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Country of Origin Information and Country Guidance Working Party

DUE PROCESS STANDARDS FOR THE USE OF COUNTRY OF ORIGIN INFORMATION (COI) IN ADMINISTRATIVE AND JUDICIAL PROCEDURES[1]

(First Draft – September 13, 2014)

A. GENERAL ASPECTS OF EFFECTIVE ACCESS TO ASYLUM PROCEDURE

1. **Duty to provide** through non-governmental organisations or specialised services of the State at first instance[2] **free of charge relevant information on legal and procedural matters**[3] in order to enable applicants to better understand their rights and obligations in the procedure **concerning the use of COI.**

2. **Access to legal advisers or counsellors** should be permitted for applicants at their own costs at all stages of the procedure.[4]

3. Applicants should have an **opportunity to communicate with a representative of the UNHCR.**[5]

4. If not possible at the first instance procedure,[6] **free legal assistance and representation** should be guaranteed **at least for the purpose of effective legal remedy** against administrative decisions for the applicants who do not have necessary financial resources. [7]

5. Applicants should have **access to the services of an interpreter for submitting his or her case**[8] **including relevant COI.**

6. **Special procedural guarantees in relation to five standards above are required for vulnerable asylum applicants** due to their age,[9] gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual

1 These standards are a compilation of common standards of EU law on asylum (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, O J L 180, 29. 6. 2013; hereinafter referred to as the RPD; Article 4 of the 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 (O J L 337, 20. 12. 2011; hereinafter referred to as the RQD), (minimum) standards from the case-law of the European Court of Human Rights (ECtHR) in relation to Article 3 and Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Court of Jsutice of the EU (CJEU) and international standards on quality criteria for judicial decisions.

2 Article 21(1) of the RPD.

3 The aim of this standard is „to ensure a correct recognition of international protection needs already at first instance" (Recital 22 in the Preamble of the RPD). This standard includes applicants in detention and at border crossing points (Article 8 of the RPD).

4 Recital 23 in the Preamble and Article 22 of the RPD.

5 Recital 25 in the Preamble and Article 12(1)(c) of the RPD.

6 Article 20(2) states that Member States may also provide free legal assistance and/or representation in the procedures at first instance.

7 Articles 20., 21 of the RPD. Article 47(3) of the Charter of Fundamental Rights of the European Union (O J C 326/403, 26. 10. 2012; hereinafter referred to as the Charter) states that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

8 Recital 25 in the Preamble and Articles 12(a) and (b) and 8(1) of the RPD.

9 A representative (a person or an organisation) must be appointed by the competent bodies in order to assist and represent an unaccompanied minor in procedures /.../ with a view to ensuring the best interest of the child and exercising legal capacity for the minor (see Articles 2(n) and 25 of the RPD). See also Article 7(5) of the RPD.

violence.[10]

B. SPECIFIC ASPECTS OF EFFECTIVE USE OF COI

7. **Shared burden of proof:**
Under EU secondary law national legislation or case-law "*may consider it the duty of the applicant to submit as soon as possible all the elements needed to substantiate the application*"[11]. These elements consists of applicant's "*statements, all the documents at his/her disposal regarding his/her age, background, relevant relatives, identity, nationality, country(es) or place(s) of previous residences, previous asylum applications, travel routes and documents and the reasons for applying for international protection*".[12] The Court of Justice of the European Union (CJEU) uses the term „elements", as well. It says: *„it is generally for the applicant to submit all elements needed to substantiate the application*".[13] This means in case that an applicant in fact has at his/her disposal COI as an evidence that he/she has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm in the past,[14] or if he/she poses COI as an element which shows possible persecution or serious harm in the future, he/she has a duty to submit such COI as evidence or as an element/information.[15] Furthermore, Article 13 of the RPD, which sets legal obligations and defines documents that must be submitted by the applicant, does not mention COI. Concerning the burden of proof for the applicant the CJEU also states that 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 the applicant adduce evidence*" that he is specifically targeted by reason of factors particular to his personal circumstances.[16]
However, on the other side, it is a duty of determining authority to ensure that "*the assessment of an application for international protection /.../ includes taking into account all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied.*"17 This is especially relevant, when an applicant has no legal representative. Furthermore, "*where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation"* when certain conditions are met and among them is the condition that /.../ *"the applicant's statement /.../ do not run counter to available specific and general information relevant to the applicant's case."*18
According to the RPD *"Member States shall ensure that decisions by the determining authority /.../ are taken after an appropriate examination. To that end, Member States shall ensure that precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants, and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions*".19
Furthermore, owing to the absolute character of protection against death penalty or execution,20 torture or inhuman or degrading treatment or punishment of an applicant in the country of origin21 and since in many cases even international protection under under Article 1 of the 1951 Convention and the 1967 Protocol relating to the status of refugees and

10 Recitals 29., 30., 31., 32. and 33. in the Preamble and Article 24 of the RPD.
11 Article 4(1) of the RQD.
12 Article 4(2) of the RQD.
13 M.M., C-277/11, para. 65. In case of H.N. (C-604/12, para. 47) the CJEU uses the expression /.../"where a third country national submits an application for international protection which disclose nothing to support the conclusion that that perosn has a well-founded fear of being persecuted" /.../.
14 See Article 4(4) of the RQD.
15 In contrast to the secondary EU law, the case-law of the ECtHR does not distinguish between COI as element /information or COI as evidence (see: concurring opinion of Judge Zupančič, ECtHR, case of Saadi v. Italy, 28. 2. 2008). The standardised expression of the ECtHR in this regard is as follows: „It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it" (Sufi and Elmi, para. 214). Under EU secondary law the term "evidence" is used only in relation to the procedural rules of the subsequent applications (see Article 42(2(a) of the RPD).
16 C-465/07, Elgafaji, operative part of the judgment.
17 Article 4(3)(a) of the RQD. Article 4(1) of the RQD states: „In cooperation with the applicant, it is the duty of the member States to assess the relevant elements of the application." The CJEU states that „a Member State may also be better placed than an applicant to gain access to certain types of documents" (M.M., C-277/11, para. 66).
18 Article 4(5)(c) of the RQD. See also standard under point 10.
19 Article 10(3)(b) of the RPD; see also Article 8(2) of the RQD.
20 Article 15(a) of the RQD wich corresponds to Article 1 of the Protocol 13 to the ECHR.
21 Article 15(b) of the RQD, which corresponds to Article 3 of the ECHR.

Article 15(c) of the RQD may have an absolute character, it is necessary that determining authorities and courts – in the words of the ECtHR - "*take as their basis all the material placed before them and, in addition, it may be necessary to obtain material proprio motu."* The ECtHR *"will do so, particularly when the applicant /.../ provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government*.22 *Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution,23 its is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities"*.24 Due to subsidiary character of protection under the ECHR, the same standards should apply to national authorities and courts.
Furthermore, under the case law of the ECtHR asylum application should not be rejected based on an argument that an applicant did not fulfill his/her burden of proof, if certain relevant facts about the conditions in the country of origin or in the country of transfer *"are well know and are freely ascertainable from a wide number of sources"*.25 A shared burden of proof concerning the use of COI is applicable also in cases of extradition, because extradition might result in direct or indirect refoulement in violation of the international and Union obligations of the member States.26

8.**The use of COI and their assessment is obligatory provided** that an applicant has an arguable claim concerning his/her request for international protection, in case that alleged persecution on conventional grounds (eligibility criteria for refugee status) or serious harm (eligibility criteria for subsidiary protection) overlap with protection under Article 3 of the ECHR[27] and also in case where there is no such overlap.[28]
Arguable claim in the sense of EU law means that even in accelerated procedure if the applicant has made *"clearly inconsistent and contradictory, clearly false or obviously improbable representations"*, COI must be taken into account in order to check whether such representations „*contradict sufficiently verified country-of-origin information*" and only then application can be considered "*clearly unconvincing"* in relation to whether he/or she qualifies as a beneficiary of international protection by virtue of RQD.[29]

9**. The benefit of doubt in relation to COI submitted:** In the words of the ECtHR "*owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies."*[30]

10.**Prohibition on obtaining COI from the alleged actor(s) of persecution or serious harm:**
"*Member States shall not obtain any information from the alleged actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or his or her dependants, or the liberty and security of his or her family members still living in the country of origin*."[31]

11**.Duty of cooperation and disclosure of COI:**
The fundamental question in this respect is whether the determining authority has an obligation to inform the applicant of the concrete COI that decision-maker intends to use in administrative decision and if the answer is positive, what basic procedural standards should be offered to the applicant for effective fulfillment of this procedural standard?
Second sentence in the Article 4(1) of the RQD states that *"in cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the application"*. Furthermore, the recital of the RPD states that the procedure in which an application for international protection is examined *"should normally provide an applicant at*

22 N.A. v. the United Kingdom, para. 119; Saadi v. Italy, para. 128.
23 Compare the importance of a historical situation as putting a„light on the current situation and its likely evolution" with the Article 4(4) of the RQD, under which a historical situation can have a significance of a „serious indication of the applicant's well-founded ear of persecution or real risk of serious harm".
24 Salah Sheekh, para. 136; Sufi and Elmi, para. 215.
25 M.S.S. v. Belgium and Greece, para. 366.
26 Article 9(3) of the RPD.
27 „The assessment whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment contrary to Article 3 inevitably requires that the Court assess the conditions in the receiving country" (Sufi and Elmi, para. 213).
28 Article 4(3)(a) and 4(5)(c) of the RQD.
29 Article 31(8)(e) of the RPD.
30 N. v. Sweden; Collins and Akaziebie v. Sweden; F.N. and Others v. Sweden, para. 67.
31 Article 30(b) of the RPD. See also Article 45(2)(b) concerning procedural rules for the withdrawal of international protection.

least with /.../ the right to be informed of his or her legal position at decisive moments in the course of the procedure".[32] This may lead to the conclusion - in the light of the principle of natural justice from the non-European jurisdictions - that "*a person whose interests are likely to be affected by an exercise of power be given an opportunity to deal with matters adverse to his/her interests that the repository of the power proposes to take into account in exercising the power. This does not mean that the source and nature of all material that comes before the decision maker must be disclosed. But in the ordinary case an opportunity should be given to deal with adverse information that is credible, relevant and significant to the decision to be made. What is required to discharge this duty depends on the circumstances of the particular case.*"[33]

However, based on the interpretation of the CJEU, the standard on "*cooperation"* from the second sentence of Article 4(1) of the RQD relates only to the "*first stage of assessment*" at determining authority. The first stage of assessment concerns "*the establishment of factual circumstances which may constitute evidence that supports the application, while the second stage relates to the legal appraisal of that evidence, which entails deciding whether, in the lights of the specific facts of a given case, the substantive conditions /.../ for the grant of international protection are met"*.[34] What is clear from the judgment in case of M.M. is that EU law does not "*require the national authority responsible for examining application for subsidiary protection to supply the applicant, before adoption of a negative decisions /.../ with the elements on which it intends to base its decisions and seek the applicant's observations in that regard*."[35] Is it possible, therefore, to place a duty of determining authority on disclosure of COI to the applicant in terms of EU law in the first stage of assessment procedure? It is – but judging from the CJEU's interpretation in case of M.M. this standard cannot be based on the aforementioned recital in the Preamble of the RPD that an applicant should normally be provided at least with the right to be informed of his or her legal position at decisive moments in the course of the procedure. Whether this standard can be based on the second sentence of Article 4(1) of the RQD, as this provision refers to the first stage of assessment, is not clear from the judgment in case of M.M. It is probably most reliable to say that a duty of disclosure of COI derives from the *"right of a foreign national to be heard in the course of examination*"[36] as this being the right of the defence as a fundamental principle of EU law, which is now *"affirmed"* in Articles 47 (right to an effective remedy and to a fair trial) and 48 of the Charter (right of defence) and 41 of the Charter (the right to good administration). [37] Namely, concerning the importance of the right to be heard, the CJEU says this right *"must apply in all proceedings which are liable to culminate in a measure adversely affecting a person /.../. Observance of that right is required even where the applicable legislation does not expressly provide for such a procedural requirement. The right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely*".[38] This means the right to be heard cannot be effective, if there would be no duty of disclosure of relevant COI to the applicant before the administrative decision is taken. In addition to judgment in case of M.M., further arguments for a duty of disclosure can be found also in the RPD. Under Articles 15(3) and 16 of the RPD *"personal*

32 Recital 25 of the Preamble in the RPD. Specifically with respect to the withdrawal of refugee or subsidiary protection status, Member States „should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and have the the opportunity to submit their point of view before the authorities can take a reasoned decision to withdraw their status" (Recital 49 in the Preamble of the RPD).

33 High Court of Australia: Muin v. Refugee Tribunal; Lie v. Refugee Tribunal [2002] HCA 30, 8. August 2002.

34 M.M., C.-277/11, para. 64.

35 Ibid. para. 60.

36 See interpretation of the CJEU in case of M.M. from paragraph 75 onwards, which does not mention Article 4(1) of the former Qualification Directive any more.

37 Ibid. paras. 81-82.

38 Ibid. paras. 85-87. This interpretation of the CJEU in case of M.M. was given based on at that time enforceable Procedures Directive 2005/85/EC, while the RPD brought a special provision in Article 12(1)(d). This new provision says that „with respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees: /.../ they, and if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and /.../ in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application." The text of this secondary law provision is such that it cannot be said that this provision in any way reaffirms the above advocated standard more than it is already secured by the CJEU in case of M.M. through the right to be heard as being the general principle of EU law; this is probably so, because access to COI under Article 12(1)(d) of the RPD is guaranteed only after taking an administrative decision and, furthermore, the aforementioned duty is not applicable for procedures under Chapter IV, which regulates decision on withdrawal of international protection. (Compare this with recital 49 in the Preamble of the RPD). In the opinion of the drafters of these standards the Article 19 of the RPD does not refer to COI, since Article 19 of the RPD refers only to "legal and procedural information".

interviews must be conducted under conditions which allows applicants to present the grounds for their applications in a comprehensive manner" and the applicant "*must be given an adequate opportunity to present elements needed to substantiate the application in accordance with Article 4 of the RQD as completely as possible. This shall included the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant's statements.*" These standards could not be fulfilled without a duty of disclosure of COI before administrative decision is taken. Furthermore, Article 23(1) of the RPD sets the "*right to access to the information in the applicant's file upon the basis of which a decision is or will be made".*[39]

Therefore, for the purpose of effective realisation of the "*right to access to the information in the applicant's file*" from EU secondary law and for the purpose of effective realisation of the "*right to be heard"* as being a general principle of EU law, the determining authority has a positive obligation to inform the applicant directly or through his/her legal representative about the particular information in the COI document, which decision-maker thinks will be relevant for the applicant's case; if the applicant does not have a legal representative that particular information, the title of the document, the eventual subtitle and the source of a particular information should be translated in a language which the applicant understands or is reasonably supposed to understand;[40] the applicant or his/her legal representative should have access to the entire document (in original language) from where that particular COI is taken; the applicant or his/her legal representative should have enough time to prepare a response to the relevant and particular COI disclosed;[41] the right to be heard requires the authority *"to pay due attention to the observations thus submitted by the person concerned examining carefully and impartially all the relevant aspects of the individual case and giving detailed statement of reasons for their decision.*"[42]

12.**Exceptions concerning disclosure of COI:**

There are legitimate exceptions from the right to access to information in the applicant's file from Article 23(1) of the RPD, which include COI.[43] The exceptions are applicable "*where disclosure of information or sources would jeopardise national security, the security of the organisations or persons) providing the information or the security of the person (s) to whom the information relates or where the investigative interests relating to examination of applications for international protection /.../ or the international relations of the Member States would be compromised.*" Two additional standards derive from EU secondary law in this regard: those information or sources must be available to judges in adjudication process[44] and national law procedures must guarantee the applicant's rights to defence at the first instance authority [45] and during the realisation of the right to an effective remedy before a court or tribunal. From the standpoint of the general principle of EU law the later means that realisation of the rights conferred by EU law may not be rendered *"practically impossible or excessively difficult".*[46] In the light of the Charter, this general principle of EU law means that the right to good administration *"includes the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy."*[47] The right to access to file or the right to asylum from Article 18 of the Charter may be limited if limitation is provided by law and if it respects "*the essence"* of these rights. "*Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet the objectives of general interest recognised by the Union*

39 Article 23(1) of the RPD.

40 Recital 25 in the Preamble and Article 12(1)(a) and (b) of the RPD.

41 „Even in cases of expulsion to a country where there is an alleged risk of ill-treatment contrary to Article 3, the formal requirements and time-limits laid down in domestic law should normally be complied with /.../.It should be borne in mind in this regard that in applications for recognition of refugee status it may be difficult, if not impossible, for the person concerned to supply evidence within a short time, especially if – as in the present case – such evidence must be obtained from the country from which he or she claims to have fled. Accordingly, time-limits should not be so short, or applied so inflexibly, as to deny an applicant for recognition of refugee status a realistic opportunity to prove his or her claim (ECtHR, Case of Bahaddar v. the Netherlands, para. 45).

42 M.M., C-277/11, para. 88.

43 Article 72 of the Treaty of the Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) says that Title V. (Area of Freedom, Security and Justice, which also contains policies on asylum) shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. This is reaffirmed by the recital 51 of the RPD.

44 Artice 23(1)(a) of the RPD.

45 Artice 23(1)(b) of the RPD.

46 Joined cases C-411/10 and C-493/10, N.S. and M.E., Opinion of Advocate General Trstenjak, paras. 160-161.

47 Article 41(2)(b) of the Charter.

or the need to protect the rights and freedoms of others."[48] From the standpoint of ECHR, useful guidance in terms of procedural guarantees for the use of COI in cases of security concerns can be distilled from a judgment of the ECtHR in case of *A and others v . the United Kingdom* from 2009 taking into account that standards of fair trial from Article 6(1) of the ECHR are not applicable in cases of decisions on whether or not to authorise an alien to stay in a country of which he is not a national.[49]

13.**The practice of using COI must respect a right to protection of personal data.**[50]

14.**Duty to consult in drafting a list of safe third countries:** Where an administration is reaching a conclusion of general application, for example, where a state makes an order designating a country as "safe," there needs to be consultation with inter governmental organizations such as UNHCR and NGOs, perhaps with advocates and researchers so that they can make representations and report the results of their own enquiries.[51]
Under EU law there is even a general standard - applicable not just in cases of generalised decisions on list of safe countries - that *"Member States shall allow UNHCR to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure."*[52]

15**.A general decision on of safe third countries should have as an attachment a list of COI that have been used as factual grounds to adopt that decision.**

16.**Authorities should keep a list of safe third countries under periodic review.**[53]

17.**An applicant must have an effective opportunity to challenge with counter-indications or valid reasons a presumption that a particular country is safe for him/her.**[54]

C. QUALITY STANDARDS FOR ADMINISTRATIVE AND JUDICIAL DECISIONS

18**.Assessment of COI must be done** by properly trained professionals[55] acting in the framework of procedure **objectively, impartially and within reasonable time.**[56]

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48 Article 52(1) of the Charter.

49 In case of Maaouia v. France (2000) the ECtHR stated that „the decision whether or not to authorise an alien to stay in a country of which he is not a national does not entail any determination of his civil rights or obligations or of any criminal charge against him within the meaning of Article 6 § 1 of the ECHR" (para. 35).

50 Recital 52 in the preamble of the RPD states that Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to processing of personal data and on the free movement of such data governs the processing of personal data carried out in the member States pursuant to this directive. Article 48 of the RPD states that *"Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work."*

51 In this regard, recital 46 in the RPD imposes an obligation to the Member States to „take into account, inter alia, the guidelines and operating manuals and the information on countries of origin and activities, including EASO Country of Origin Information report methodology, referred to in Regulation (EU) No. 439/2010, as well as relevant UNHCR guidelines.

52 Article 29(19(c) of the RPD.

53 „In order to ensure the correct application of the safe country concepts based on up-to-date information, Member States should conduct regular reviews of the situation in those countries based on a range of sources of information /.../" (Recital 48 in the Preamble of the RPD). See also Article 37(2) of the RPD.

54 Recitals 40. and 42 in the Preamble of the RPD. Under second paragraph of Article 35 of the RPD „*the applicant shall be allowed to challenge the application of the first country of asylum concept to his or her particular circumstances"*. See a similar due process standard in relation to the concepts of safe country of origin (Article 36(1) of the RPD), safe third country (Article 38(2(c) of the RPD) and the European safe third country (Article 39(39 of the RPD.

55 Recitals 16. and 17 and Articles 4(1)(3) and (4) of the RPD, third paragraph of Article 6(1) of the RPD, Article 10(3)(c) of the RPD, Articles 15(3)(a) and 34(2) of the RPD. See also second paragraph of Article 14(1) of the RPD.

56 Recitals 17. and 18 in the Preamble of the RPD and Article 10(3)(a) of the RPD. Article 41(1) of the Charter (right to good administration) states that every person has the right to have his or her affairs handled impartially, fairly and within reasonable time by the institutions, bodies, offices and agencies of the Union. First sentence of Article 47(2)

19.Objectivity and impartiality means that **specific criteria for the assessment of COI should be given due consideration,**[57] while from the standpoint of the CJEU the requirement for impartiality pertaining to the right to good administration in international protection cases *"encompasses, inter alia, objective impartiality, in so far as* ***there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the national authorities concerned".***[58]

20.Assessment of COI within reasonable time means that assessment must be conducted **without prejudice to an adequate and complete**[59] **examination being carried out**[60] **even if application is examined under priority**[61] **or accelerated procedures.**[62]

21.Decision/judgment must contain **reasons in fact (COI) and in law.**[63] Reasons must be "*sufficiently specific and concrete to allow the person to understand why his application is being rejected.*"[64] **Judicial scrutiny must provide for a "*full and ex nunc examination of both facts and points of law,*** *and shall ensure, where applicable, an examination of the international protection needs pursuant to Recast Qualification Directive at least in appeals procedures before a court or tribunal of first instance.*[65] *Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. the time limits shall not render such exercise impossible or excessively difficult*".[66]

22. **Written decision**[67]**/judgment should be delivered directly to an applicant, but in case that he/she has a legal representative, it should be delivered to legal representative.**[68]

23. In case that an applicant does not have a legal representative, **a synopsis of a written administrative decision in terms of decisive reasons of facts and law should be translated to the applicant in a language which he/she understands or is reasonably supposed to understand.**[69]

24. **General quality criteria for judicial decisions:**
General quality criteria for judicial decisions as being guarantees against arbitrariness (not just in asylum disputes) are

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of the Charter states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

57 See the Revised IARLJ's Check-list on Criteria for Assessment of COI from 2014.

58 H.N., C-604/12, para. 52.

59 Under the EU secondary law the exceptions in terms of complete examination whether the applicant qualifies for international protection are regulated in Article 33 of the RPD (inadmissible applications).

60 Recital 18 in the Preamble and Article 31(2) of the RPD. According to the Article 31(3) of the RPD, the examination procedure should be concluded within six months of the lodging of the application, but this time limits may extend for a period not exceeding a further nine months and, exceptionally, further three months in cases mentioned in third and fourth sub-paragraph of Article 31(3) of the RPD. In any event, Member States shall conclude the examination procedure within a maximum time limit of 21 months from the lodging of the application (Article 31(5) of the RPD. For the time limits concerning border procedures, see Article 43(2) of the RPD.

61 Recital 19 in the Preamble of the RPD.

62 Recital 20 in the Preamble and Article 31(8)(e) of the RPD.

63 Recital 25 in the Preamble of the RPD; Article 11(2) of the RPD; Article 41(2)(c) of the Charter. See also due process standard no. 24.

64 M.M., C-277/11, , para. 88.

65 Article 46(3) of the RPD. From the standpoint of EU law, the principle of effective judicial protection affords an individual a right to access to a court or tribunal but not to a number of levels of jurisdiction (Diouf, C-69/10, para. 69).

66 Article 46(4) of the RPD. „"Member States may lay down time limits for the court or tribunal /.../ to examine the decision of the determining authority" (Article 46(19) of the RPD.

67 Article 11(1) of the RPD says: „*Member States shall ensure that decisions on applications for international protection are given in writing.*"

68 In this regard, recital 25 in the Preamble of the RPD uses the term „the right to appropriate notification of a decision", while Article 12(1(e) of the RPD states, if a legal adviser /.../ is representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant." Under the usual circumstances of very short time limits for filing a lawsuit against a first instance decision, it is much better from the standpoint of effective legal remedy to impose an obligation to deliver a decision to applicant's legal representative.

69 Recital 25 in the Preamble and Article 12(1)(f) of the RPD.

the following:

- **correctness (lawfulness)**,
- **reasoning** and
- **clarity.**

In general terms the Opinion no. 11 of the Consultative Council of European Judges (CCEJ) defines a high quality judicial decision in the sense of ***"correctness"*** as one "*which achieves a correct result – so far as the material available to the judge allows – and does so fairly, speedily, clearly and definitely".*[70] The Rovaniemi project points out that *"decision can be assumed to be just and lawful if, in addition to legislation, the prevailing case-law and other accepted sources of law have been taken into account in its formulation. In addition, the specific characteristics of the case at hand must have been recognised."*[71]

Judicial decisions must be **reasoned.**[72] This serves as a safeguard against arbitrariness, but also means that the reasoning process must be transparent.[73] *"Reasoning concluded by judges must be comprehensible, detailed and systemic /.../ Reasons for judicial decisions must demonstrate a clear guidance for the parties and legal professionals of the fairness and lawfulness of the decision".*[74] The CCEJ recommends that the reasons concluded must be consistent, clear, unambiguous and not contradictory. They must allow the reader to follow the chain of reasoning which led the judge to reaching the decision.[75] The statement of reason must respond to the parties' submissions. The reasoning must be free of any insulting or unflattering remarks about the parties; a proper balance must be found between conciseness and a proper understanding of the decision.[76] Reasoning includes an examination of the factual and legal issues at the heart of the dispute. When examining factual issues, the judge may need to address objections to the evidence, especially in terms of its admissibility. The judge will also consider the weight of factual evidence likely to be relevant for the resolution of the dispute.[77] The CCJE also recommends using the case-law of higher courts either as a binding or a persuasive authority - depending on the legal tradition.[78]
The Rovaniemi project adds that the criteria stating that reasons are to be detailed and systematic mean judges should indicate which relevant issues are in dispute, and which are not. Reasons should be drafted in a problem-oriented

70 CCJE, Opinion no. 11, point 3 (general introduction). However the purpose of a high quality judicial decision is not only to resolve a given dispute providing the parties with legal certainty, but often also to establish case law which may prevent the emergence of other disputes and to ensure social harmony (Ibid. point 7 - general introduction).

71 Evaluation of the Quality of Adjudication in Courts of Law, Quality Project of the Courts in the Jurisdiction of the Court of Appeal of Rovaniemi, Finland, May 2006, p. 36.The standard on "*correctness from the legal point of view"*has been defined by the Swedish *Domstolsverket* Report "*Kvalitete i domstolsverksamhet*" from 25 May 1997 in the following way: "F*irst characteristic of a quality decision is that it is correct from the legal point of view. In addition, it should contain comprehensive and comprehensible reasons, and a coherent and precise statement of facts"* (Evaluation of the Quality … p.23). The project of the Bank of Reconstruction and Development on the quality of judicial decisions in commercial matters in the States of the Balkan defines quality as an expectation that the „*court would apply the right norm of law, demonstrate objectivity in evaluation of facts laid down in the reasoning (substantiation) section of a decisions and be exceptionally persuasive in laying down its legal arguments. The decision language should also imprint impartiality of the judge(s) which will not be subject to any perception of bias if the court"* /.../ (EBRD, The EBRD Judicial Decisions Assessment for Albania, Bulgaria, BiH, Croatia, FYRM, Kosovo, Montenegro, Romania, Serbia and Slovenia, The Region Summary). In contrast to this, in the *Trial Court Performance Standards of the National Center for the State Court*, "*integrity*" as a quality benchmark in the sense of a correct application of the law means that "*courts must be faithful to the laws they are expected to apply. The court's integrity in upholding the law can be measured by the extent to which its actions are in accordance with the requirements specified in substantive and procedural law*" **(**Bureau of Justice Assistance, US Department of Justice: Trial Court Performance Standards and Measurement System Implementation Manual, July 1997).

72 This requires judges to have proper time to prepare their decisions (CCEJ Opinion no. 11, point 3b, p. 7).

73 „Transparency means also that if there have been more than one seriously considered alternative, all of these have been covered in the reasons. Transparent reasons comment also on arguments against the eventual outcome, as well as indicative why the arguments for the outcome have prevailed in the case at hand (pro& contra)" (Evaluation of the Quality …, point 2. c., p. 37).

74 CEPEJ, 2008, The Checklist for Promoting the Quality of Justice and the Courts of the CEPEJ, Strasbourg, 18 December 2008, Council of Europe, Point III/5, p. 12.

75 CCJE, Opinion No. 11 … point 4/b, paragraph 36.

76 Ibid. point 4/B, paragraphs 38 and 40.

77 Ibid. paragraphs 42-43.

78 Ibid. paragraphs 44-45.

manner. A systemic approach means that different legal issues are settled separately in a sensible order.[79]

Although **clarity** as a general criterion is mostly covered by the criterion on reasoning, it is worth mentioning that the Rovaniemi Project defines a clear structure and linguistic and typographical correctness as a special criterion. Clarity in this regard is improved when the structure of the decision makes distinctions between the background of the case, evidence, reasons and the outcome, and when headings and a consistent structure are used. Comprehensibility requires the use of general language so that also the outside reader can easily understand the main thrust of the decision. The decision should also be pronounced so that it can be understood.[80]

25.**Duty to treat like cases alike:**[81] if certain country-guidance system is in place in practice, it is recommended that country-guidance system should be properly institutionalised and transparent in procedural terms.

79 Evaluation …, points 2.d, 2.e), p. 37.

80 Evaluation …, points 2.e, 2.f and 2.g, p. 37. For more on basic quality benchmark checklist for judicial decisions in asylum disputes, see: Zalar, Boštjan, 2014, Methodology for the Analysis of Judicial Decisions of the Administrative Court of the Republic of Croatia in International Protection Disputes under EU Law: Basic Quality Benchmark Checklist, Centar za mirovne studije, Zagreb).

81 „The objective is that similar cases should be treated alike and result in the same outcome“ (Recital 8 of the Preamble in the RPD).