

# SECTION 15 (C) ANALYTIC FLOW CHART

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The analysis of Article 15 (c) of the Qualification Directive [Section 2(1) of the International Protection Act 2015] requires the analysis of several concepts, only some of which have received attention from the CJEU. Consequently, the interpretation of this Article is very much a live issue. Apart from the CJEU, decisions from the ECtHR may provide guidance where similar concepts appear; similarly, decisions of national courts in the EU may also provide some guidance. This Flow Chart provides guidance on how to analyse Article 15 (c) / Section 2 (1).

Section 2 (1) of The International Protection Act 2015 defines who is 'eligible' for subsidiary protection as well as what constitutes 'serious harm'.

A person eligible for subsidiary protection means a person (a) who is not a national of a Member State of the European Union, (b) who does not qualify as a refugee, (c) in respect of whom substantial grounds have been shown for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country, and (d) who is not excluded under *section 12* from being eligible for subsidiary protection. Of particular note is that the person does not qualify for refugee protection and that the person faces a 'real risk of suffering serious harm' if returned to his or her country of origin.

"Serious harm" means – (a) death penalty or execution, (b) torture or inhuman or degrading treatment or punishment of a person in His or her country of origin, or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict.'

In this analysis we are concerned only with the third limb of 'serious harm'.

## THE CONCEPTS

**INTERNAL ARMED CONFLICT**  
 "An internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other." [Diakite, paragraph 35; CJEU]

**INDISCRIMINATE VIOLENCE**  
 The UNHCR has suggested that the term 'indiscriminate violence' encompasses "acts of violence not targeted at a specific object or individual, as well as acts of violence which are targeted at a specific object or individual but the effects of which may harm others".

**HIGH LEVEL INDISCRIMINATE VIOLENCE**  
 [General Risk]  
 In Elgafaji the CJEU stated that: "the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place... reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat".

**INDISCRIMINATE VIOLENCE WITH INDIVIDUAL FACTORS: THE SLIDING SCALE**  
 [Specific Risk]  
 Where the violence does not reach the level noted above, then personal characteristics of the Appellant may come into play. This is what is known as Elgafaji's 'sliding scale'. At paragraph 39 the Court states that "the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection".

Article 4 (3) of the QD [Section 28] requires that a decision maker evaluate all personal characteristics when analysing SP. Therefore, the 'personal circumstances' referred to in Elgafaji include any factor which may increase an individual's risk even though those factors may have qualified him/her for RSD. See FAC, UKUT cases.

**CIVILIAN**  
 Although there are many definitions of 'civilian' each case must be examined on its own. The ICRC has defined 'civilians' as "all persons who are not members of State armed forces or organised armed groups of a party to the conflict". The UNHCR adds to this that where a former combatant has specifically and genuinely given up violence he/she too could qualify for SP.

**CIVILIAN'S LIFE OR PERSON**  
 While the meaning of 'life' is clear the meaning of 'person' is less so. The UNHCR has stated that the 'harm' to a civilian's life or person can involve 'psychological' or 'mental' harm as well as 'physical' and in HM the UKUT stated this harm could also derive from indirect forms of violence such as intimidation, blackmail, kidnapping and so on.

## THE ANALYSIS

