

The Qualifications Directive

Presentation
by
Boldizsár Nagy
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Qualifications Directive, 2004 April

**EC Council Directive 2004/83/EC of 29 April 2004
on Minimum Standards for the Qualification and Status of Third Country
Nationals or Stateless Persons as Refugees
or as Persons who otherwise need International Protection
and the Content of the Protection granted
(OJ L 304/12 of 30.9.2004)**

Qualification directive

Purpose

- **Guaranteeing a minimum of protection**
- **Closing the protection gap concerning persons not threatened with Geneva Convention type persecution**
- **Prevention of asylum shopping and abuse of the asylum system**

Scope of application

- **26 Member states of the EU, including the UK and Ireland who opted in (Denmark not)**

Minimum standards

- **According to Art 3. states may introduce or retain more favourable standards. This is the bare minimum**

Major innovations

- **Introduction of „subsidiary protection” and identification of rights accompanying it.**
- **Non-state actors may qualify as persecutors in a Geneva Convention sense**
- **Internal flight alternative is an exclusion ground.**
- **The directive not only offers detailed definition (as the common position of 1996), but also identifies the rights of the protected persons.**

Qualifications directive (cont'd)

- 2 § Definitions:
 - Application = seeking refugee **or** subsidiary protection status
 - **Refugee** = GC definition + absence of exclusion grounds according to Art 12 of the D.
 - **Person eligible for subsidiary protection**

» See next slide

Qualifications directive (cont'd)

Art 2 (e)

„‘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**, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country”

Qualifications directive (cont'd)

Article 15: Serious harm

Serious harm consists of:

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

Qualifications directive (cont'd)

Definitions: Family

- Spouse

 - + **unmarried partner**, if stable relationship + territorial states recognizes such partnerships

- **Children:**

 - minor, unmarried, dependent

If already a family in the country of origin + together present in the country of asylum

Recast, 2009 intends to extend!

(Married minor, sibling, parents even of minor married if in the best interest)

Qualification directive

Major themes

Convention refugee status

- Well founded fear
 - Evidence, credibility, sur place, manufactured cases
- Persecution
 - Actors, protection,
 - Internal relocation alternative,
 - Acts of persecution
- The five grounds (reasons)
- Cessation, exclusion
- Procedure, including revocation of status

Subsidiary protection

- Serious harm
- Cessation, exclusion
- Procedure, including revocation of status

Content of protection

Non refoulement, information, family unity, residence permits, travel document, employment, education, social welfare, health care, unaccompanied minors, accommodation, freedom of movement, integration, repatriation

Qualifications directive

- **Well founded fear** = Assessment of applications for international protection (Chapter II) = objective theory
- **burden of proof: shared** between applicant and assessing state;
- **assessment: individual**, based on the statement of the applicant + his documents
- country of origin: **law and reality** should be assessed
- opening for subjectivization (4§ (2. (c)) (Taking into account the „**individual position and personal circumstances**” of the applicant ...to assess whether the acts to which (s)he could be exposed amount to persecution)
- **Past persecution /serious harm** = serious indication of well-founded fear unless „good reasons to consider” that they „will not be repeated”.
- Credibility issues - see next slide

Qualifications directive Well-founded fear (cont'd)

Credibility /benefit of doubt

„where aspects of the applicant’s statements are not supported by... evidence” these need no confirmation if:

- applicant made **genuine effort** to substantiate
- **submitted all** available evidence and **explained the lack** of others
- the statement is **coherent and plausible** and does not contradict available information
- the a. has **applied „at the earliest possible time” unless** good reason for not having done so
- „the **general credibility** of the applicant has been established” (4§ 5. (e))

Qualifications directive

Well-founded fear (cont'd)

Sur place refugees and manufactured cases

- Genuine sur place = changes at home
- „sincere” sur place = activities abroad which „constitute the expression and continuation of convictions or orientations held in the country of origin” (5§ 2.)
- Manufactured case:
 - Subsequent application
 - based on circumstances the a. has created by his own decision → may be denied refugee status

Recast 2009: removes manufactured cases

(for fear of discrimination)

QUALIFICATIONS DIRECTIVE

PERSECUTION (CONT'D)

Persecutor / serious harm doer

- the State;
- parties or organisations controlling the State or a substantial part of the territory of the State;
- **non-State actors**, if the state or other agents are **unable** or unwilling to provide protection

Protector

- the State; or
 - parties or organisations, **including international organisations**, controlling the State or a substantial part of the territory of the State.
 - Protection means at least that
 - an effective legal system for the detection, prosecution and punishment of persecution or serious harm is operated
 - the applicant has access to such protection.
-
- Recast, 2009: Protection **must be effective and durable** and can only be provided by the above mentioned actors if they are **willing and able to enforce the rule of law**.

Qualifications directive Persecution (cont'd)

Internal relocation alternative (8§)

- Optional! (MS „may” determine)
- In a **part of the country** of origin
 - there is **no well-founded fear** of being persecuted / **no real risk** of suffering serious harm
 - the applicant „can **reasonably be expected to stay** in that part of the country”
- „Have regard” to –general circumstances +personal circumstances of the applicant
- If no possibility to return for technical reasons, still applies!

Recast, 2009:

- incorporates the 2007 Salah Sheek judgement of the ECtHR: legally travel there, gain admittance and settle there
- removes the applicability even if technical obstacles
- Establishes obligation of authorities to have up-to-date info

Qualifications directive

Persecution (cont'd)

Acts of persecution

- (a) [„must be”] sufficiently **serious**
 - by their 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 European Convention for the Protection of Human Rights and Fundamental Freedoms;
 - or
- (b) be 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 (a).

Acts: violence (physical, mental, sexual), discriminatory measures and punishment,
prosecution for denial of military service in a conflict entailing crimes or acts justifying exclusion, gender specific or child-specific acts

Recast 2009: (amending 9§ (3)) nexus need not be with persecution may be with absence of protection.

Qualifications directive

The reasons for persecution

Immaterial whether applicant possesses the characteristic or only the persecutor attributes to her/him.

- **Race:** includes colour, descent, or membership of a particular ethnic group;
- **Religion:** theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public
- **Nationality:** citizenship or lack thereof + membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- **Political opinion:** opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not reflected in acts of the applicant.
- **Particular social group:**
 - 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;

Qualifications directive

Cessation, exclusion

Cessation

Usual GC grounds (re-avaiement of protection, re-acquiring nationality, acquiring new nationality, re-establishment in country of origin, circumstances justifying ref. status cease to exist)

The change of circumstances must be of such a **significant and non-temporary nature** that the refugee's fear of persecution can no longer be regarded as well-founded.

Questions:

Durability

Justified grounds to resist return solely for memories of past persecution

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- Recast, 2009: introduces to exception to ceased circumstances if „a refugee who is able to invoke **compelling reasons arising out of previous persecution for refusing to avail** himself of the protection of the country of nationality”

Qualifications directive Cessation, exclusion

GC grounds:

- protection by other UN organ (UNRWA)
- enjoying rights equivalent to those of nationals
- crime against peace, war crime, crime against humanity
- a serious non-political crime outside the country of refuge **prior to the issuing of residence permit** based on refugee status; **particularly cruel actions**, - even if committed with political objective - may be classified as serious non-political crimes;
- Acts contrary to the purposes and principles of the UN

Exclusion ≠ return: non refoulement may apply!

Qualifications directive

Procedure, including revocation of refugee status

- MS **must** „grant” (i.e.: recognize) refugee status to those who qualify! (13 §)
- MS **must** „revoke, end or refuse to renew” refugee status if **cessation grounds** apply or „he or she **should have been or is excluded** from being a refugee” (14 § 3. (a)) or his or her **misrepresentation or omission of facts**, including the use of false documents, were decisive for the granting of refugee status.
- MS **may** „revoke, end or refuse to renew” status **when GC exceptions to non-refoulement** (33§ (2)) apply, i.e. national security or danger to the community
- Burden of proof:
 - cessation: MS „demonstrate” on an individual basis
 - Exclusion: „establish”

Confusion of cessation, cancellation and revocation

Cessation – normal end of status – changed circumstances

Cancellation – should not have been recognized

Revocation – after recognition engages in 1 F (a) and (c) activities

Ending status = in fact ending asylum, not refugee quality in the Geneva 33(2)cases

Qualifications directive Subsidiary protection

- **See definition (2§ and 15§) above**
(death penalty, execution; torture, inhuman, degrading treatment, punishment; serious indiv. threat to life or person by reason of indiscriminate violence in armed conflict)
- **Applies to anyone, not only to those who are threatened with the harm for the five grounds**
- **Should not be used to replace GC ref. status**
- **Individual threat in generalized violence? See**
- **Elgafaji judgment, Case C-465/07, judgment of 17 February 2009**
- **What about non armed conflict situations?**

Issues raised

The moral dilemma – is subsidiary protection of less moral value?

- Recent cases: „Elgafaji”, ECJ, „AH és QD v SSHD” Court of Appeal, UK, „Abdullah and others”, ECJ.


Interpretations of § 15

- is there a difference between a,b and c

- - the necessary individualisation
- - armed conflict
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Conclusions

Use of terms and the moral dilemma – is subsidiary protection of a lesser standing?

- Complementary – subsidiary
 - **Preamble (24) :**
- „**Subsidiary protection should be complementary and additional** to the refugee protection enshrined in the Geneva Convention”
 - **Is subsidiary protection of a lesser standing, do beneficiaries deserve less rights/protection?**
- Qualification Directive (QD)  Jane Mc Adam, UNHCR: no
- Hungarian Office of Immigration
- And Nationality: Yes
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- J.F. Durieux:
- Non Convention refugee = complementary,
- Excluded Convention refugee (1 F, 33 (2) = subsidiary

The moral dilemma – what is the basis of subsidiary protection?

Compassion

- Differentiation between Convention status and complementary protection is conceivable
- State discretion in granting or withholding it

Integrity, dignity and human rights of the human being

- Differentiation is unjustified
 - The state only recognises the necessity of protection
- "There is no legal justification for differentiating between convention refugees and the status of beneficiaries of complementary protection,"*
- (McAdam, 2007, p.1.)

The Elgafaji case – C-465/07 ECJ – Judgment, 17 February 2009

- **The case:**

Case C-465/07, Reference for a preliminary ruling under Articles 68 EC and 234 EC from the Raad van State (Netherlands), in the proceedings **Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie** . The Grand Chamber deciding, Netherlands and seven other MS (+ the Commission) making observations

- **Importance:** clarifying what „individual” means in 15 § c; settling the relationship among a, b, and c by stating that c goes beyond a and b.

- **Facts:**

- Mr Elgafaji, is a Shiite Muslim his wife is Sunni. He had worked from August 2004 until September 2006 for a British firm providing security for personnel transport between the airport and the ‘green’ zone. His uncle, employed by the same firm, had been killed by a terrorist act of the militia.
- **Claimants’ reasons for believing that there was a serious and individual threat**
 - - The killing of the uncle
 - - A short time later, a letter threatening ‘death to collaborators’ fixed to the door of their residence

The Elgafaji case - Judgment, 17 February 2009

- **The question: do Article 15 § b and 15 § c require the same level of individualisation?**
- Dutch first level decision: yes; second level: ~~no~~ → Raad van State (Council of State) request to ECJ for preliminary ruling:
 1. Does Article 15(c), in comparison with Article 3 of the [ECHR], offer **supplementary or other** protection?
 2. If the answer is affirmative, **when** does a person run „**a real risk of serious and individual threat** by reason of indiscriminate violence”

The Elgafaji case - Judgment, 17 February 2009

- ECJ: Article 15 b corresponds to Art 3 of the ECHR,
 - however
- Article 15 c differs from it and needs to be interpreted independently (28. §)
- § 15 b (and 15 a)
- *„cover situations in which the applicant for subsidiary protection is specifically exposed to the risk of a particular type of harm.“*
 - **but**
- See. NA v. UK, ECtHR, judgment of 17 July 2008, § 116

The Elgafaji case - Judgment, 17 February 2009

- *„By contrast, the harm defined in Article 15(c) of the Directive as consisting of a ‘serious and individual threat to [the applicant’s] life or person’ covers a more general risk of harm”* (33. §)
- It does not refer to specific acts of violence, but to the **threat** of the applicant’s life and person.
- That threat is **triggered by violence**, which is indiscriminate (34. §)
- **Indiscriminate**: it extends to the person *„irrespective of her/his personal circumstances”* (34 §)

The Elgafaji case - Judgment, 17 February 2009

The key sentence

- ...[T]he word **‘individual’** must be understood as covering **harm** to civilians **irrespective of their identity**, 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 the serious threat** referred in Article 15(c) of the Directive


Epilogue to Elgafaji

- On 25 May 2009, the Dutch Council of State, the Netherland's highest administrative court, gave an important judgment applying the recent European Court of Justice's interpretation of the qualification directive.
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- The Dutch Council of State, taking into account the above ECJ interpretation, denied the request of the Elgafaji couple to remain in the Netherlands on the ground that there is no exceptional situation taking place in Iraq whereby any civilian is at risk through random acts of violence.
 - (Source: ECRE Weekly Bulletin, xxx 2009)

QD (IRAQ) és AH (IRAQ v. SSHD)

- **The case:** QD (IRAQ) Appellant and SECRETARY OF STATE FOR THE HOME DEPARTMENT (Respondent) and AH (IRAQ) Appellant and SECRETARY OF STATE FOR THE HOME DEPARTMENT (Respondent)
Court of Appeal judgment, 24 June 2009. [2009] EWCA Civ 620 Case No: 1. C5/2008/1706 & No. 2. C5/2009/0251
- **Importance:** **rejects** the *KH (Article 15(c) Qualification Directive) Iraq CG [2008] UKAIT 00023* doctrine, according to which Article 15 c „is limited [to]... those who can show that as civilians they face on return a real risk of suffering certain types of **serious violations of IHL** caused by indiscriminate violence.”
- + states that in interpreting „individual” threat **Elgafaji sets the standard**
- + rules that , „**armed conflict**” **has to be interpreted** in extended fashion: there is no need to have to armed factions one is enough.
- **Facts:** QD comes from Samarra in the Salah Al-Din governorate of Iraq. Under the Saddam regime he was a Ba’ath Party member, and his expressed fear is of reprisals.
- AH, who has just turned 18, comes from Baquba in Iraq. He had moved with his
- family to Kifri in the Diyala governorate.
- **Past harm and feared harm:**
- QD’s fear is of reprisals for his past party membership, AH fears the general violence

QD (IRAQ) és AH (IRAQ v. SSHD)

- Rules applicable to armed conflict are not governing
- as their purpose is not the grant of refuge to people who flee armed conflict. A limitation to the victims would result in a too narrow interpretation of the QD, which goes far wider in its purposes than states of armed conflict
- „the Directive has to stand on its own legs and to be treated, so far as it does not expressly or manifestly adopt extraneous sources of law, as autonomous.” (§ 18)”

- This error led the UKAIT it led to construe “indiscriminate violence” and “life or person” too narrowly, to construe “individual” too broadly, and to set the threshold of risk too high. (18 §)
- (Article 17§ (1) /exclusion grounds/ serves as an example of QD really incorporating extraneous sources of law)

QD (IRAQ) és AH (IRAQ v. SSHD)

- Individual threat
- The Court of Appeal literally quotes and approves §§ 31-40 and 43 § of the Elgafaji judgment.
 - Meaning of „armed conflict” (beyond international humanitarian law)
- „ If the overriding purpose of article 15(c) is to give temporary refuge to people whose safety is placed in serious jeopardy by indiscriminate violence, it cannot matter whether the source of the violence is two or more warring factions (which is what ‘conflict’ would ordinarily suggest) or a single entity or faction.” (§ 34)

The logic behind the different provisions of Article 15 and the preamble of the QD

Provision	Level of individualisation
<p>Preamble</p> <p>Para 24. Subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention.</p>	<p>Article 15.</p> <p>Serious harm consists of</p>
<p>Para 25. The criteria should be drawn from international obligations under human rights instruments and existing practices in Member States.</p>	<p>(a) death penalty or execution;</p> <p>(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin;</p> <p>„the applicant for subsidiary protection is specifically exposed to the risk of a particular type of harm.”(Elgafaji, § 32.)</p>
<p>Para 26. Risks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm</p>	<p>(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.</p> <p>Not specifically targeted by reason of factors particular to the personal circumstances— a mere presence on the territory entails a threat to life and person of civilians irrespective of their identity (Elgafaji, 35 és 43.pont)</p>

Problems related to Article 15

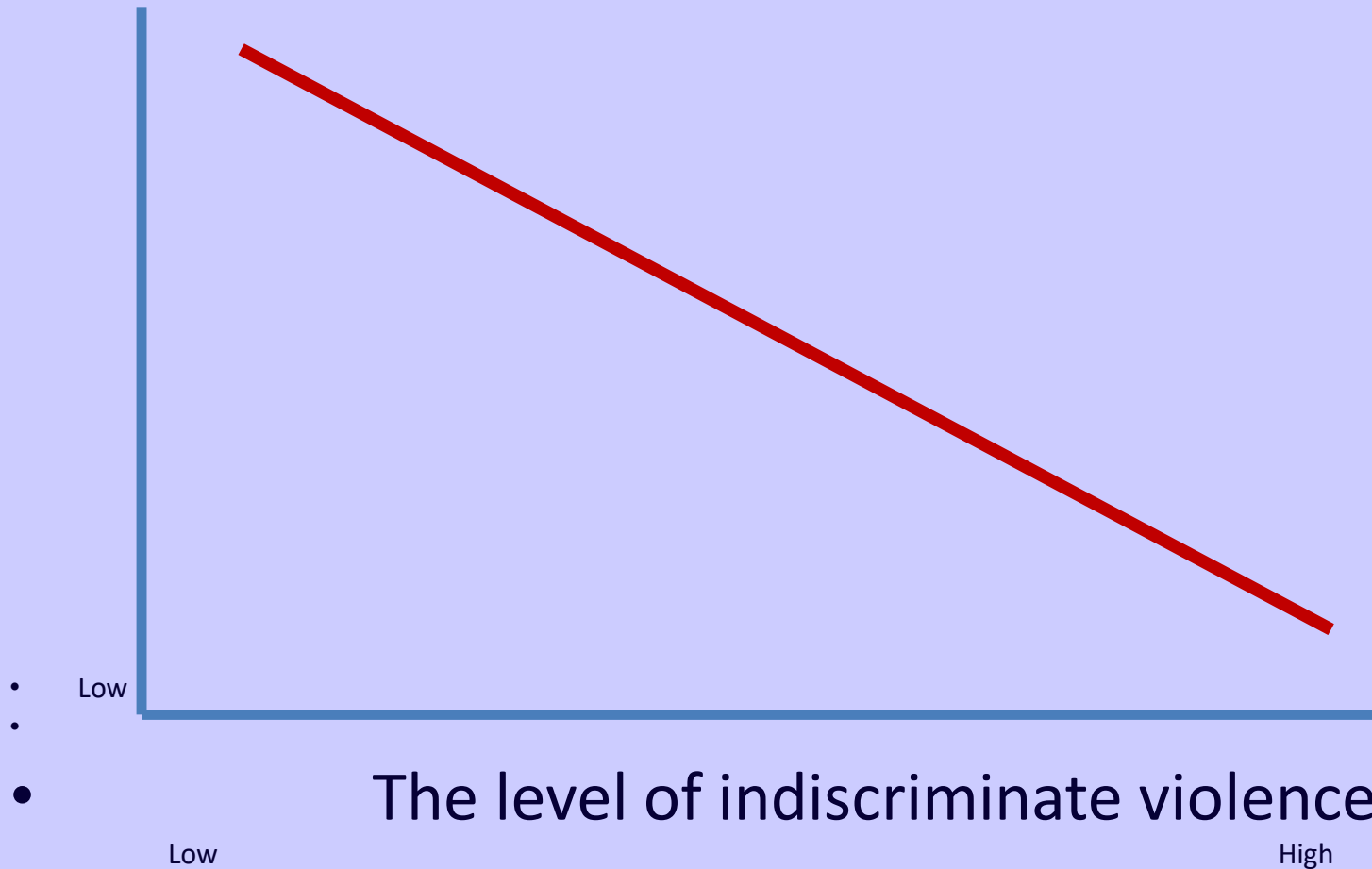
Problem	Possible answer	Example
<p>Multiplication of contingencies: real risk of suffering serious harm; serious harm = serious and individual threat. Art 2 and 15 read together (real risk of → a serious threat)</p>	<p>QD and AH v SSHD: No double contingencies “Risk” in article 2(e) overlaps with “threat” in article 15(c)</p> <p>The latter reiterates but does not qualify or dilute the former.</p>	<p>the placing of car bombs in market places; snipers firing methodically at people in the streets (QD and AH v. SSHD, § 27.)</p>
<p>Contradiction: Indiscriminate violence -- individual threat</p>	<p>Elgafaji: the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence reaches such a high level ...that a civilian, 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. See also NA v. United Kingdom, ECtHR Case No. 25904/07 § 115.</p>	
<p>Armed conflict – what does it mean? = two or more warring factions or = one actor using armed violence</p>	<p>Czech Administrative High Court: Geneva II. protocol + „Tadic”</p> <p style="text-align: center;">↓</p> <p>QD and AH v SSHD : Not humanitarian law. Independent meaning</p>	

The measure of individualisation and the level of violence

Elgafaji, 39. pont

- Individualisation

- High



- „the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances”

(§ 43)

Individualisation, singling out

- Hathaway, 2003 on QD
- „There is no clear recognition [in the QD] that a well-founded fear of being persecuted **does not** require targeting or individualized risk, but may be established where the individual concerned demonstrates risk to a group of persons defined by a Convention ground of which he or she is found to be a member.” (14.o.)
- Hathaway says this on Convention status, but is no less true for subsidiary status

Individualisation ECtHR, NA. v UK, No 25904/07 – Judgment of 17 July 2008

- „116. *Exceptionally, however, in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court has considered that the protection of Article 3 of the Convention enters into play when the applicant establishes that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned (see Saadi v. Italy, cited above, § 132). In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3.*”

The question to be raised to the applicant based on QD
and AH v SSHD

- *Is there in the country of origin or a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that the applicant would, solely by being present there, face a real risk which threatens his life or person? (point 40.)*

Interpretation of the term „armed conflict”

Humanitarian law



Wider meaning

Geneva II. protocol, Art. 1.
(1)

- Between forces of the state and „dissident armed forces” or other organised armed groups
- Under responsible command
- Control over at least part of the country
- Sustained and concerted military operations



Geneva II. protocol, Art. 1. (2)

- shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts

Tadić criteria

- The existence of organised armed groups
- Protracted armed conflict



- „[T]he phrase ‘situations of international or internal armed conflict’ in article 15(c) has an autonomous meaning broad enough to capture any situation of indiscriminate violence, whether caused by one or more armed factions or by a state, which reaches the level described by the ECJ in *Elgafaji*.”

QD és AH v SSHD, § 35

Summary

Arguments against the requirement of singling out or high level of individualisation

- Refugee Convention and QD § 15 (b) and (c)
- RC: Persecution of the group (a violation of basic /human/ rights) and membership in the group should amount to persecution
Hathaway
- QD 15 § (b) = ECHR Art 3. torture, inhuman or degrading treatment or punishment: In exceptional cases membership in a group suffering such treatment establishes protection need (prohibition of refoulement) if requiring individual distinguishing factors would render the protection illusory. (**NA v UK, ECtHR and approvingly QD and AH v SSHD, Court of Appeal judgment**)
- 15 c: Serious and individual threat is present if the level of indiscriminate violence is so high, that the life or person of a human being is at real risk solely because of being present on the territory. (**Elgafaji and QD and AH v SSHD, Court of Appeal judgment**)

Summary

The wider meaning of the term „armed conflict”

- Subsidiary protection does not require that in the whole or material part of the country of origin an armed conflict – as understood in international humanitarian law - take place. There is not even a requirement that two or more parties in conflict be identifiable. One actor (the state or a faction challenging it) may alone create the situation amounting to armed conflict. (AH v SSHD, Court of Appeal judgment)
- The term „armed conflict” in Article 15 is to be interpreted as to mean indiscriminate violence caused by one or more armed parties where the level of violence reaches the intensity identified in Elgafaji. (ibid)

Qualifications directive

Subsidiary protection: procedure, including revocation of status

- MS **must** „grant” (i.e.: recognize) subsidiary protection status to those who qualify! (18 §)
- **Cessation**: A person shall cease to be eligible for subsidiary protection when the **circumstances** which led recognition **have ceased to exist** or **have changed to such a degree** that protection is no longer required.
- the change must be **significant and of a non-temporary nature**, therefore the person no longer faces a **real risk of serious harm**.

Recast, 2009: here also exception to ceased circumstances?
If **compelling reasons** to refuse protection, **arising out of previous harm**

Qualifications directive: Subsidiary protection: procedure, including revocation of status (Cont'd)

Exclusion

- A person „**is excluded** from being eligible for s.p. if there are serious reasons for considering that:”
- (a) he or she has committed a crime against peace, a war crime, or a crime against humanity,
- (b) he or she **has committed a serious crime**;
- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations
- (d) he or she **constitutes a danger to the community or to the security of the Member State** in which he or she is present.
- Member States **may exclude** a person from being eligible for subsidiary protection, if prior to admission the person has committed **one or more (non-serious) crime**, punishable in the Member State concerned, **and** if the person **left** his or her country of origin **solely in order to avoid sanctions resulting from these crimes**.

Qualifications directive: Subsidiary protection: procedure, including revocation of status (Cont'd)

Compulsory

Optional

revocation

- Cessation clauses
 - Exclusion clauses: for
 - Peace, war, humanity
 - serious common crime
 - UN principles,
 - Misrepresentation of decisive facts
- Fleeing prosecution
 - Smaller crime

Qualifications directive: substantive rights

- Without prejudice to GC
- **Same rights** to refugees and beneficiaries of subsid. prot - **unless otherwise** indicated!
- Specific attention to **vulnerable groups** + best interest of the child
- In „manufactured cases” (refugee and subs. prot.) MS „**may reduce the benefits**”
- 21 § **confirms non-refoulement** both for asylum seekers and recognized refugees

Qualifications directive: substantive rights

- MS **shall** ensure **family unity** (23 §)
 - (def – see there, unity and benefits according to national law)
 - national security or public order: grounds for refusal, reduction or withdrawal of benefits from fam. members
 - MS **may** extend to other close relatives, who lived together and were dependent on the beneficiary of ref or subsid prot status before his/her departure
- **Residence permits**: min **3** years for refugees **1** year for subsid. prot.
- **Travel document**: refugees: as in GC, subsid. prot: „document” „at least when serious humanitarian reasons arise” (25 § (2))

Recast, 2009:

- Would abolish difference in benefits to family members between Convention status and subsid prot (23§ (2))
- Residence permit: 3 years for both status
- Travel doc: no limitation to humanitarian reasons – generally accessible

Qualifications directive: substantive rights

- **Employment, self employment, vocational (further) training:**
 - Refugees: subject to rules applicable to the profession
 - Subsidiary protection beneficiaries: the same
 - + examination of the labour market situation
 - + limited period access
 - + vocational training: state's discretion
- **Education:** Minors: full access; adults: as third country nationals.

Recast, 2009:

- eliminates difference between ref prot and subsid prot in employment

New:

- MS must facilitate (by grants and loans) access to employment related education and training
- New article (28) on access to procedures for recognition of qualifications

Qualifications directive: substantive rights

- **Social welfare and health care:**

national treatment, but for subsid. prot. beneficiaries MS may limit to core benefits

Accommodation:

As legally resident third country nationals

Integration: MS must create programs but subsid. prot. beneficiaries only get access to them „where it is considered appropriate by MS” (33 §)

Repatriation: MS **may** provide assistance to voluntary return.

Unaccompanied minors: 30 § details the protection of their special interests

Recast, 2009: equal treatment of Conv ref and subsid prot in matters of social welfare, health care and integration

Qualification directive Final provisions

- Entry into force: 20 October 2004
- Transposal: by 10 October 2006.

- Proposal for amendment – „Recast” published on 21 October 2009

Recast of the Qualification Directive, 2009 (COM (2009) 551 and related documents)

Problems identified:

Symptoms

- Divergent recognition rates
- Remaining secondary movements
- Lack of integration

Causes

Vague terms, different interpretation

- actors of protection
- internal protection
- membership of a particular social group

Different standards of protection

- Convention refugees – beneficiaries of subsidiary protection
- Limited right to family unification

Suggested changes to QD

- Restrict the broad interpretation of the concepts "actors of protection" and "internal protection" by specifying the criteria for assessing the accessibility and effectiveness of protection
- Ensure a more inclusive interpretation of the concept "particular social group" in line with the standards of the Geneva Convention, by better defining the significance to be attached to aspects arising from the applicants' gender and thus enhancing access to protection in particular for women.
- Approximate the rights of beneficiaries of subsidiary protection to those of refugees by removing all differences
 - regarding the duration of their residence permit;
 - access to employment and employment-related education activities;
 - access to social welfare, health care and to integration facilities;
 - access to benefits for their family members.

Suggested changes to QD

- Enhance the **integration of beneficiaries of protection** taking into account their specific needs:
 - enhance recognition of their qualifications;
 - vocational training and employment support;
 - accommodation and integration programmes
- Enhance respect the protection to family life: **broaden the definition of family members** so as to address the case where a beneficiary is a minor and the wide range of situations where a minor might be considered dependent, while ensuring the best interest of the child.

Thanks!

Boldizsár Nagy
Central European University
Budapest

nagyboldi@ludens.elte.hu

www.nagyboldizsar.hu