\]](#)

Since the examination of the need for international protection is forward-looking, the assessment of whether or not the protection in the 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 parties or organisations, including international organisations, controlling the state or a substantial part of the territory of the state, given that their control would normally be of temporary nature.

► Accessibility [\[back to checklist\]](#)

The applicant’s access to protection in the country of origin has to be assessed in light of both legal and practical obstacles to protection. Such obstacles may relate to the personal situation of the applicant, to discrimination, to cultural barriers, to 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.

In order to find that protection is not accessible, it should be substantiated that:

- the applicant unsuccessfully sought protection from the competent authorities in the country of origin; or
- the applicant would not have obtained protection if he or she had requested it, such as in the case where protection is generally not available or where a request would be inconsequential or even dangerous.

However, exhaustion of domestic remedies in the country of origin is not a prerequisite to assert the lack of access to protection against persecution or serious harm. Due consideration has to be given to the personal circumstances of the applicant, in particular if he or she has experienced ill treatment by the actor of protection or the actor of protection has previously failed to protect the applicant from persecution or serious harm.

Internal protection alternative [\[back to checklist\]](#)

Geneva Convention	Qualification directive	National legislation
Article 1A(2)	Article 8	

If protection is not available in the home area in the country of origin, the existence of a different safe part in that country is to be examined.

Consequently, the case officer can determine that an applicant is not in need of international protection if in a part of the country of origin he or she has no well-founded fear of being persecuted and is not at real risk of suffering serious harm or has access to protection against persecution and serious harm.

The case officer has the duty to demonstrate that internal protection is available in the particular area in the country of origin. This area has to be identified by the case officer.

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 has exhausted the possibilities to obtain protection in a different part in the country of origin. The assessment focuses on whether such an alternative is available at the time the decision is made.

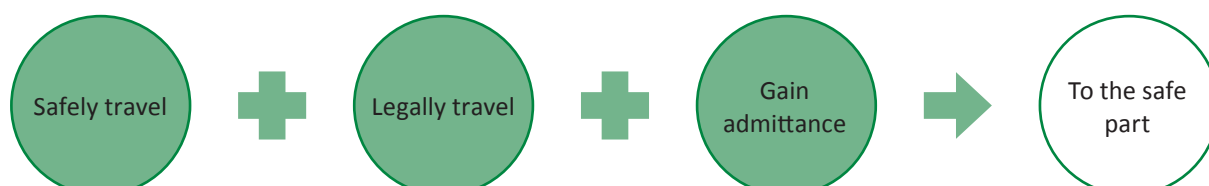
► Safety in a part of the country of origin [\[back to checklist\]](#)

An area is safe for the applicant either because he or she has no well-founded fear of persecution or serious harm there or because in that part of the country he or she has access to protection against persecution or serious harm.

Absence of persecution or serious harm	- Absence of the initial persecution or serious harm that originated in the home area: the reach of the actor of persecution or serious harm has to be examined in this regard. and - No potential new forms of persecution or serious harm. If the state is the actor of persecution or serious harm, normally there would not be a safe area in the country of origin, as generally the state has competence in the whole of its territory.
or	
Availability of protection against persecution or serious harm	Protection in the considered area must meet the same mandatory elements as those required for protection against persecution or serious harm in the home area in the country of origin (see subsection 'Quality of protection'). If the state is the actor 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. 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 an internal protection alternative has to be examined.

► **Access to part of the country of origin** [\[back to checklist\]](#)

In order to consider that an internal protection alternative is available in the country of origin of the applicant, it is not enough for the case officer to identify a safe part in the country. The applicant must be able to safely and legally travel to that part of the country and gain admittance thereto.



- **Safely travel.** There is a safe route that the applicant can practically travel through without undue difficulty so that he or she can access the safe area in the country of origin without serious risks.
- **Legally travel.** There are no legal obstacles that prevent the applicant from travelling to the safe area.
- In particular, if the applicant needs to pass through a third country to access the safe area, he or she must be legally able to do so.
- **Gain admittance.** The applicant is allowed to access the safe area by the actor(s) controlling it.

► **Reasonableness for the applicant to settle in a part of the country of origin** [\[back to checklist\]](#)

The test of reasonableness relies on a **rights-based approach**. Basic needs should in particular be guaranteed, including, inter alia, food, shelter and hygiene. Additionally, due consideration has to be given to the opportunity for the person to ensure his or her own and his or her family's subsistence, basic healthcare and education for children.

The assessment of whether it is reasonable for the applicant to settle in that part of the country should take into account the individual circumstances of the applicant, such as age, gender, health condition, social and educational background, family and social ties, language, gender identity, sexual orientation, etc.

National guidance**Unwillingness to avail of the protection of the country of origin**

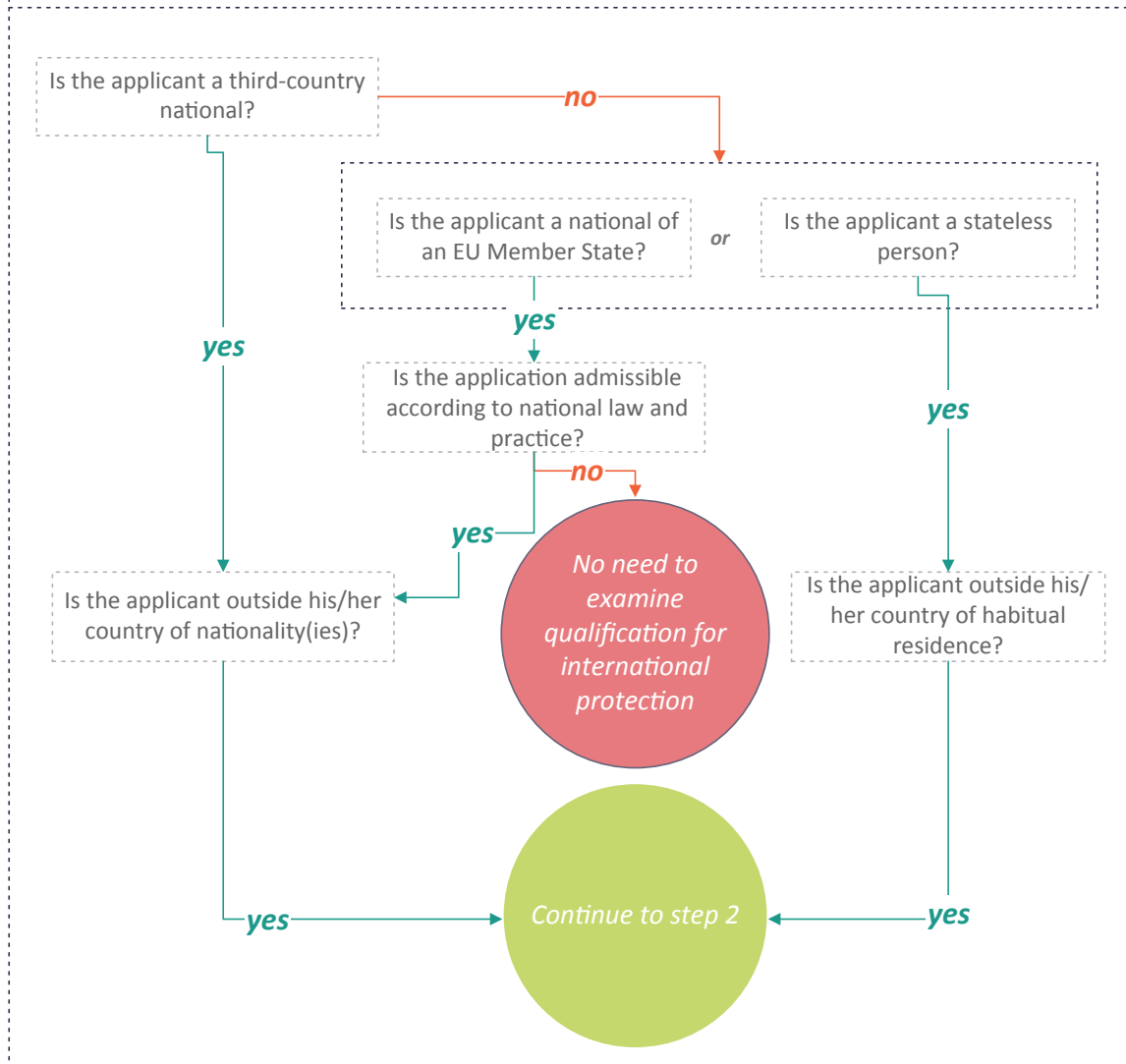
If protection is available in the country of origin, there may be instances where the applicant would be unwilling to avail of such protection based on justified reasons.

The applicant's unwillingness to avail of the protection of the country of origin (including protection available in another safe part in the country of origin) has to be linked with his or her fear of persecution or the risk of serious harm.

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

FLOWCHARTS

- ▶ *Visual step-by-step guide for the case officer in examining the individual application for international protection.*

1***Preliminary considerations: personal and territorial scope***

2a

Persecution

Is the treatment feared by the applicant a sufficiently severe violation of human rights, taking the form mentioned inter alia in Article 9(2) QD?

yes**no**

Is the treatment a violation of a nonderogable human right or a sufficiently severe violation of another basic human right?

yes**no**

Can the treatment be considered as an accumulation of various measures, the consequences of which would affect the applicant in a similar manner?

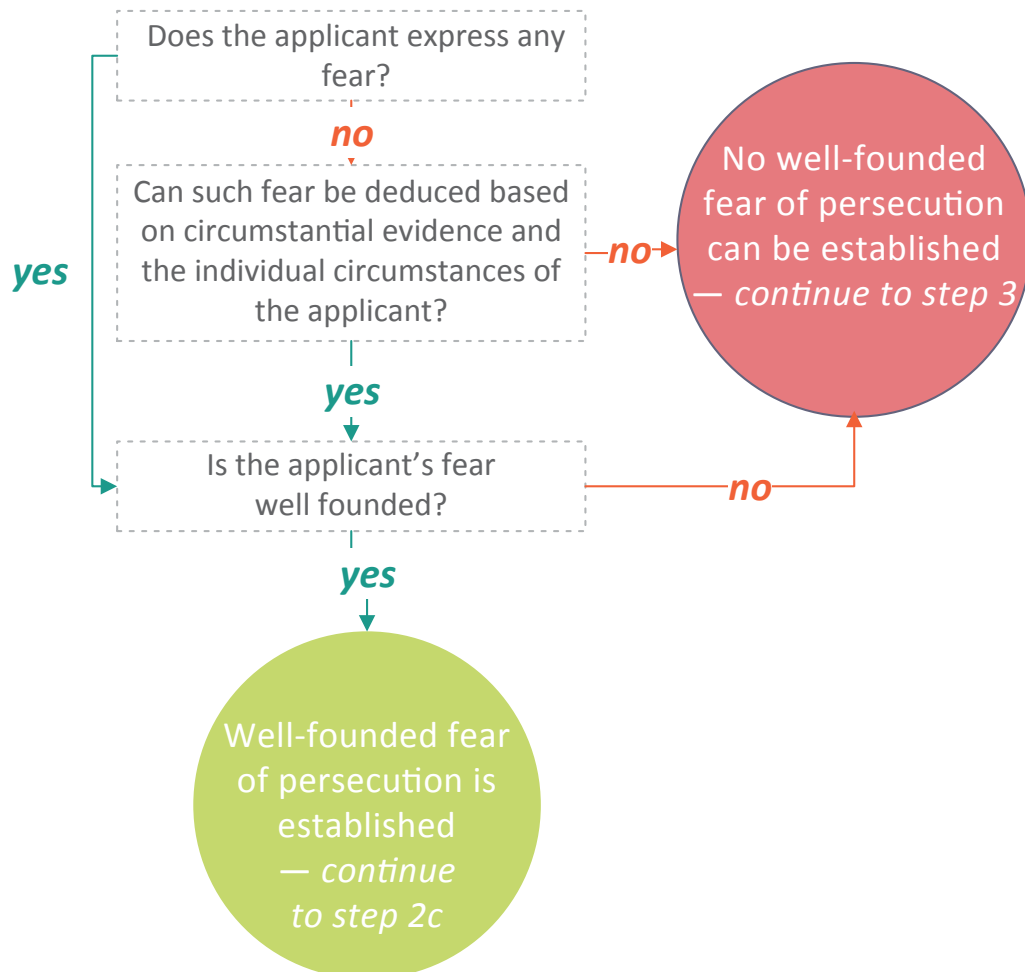
yes**no**

Treatment qualifies as persecution
— continue to step 2b

Treatment does not qualify as persecution
— continue to step 3

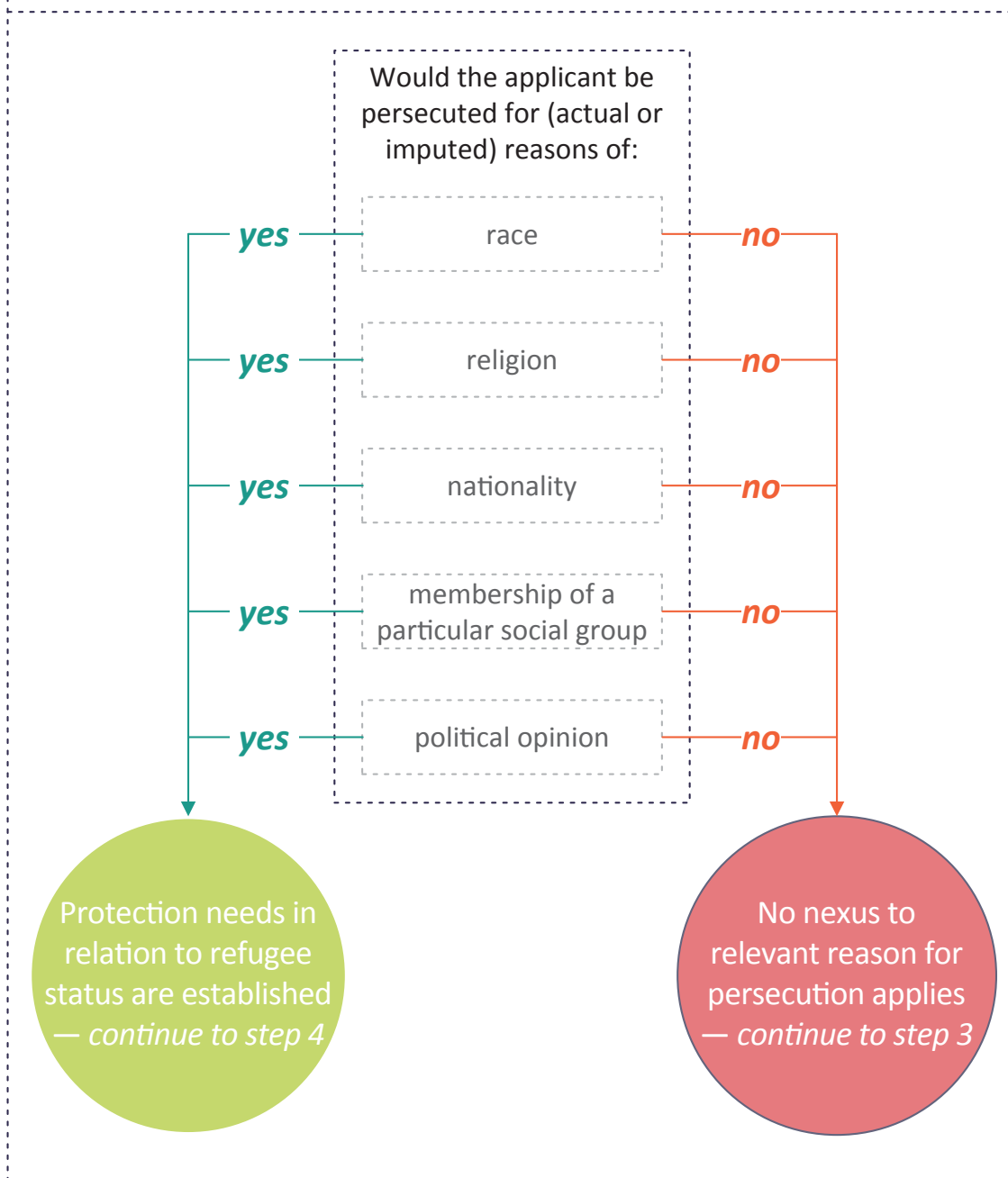
2b

Well-founded fear



2c

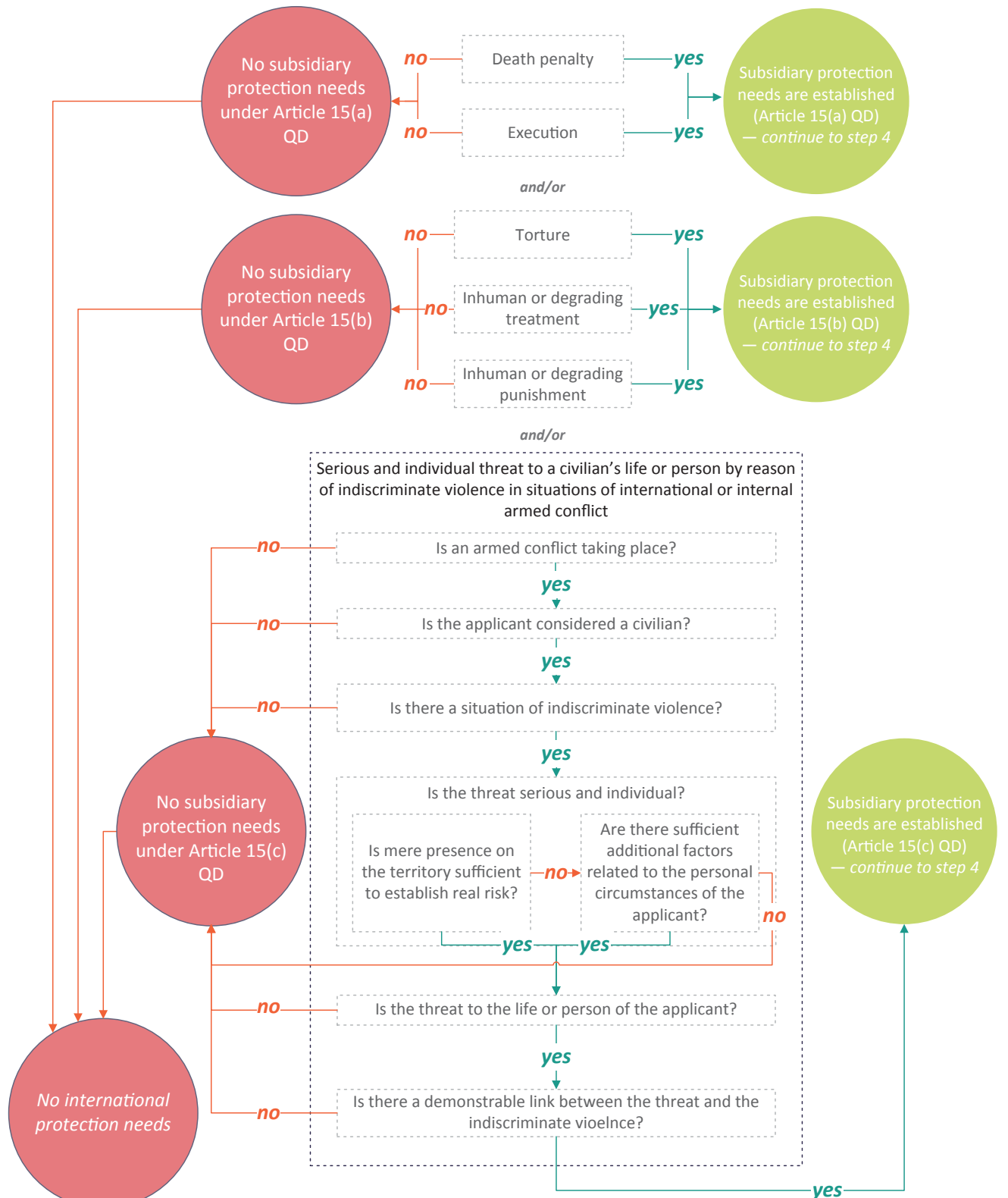
Reason for persecution



3

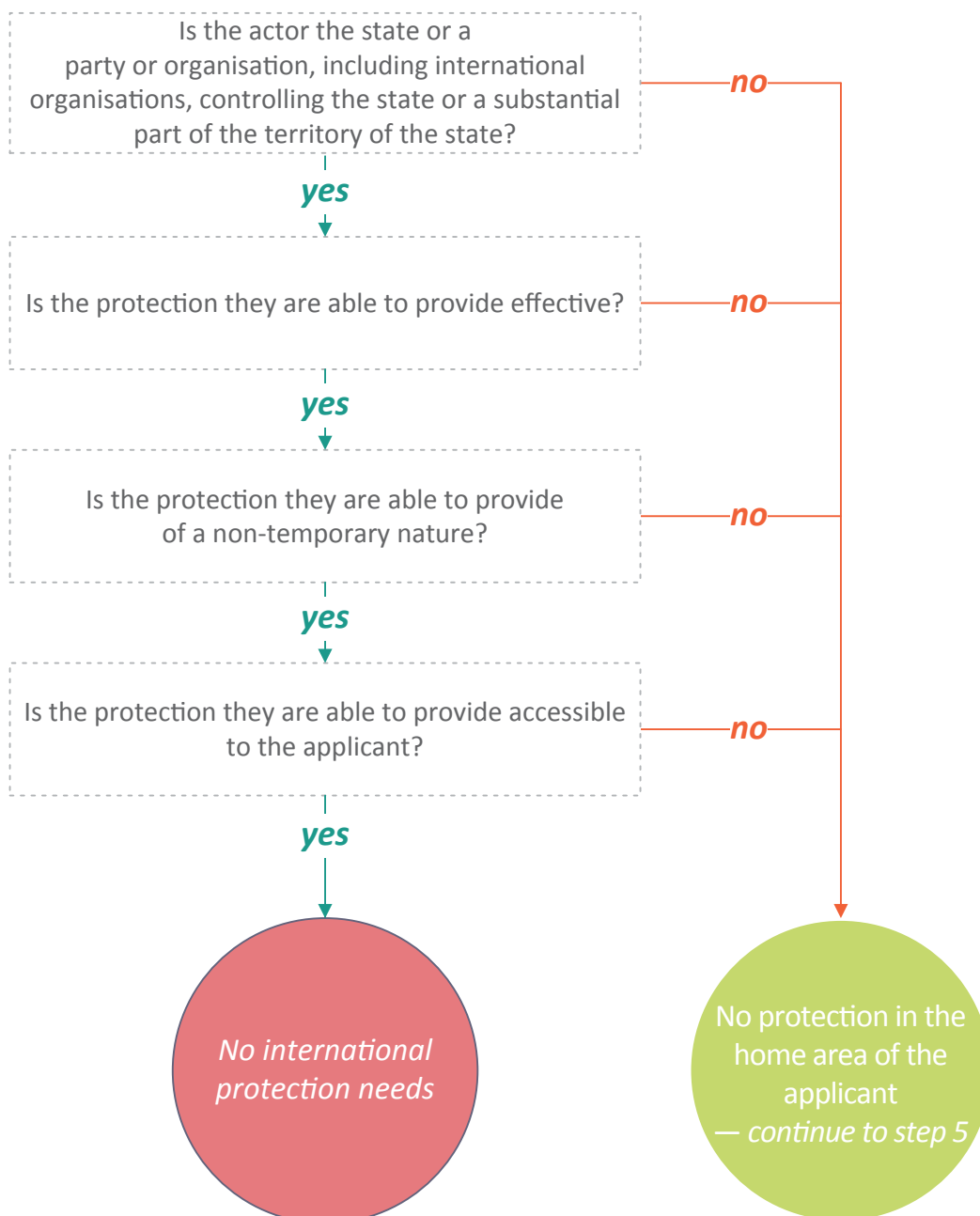
Subsidiary protection

Is there a reasonable degree of likelihood that the applicant would face any of the following types of serious harm?

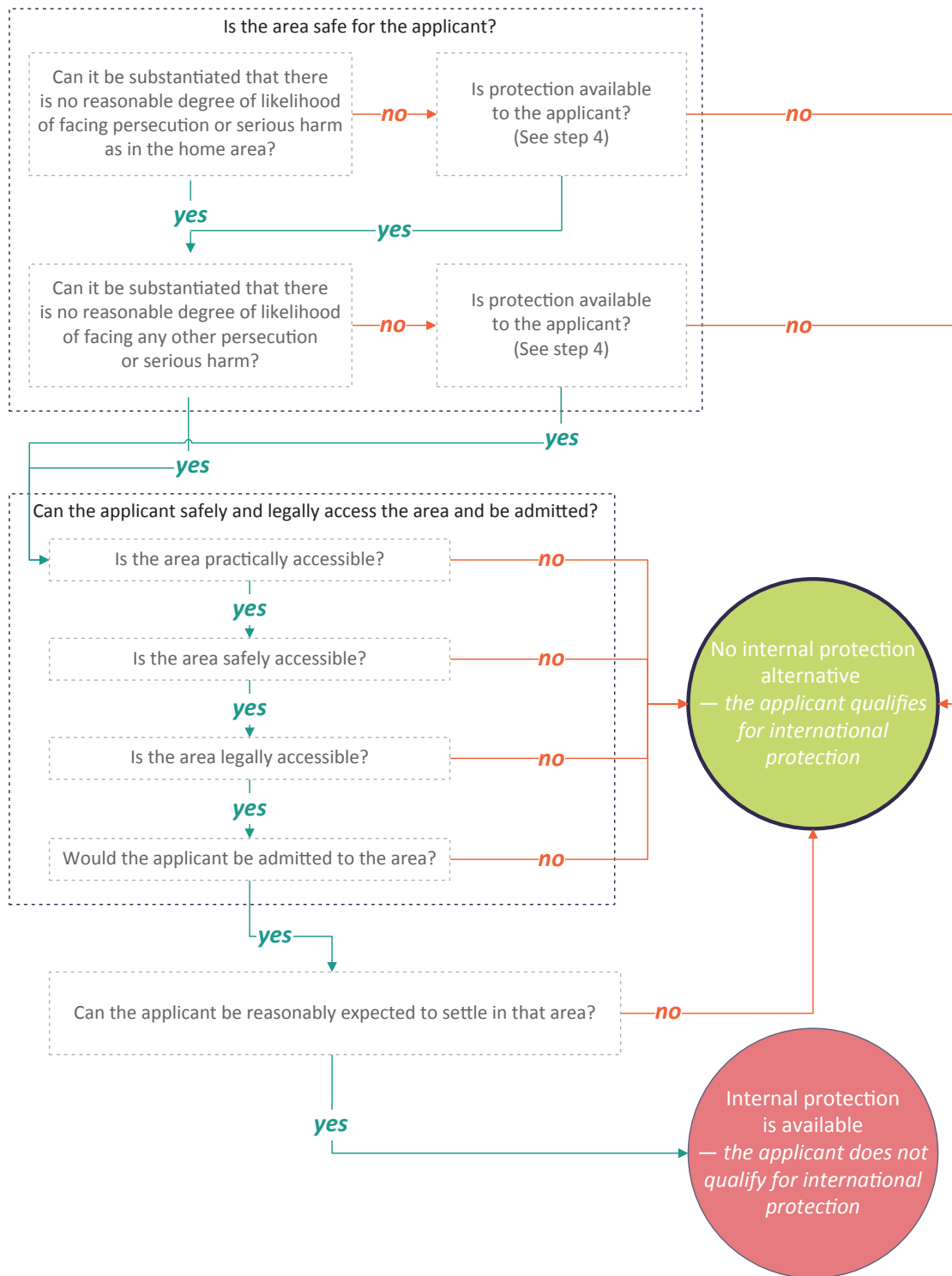


4

Protection in the country of origin



5

Internal protection alternative

REFERENCES

- ▶ *References to legislation, relevant case-law and additional resources.*
- ▶ *Use the writeable spaces to add national legislation and jurisprudence.*

Abbreviations and useful links

- **APD** — Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection
- **CJEU** — Court of Justice of the European Union
- **ECHR** — European Convention on Human Rights
- **ECtHR** — European Court of Human Rights
- **GC** — 1951 Geneva Convention and the 1967 Protocol relating to the status of refugees
- **ICJ** — International Court of Justice
- **QD** — Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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

Other resources

The UNHCR *Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, other guidance, policy documents and UNHCR ExCom and Standing Committee conclusions can be found [here](#).

Legal references and relevant case-law

This overview of legal references and jurisprudence is not intended as an exhaustive reference tool. It only aims to provide practical direction to the case officer by referring to some of the most relevant provisions and jurisprudence.

The references below are organised by topic. Where possible, the case-law and additional legal instruments are hyperlinked for ease of reference.

General principles

Legal references	Jurisprudence
Article 1A(2) GC	• CJEU, <i>H. N. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General</i>, Case C-604/12, judgment of 8 May 2014, EU:C:2014:302, para. 35 (primacy of refugee status) • CJEU, <i>M. M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General</i>, Case C-277/11, judgment of 22 November 2012, EU:C:2012:744, para. 64 (stages in the decision-making process)
Article 2(d) and (f) QD	
Article 4(3) QD	
National legislation	National jurisprudence

Personal and territorial scope

Legal references	Jurisprudence
1967 Protocol to the Geneva Convention relating to the Status of Refugees Article 2(d) and (f) QD Convention Relating to the Status of Stateless Persons, 360 UNTS 117, 28 September 1954 Protocol (No 24) on asylum for nationals of Member States of the European Union	• ICJ, <i>Nottebohm Case (Liechtenstein v Guatemala)</i>, judgment of 6 April 1955, Second Phase, ICJ Reports 1955, pages 23-24 (attribution of nationality) • CJEU, <i>X and X v État belge</i>, Case C-638/16 PPU, judgment of 7 March 2017, EU:C:2017:173, paras 49 and 51 (territorial scope of QD)
National legislation	National jurisprudence

Refugee status: well-founded fear of persecution

Legal references	Jurisprudence
Article 1A(2) GC Article 9 QD Article 4(4) QD Universal Declaration of Human Rights, UN General Assembly, Resolution 217 (III), 10 December 1948 International Covenant on Civil and Political Rights, 999 UNTS 171, 16 December 1966 International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, 7 March 1966 Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13, 18 December 1979 Convention on the Rights of the Child, 1577 UNTS 3, 20 November 1989	• CJEU, <i>Andre Lawrence Shepherd v Bundesrepublik Deutschland</i>, Case C-472/13, judgment of 26 February 2015, EU:C:2015:117, paras 25-26 (individual assessment of persecution), paras 46, 49 and 52-56 (military desertion) • CJEU, <i>Bundesrepublik Deutschland v Y and Z</i>, Joined Cases C-71/11 and C-99/11, judgment of 5 September 2012, Grand Chamber, EU:C:2012:518, para. 57, paras 60-67 (severity of interference with the right to religious freedom), para. 72 (sufficient seriousness to qualify as persecution), paras 78-80 (well-foundedness) • CJEU, <i>Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel</i>, Joined Cases C-199/12 to C-201/12 judgment of 7 November 2013, EU:C:2013:720, paras 53-61 (sufficient seriousness to qualify as persecution, criminalisation of homosexual acts), paras 63-64 (past persecution), paras 73-76 (well-foundedness)

Legal references	Jurisprudence
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 25 May 2000 Convention on the Rights of Persons with Disabilities, 2515 UNTS 3, 13 December 2006 International Covenant on Economic, Social and Cultural Rights of 1966, 993 UNTS 3, 16 December 1966 European Social Charter of 1961, ETS No 35, 18 October 1961 and Revised European Social Charter, ETS No 163, 3 May 1996	
National legislation	National jurisprudence

Reasons for persecution: race

Legal references	Jurisprudence
Article 1A(2) GC Article 10(1)(a) QD International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, 7 March 1966	• ECtHR, <i>Khamrakulov v. Russia</i>, Application No 68894/13, 16 April 2015, paras 66 and 67 (persecution on ethnic origin) • ECtHR, <i>A.A. v. France</i>, Application No 18039/11, 15 April 2015, para. 58 (persecution on ethnic origin) • ECtHR, <i>A.F. v. France</i>, Application No 80086/13, judgment of 15 April 2015, paras 50-52 (persecution on ethnic origin) • ECtHR, <i>S.H. v. the United Kingdom</i>, Application No 19956/06, judgment of 15 June 2010, para. 70 (racial discrimination) • ECtHR, <i>Salah Sheekh v. the Netherlands</i>, Application No 1948/04, judgment of 11 January 2007, para. 148 (ethnic minority) • ECtHR, <i>Cyprus v. Turkey</i>, Application No 25781/94, judgment of 10 May 2001, Grand Chamber, para. 306 (racial discrimination)
National legislation	National jurisprudence

Reasons for persecution: religion

Legal references	Jurisprudence
Article 1A(2) GC Article 10(b) QD	• CJEU, <i>Bundesrepublik Deutschland v Y and Z</i>, Joined Cases C-71/11 and C-99/11, judgment of 5 September 2012, Grand Chamber, EU:C:2012:518, para. 80 (<i>applicant cannot be expected to abstain from religious practices</i>) • ECtHR, <i>F.G. v. Sweden</i>, Application No 43611/11, judgment of 23 March 2016, paras 123-124 (<i>religious conversion</i>) • ECtHR, <i>M.K.N. v. Sweden</i>, Application No 72413/10, judgment of 27 June 2013, paras 32-44 (<i>religious affiliation</i>)
National legislation	National jurisprudence

Reasons for persecution: nationality

Legal references	
Article 1A(2) GC Article 10(c) QD	
National legislation	National jurisprudence

Reasons for persecution: membership of a particular social group

Legal references	Jurisprudence
Article 1A(2) GC Article 10(d) QD Recital 30 QD	• CJEU, <i>Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel</i>, Joined Cases C-199/12 to C-201/12, judgment of 7 November 2013, EU:C:2013:720, paras 45-49 (<i>definition of particular social group</i>), paras 53-61 (<i>criminalisation of homosexual acts</i>), paras 70-76 (<i>applicant cannot be expected to conceal homosexuality or exercise reserve in the expression of his sexual orientation</i>)
National legislation	National jurisprudence

Reasons for persecution: political opinion

Legal references	
Article 1A(2) GC	
Article 10(d) QD	
National legislation	National jurisprudence

Nexus (for reasons of)

Legal references	
Article 1A(2) GC	
Article 9(3) QD	
National legislation	National jurisprudence

Subsidiary protection: real risk of serious harm

Legal references	Jurisprudence
Article 2(f) QD	• CJEU, <i>Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie</i>, Case C-465/07, judgment of 17 February 2009, EU:C:2009:94, para. 40 (past serious harm) • ECtHR, <i>F.G. v Sweden</i>, Application No 43611/11, judgment of 23 March 2016, para. 115 (assessment of real risk) • ECtHR, <i>Auad v. Bulgaria</i>, Application No 46390/10, judgment of 11 October 2011, para. 99(c) (assessment of real risk) • ECtHR, <i>Saadi v. Italy</i>, Application No 37201/06, judgment of 28 February 2008, para. 130 (assessment of real risk); para. 140 (standard of proof) • ECtHR, <i>Vilvarajah and Others v. The United Kingdom</i>, 45/1990/236/302-306, judgment of 26 September 1991, para. 111 (standard of proof)
National legislation	National jurisprudence

Subsidiary protection: death penalty or execution

Legal references	Jurisprudence
Article 15(a) QD Article 2 ECHR Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances	• ECtHR, <i>Al-Saadoon and Mufdhi v. the United Kingdom</i>, Application No 61498/08, judgment of 2 March 2010, para. 115 (death penalty — death row) • ECtHR, <i>Ilascu and Others v. Moldova and Russia</i>, Application No 48787/99, Judgment of 8 July 2004, paras 429-433 (death penalty — death row) • ECtHR, <i>Soering v. the United Kingdom</i>, 1/1989/161/217, 7 July 1989, para. 111 (death row)
National legislation	National jurisprudence

Subsidiary protection: torture or inhuman or degrading treatment or punishment

Legal references	Jurisprudence
Article 15(b) QD Article 3 ECHR Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, 10 December 1984	• CJEU, <i>Mohamed M'Bodj v État belge</i>, Case C-542/13, judgment of 18 December 2014, Grand Chamber, paras 40, 41 and 50 (unavailability of appropriate health-care) • CJEU, <i>Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie</i>, Case C-465/07, judgment of 17 February 2009, EU:C:2009:94, para. 28 (relevance of ECtHR case-law in interpreting the scope of Article 15(b) QD) • ECtHR, <i>Paposhvili v. Belgium</i>, Application No 41738/10, judgement of 13 December 2016, paras 181-193 (unavailability of appropriate healthcare) • ECtHR, <i>Trabelsi v. Belgium</i>, Application No 140/10, 4 September 2014, paras 113-115 (life imprisonment) • ECtHR, <i>M.S.S. v. Belgium and Greece</i>, Application No 30696/09, judgment of 21 January 2011, Grand Chamber, para. 220 (definition of 'inhuman' and 'degrading') • ECtHR, <i>Gäfgen v. Germany</i>, Application No 22978/05, judgment of 1 June 2010, Grand Chamber, para. 108 (threshold of severity to qualify as torture) • ECtHR, <i>Kalashnikov v. Russia</i>, Application No 47095/99, judgment of 15 July 2002, para. 95 (degrading treatment). • ECtHR, <i>Selmouni v. France</i>, Application No 25803/94, judgment of 28 July 1999, Grand Chamber, paras 99-101 (definition of torture) • ECtHR, <i>Tyrer v. the United Kingdom</i>, Application No 5856/72, judgment of 15 March 1978, para. 30 (degrading treatment) • ECtHR, <i>Ireland v the United Kingdom</i>, Application No 5310/71, judgment of 18 January 1978, para. 167 (distinction between torture and inhuman or degrading treatment or punishment)
National legislation	National jurisprudence

Subsidiary protection: serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict

Legal references	Jurisprudence
Article 15(c) QD	• CJEU, <i>Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides</i>, Case C-285/12, judgment of 30 January 2014, para. 35 (armed conflict) • CJEU, <i>Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie</i>, Case C-465/07, judgment of 17 February 2009, EU:C:2009:94, paras 32-33 (serious and individual threat); paras 34-35 (indiscriminate violence); para. 39 ('sliding-scale' test) • ECtHR, <i>K.A.B. v. Sweden</i>, Application No 886/11, judgment of 5 September 2013, paras 75-77 (indiscriminate violence) • ECtHR, <i>Sufi and Elmi v. the United Kingdom</i>, Applications Nos 8319/07 and 11449/07, judgment of 28 November 2011, para. 241 (indiscriminate violence)
National legislation	National jurisprudence

International protection needs arising *sur place*

Legal references	Jurisprudence
Article 5 QD	• ECtHR, <i>F.G. v. Sweden</i>, Application No 43611/11, judgment of 23 March 2016, paras 123-124 and 144-158 (activities in the country of asylum — risk assessment) • ECtHR, <i>H.S. and others v Cyprus</i>, Application No 41753/10 and 13 other applications, judgment of 21 July 2015, para. 277 (identification by authorities) • ECtHR, <i>A.A. v. Switzerland</i>, Application No 58802/12, judgment of 7 January 2014, paras 38-43 (level of activities and identification by authorities) • ECtHR, <i>S.F. v. Sweden</i>, Application No 52077/10, judgment of 15 May 2012, paras 68-71 (level of political activities)
National legislation	National jurisprudence

Actors of persecution or serious harm

Legal references	Jurisprudence
Article 6 QD	• CJEU, <i>Mohamed M'Bodj v État belge</i>, Case C-542/13, judgment of 18 December 2014, Grand Chamber, para. 35 (actor of persecution as a necessary condition) • ECtHR, <i>Tatar v. Switzerland</i>, Application No 65692/12, Council of Europe: European Court of Human Rights, 14 April 2015, para. 41 (non-state actors) • ECtHR, <i>Sufi and Elmi v. the United Kingdom</i>, Applications Nos 8319/07 and 11449/07, judgment of 28 November 2011, paras 281-282 (actor of persecution as a necessary condition)
National legislation	National jurisprudence

Actors of protection and quality of protection

Legal references	Jurisprudence
Article 1A(2) GC Article 7 QD	• CJEU, <i>Aydin Salahadin Abdulla and Others v Bundesrepublik Deutschland</i>, Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08, judgment of 2 March 2010, paras 67-76 (effectiveness, durability and accessibility of protection, actors of protection) • ECtHR, <i>K.A.B. v. Sweden</i>, Application No 886/11, judgment of 5 September 2013, paras 69 and 87 (actors of protection) • ECtHR, <i>Salah Sheekh v. the Netherlands</i>, Application No 1948/04, judgment of 11 January 2007, paras 147-148 (accessibility of protection) • ECtHR, <i>N. v. Finland</i>, Application No 38885/02, judgment of 26 July 2005, paras 163-164 (actors of protection) • ECtHR, <i>Osman v. the United Kingdom</i>, Application No 23452/94, judgment of 28 October 1998, paras 115-116 (effectiveness of protection)
National legislation	National jurisprudence

Internal protection alternative

Legal references	Jurisprudence
Article 8 QD	• ECtHR, <i>A.A.M. v. Sweden</i>, Application No 68519/10, judgment of 3 April 2014, paras 66-75 (safety in a part of the country of origin) • ECtHR, <i>K.A.B. v. Sweden</i>, Application No 886/11, judgment of 5 September 2013, paras 80-85 (accessibility to a part of the country of origin, reasonableness to settle) • ECtHR, <i>D.N.M. v. Sweden</i>, Application No 28379/11, judgment of 27 June 2013, paras 57-59 (safety in a part of the country of origin, reasonableness to settle) • ECtHR, <i>S.A. v. Sweden</i>, Application No 66523/10, judgment of 27 June 2013, paras 56-58 (safety in a part of the country of origin) • ECtHR, <i>M.Y.H. and others v. Sweden</i>, Application No 50859/10, judgment of 27 June 2013, paras 68-73 (reasonableness to settle) • ECtHR, <i>Sufi and Elmi v. the United Kingdom</i>, Applications Nos 8319/07 and 11449/07, judgment of 28 November 2011, paras 249 and 265-296 (accessibility to a part of the country of origin, reasonableness to settle) • ECtHR, <i>Salah Sheekh v. the Netherlands</i>, Application No 1948/04, judgment of 11 January 2007, paras 140-148 (clan protection, individual circumstances) • ECtHR, <i>M.K.N. v. Sweden</i>, Application No 72413/10, judgment of 27 June 2013, paras 35-44 (religious affiliation, individual circumstances)
National legislation	National jurisprudence

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