



**FOURTH EASO CONSULTATIVE FORUM PLENARY MEETING
11 & 12 December 2014**

Round table 4: Facilitating a more common use of Article 15 QD in the EU – EASO’s COI and practical cooperation activities on Afghanistan and the development of guidance and tools on Article 15c

- Report –

Moderated by: **Judge Bernard Dawson**, Upper Tribunal, Immigration and Asylum Chamber, UK.
Supported by: **Jamil Addou**, Training, Quality and Expertise Officer, EASO

Participants:

Achilles Skordas, Professor at University of Bristol, UK
Laurent Aldenhoff, European Council on Refugees and Exiles

Summary

The round table was introduced by a lead-off presentation by EASO introducing Article 15(c) QD and the challenges experienced by EU Member States (MS) in the interpretation and the practical implementation of the EU legal provisions on subsidiary protection for civilians at risk of serious harm caused by indiscriminate violence in a situation of armed conflict. A mapping exercise under the EASO Quality Matrix, concluded in 2013, has shown that practices with regard to the application of Article 15(c) QD vary across MS. EASO has taken several steps to address the need for enhanced harmonisation of the application of Article 15(c) QD.

Judge Dawson first recalled that the interpretation of the relevant provisions by the Court of Justice of the European Union is limited in scope which leaves an important role to national courts in the EU to approach and apply the Qualification Directive. He then stated that Article 15(c) provides scope for protection which may not be otherwise applicable and as such is a crucial provision. Professor Skordas presented the construction of Article 15(c) as shaped by the European Courts as well as by UK and German national courts. Laurent Aldenhoff presented some selected findings from ECRE’s study titled *“Actors of Protection and the application of the Internal Protection Alternative”* comparing relevant practices in 11 EU MS. Judge Dawson concluded that law is not static and that an EU approach to the interpretation of Article 15(c) is needed to overcome the variations and divergences seen in different EU MS.

Detail

Variances in practices are illustrated, for example, by the application of Article 15(c) QD in cases of Afghan applicants where protection rates and the types of protection granted are widely spread and distributed in the EU. Moreover, in 2013, out of 22 MS participating in the Quality Matrix, only 3 MS



indicated they were still considering that Article 15(c) QD was applicable to Afghanistan in general; while 6 other MS replied they would only apply Article 15(c) QD to applicants coming from specific regions in Afghanistan.

The main reasons behind such variations are:

- Different assessments of situations in countries of origin
- Different approaches to the interpretation and application of the legal framework

EASO has taken several steps to address the need for enhanced harmonisation of the application of Article 15(c) QD. These initiatives are tackling both the need for common COI (through the establishment of COI networks and the publication of a COI report on the Security Situation in Afghanistan) and common Quality (through practical cooperation and exchange of information between MS and the publication of a Judicial Analysis of Article 15(c) developed together with the EASO network of Courts and Tribunals).

Judge Dawson first recalled that the interpretation of the relevant provisions by the Court of Justice of the European Union is limited in scope which leaves **an important role to national courts in the EU to approach and apply the Qualification Directive**. He then stated that Article 15(c) provides scope for protection which may not be otherwise applicable and as such is a crucial provision. Judge Dawson then presented an overview of the case law in the UK on Article 15(c) in general and on Afghan cases in particular. He highlighted a decision from May 2012 ruling that despite evidence of an increasing rate of casualties in Afghanistan, Article 15(c) was not found applicable since the level of violence was not considered to reach the required threshold for its application.

Professor Skordas presented the construction of Article 15(c) as shaped by the European Courts as well as by UK and German national courts. According to Professor Skordas the three key concepts to interpret and apply this article are:

- 1) Is there an armed conflict?
- 2) Is there indiscriminate violence?
- 3) Is there a link between the level of violence and the prevailing armed conflict?

Dealing with the first issue, the CJEU has made clear in its decision *Diakité* from 2014 requirements from **International Humanitarian Law are not to be fulfilled**. The only criteria to determine the existence of an armed conflict is the involvement of military forces in combat against conventional or non-conventional armed groups.

Turning to the second issue, the main question should be **“how to measure the seriousness of the level of violence?”** National courts have adopted either quantitative (number of attacks or casualties), qualitative (means of warfare) or comparative approaches (between conflicts. In this regard, level of violence in Kabul would for instance be assessed as much lower compared to Syria). Another indicator can be the evolution of the situation. Guidance could be sought in UN reports indicating, to take the Afghan example that the trends in incidents is on the increase.

Finally, on the last issue is to be interpreted as a **relationship between the individual risk and generalised violence**. The CJEU in the *Elgafaji* decision has introduced the concept of the sliding scale, meaning that the higher is the level of violence, the lesser individualisation of the risk is required.



Participants in the audience highlighted that displacement of populations should be considered a key indicator of the level of generalised/indiscriminate violence. It was commented by EASO that research shows that such indicator is indeed widely used across the EU both by first and second instances authorities.

Laurent Aldenhoff presented some selected findings from ECRE's study titled "*Actors of Protection and the application of the Internal Protection Alternative*" comparing relevant practices in 11 EU Member States.

It is to be noted that a significant number of the cases analysed are Afghan applications. These being particularly relevant to the topic at hand since there are high numbers of applications across the EU, since national authorities in Afghanistan are considered as quite weak (national protection not guaranteed) and because of the presence of international forces (but not considered as sufficient actors of protection).

Regarding the approach to **actors of protection** in "15(c) situations" it was found that usually MS do not assess in depth the availability of protection in reason of the high level of violence required. On the contrary, when approaching the availability of **internal protection alternatives**, several Member States systematically assess such avenue in 15c cases. In the case of Afghan applicants, the possibility to relocate to Kabul is often raised as a ground for rejection. Mr Aldenhoff underlined that a matter of concern lies with the fact that not all rejection decisions based on internal protection alternative are based on updated COI. Personal circumstances of the applicant (age, vulnerability (ex: single women), family links, etc.) have to be taken into consideration on a case by case approach.

During the plenary discussion it was asked whether EASO would engage in the future in the follow-up of the cases of people returned to alternative regions in their countries of origin however it was recalled that EASO's mandate expressly forbids the agency to address individual cases. One other question related to the assessment of the best interest of the child when assessing internal protection but the study did not explore specifically the issue. It was commented by a Member State that recent internal guidance on best interest resulted in an immediate increase in the protection rate of unaccompanied children applicants.

Judge Dawson concluded that law is not static and that an EU approach to the interpretation of Article 15(c) is needed to overcome the variations and divergences seen in different EU MS.

Next steps

EASO is to further develop its initiatives in the field of COI and Quality supporting a more common approach to the application of Article 15 (c) QD.