

# QUALITY CRITERIA FOR THE RESEARCH AND USE OF COUNTRY INFORMATION (COI)

*Background paper*

## **0. Mandatory use of COI**

- ⇒ **Asylum** cases: EU law foresees this obligation (Article 4 (3) (a) of the Qualification Directive), transposed into all national legislations, reinforced in Czech, Austrian, UK, Irish, Belgian, Spanish, Dutch, Hungarian, Slovak, Lithuanian and Slovenian asylum jurisprudence.
- ⇒ Assessment of **non-refoulement** obligations in expulsion/extradition cases: clear obligation set by the European Court of Human Rights, for example:
- *Mamatkulov and Askarov v. Turkey* (4 February 2005), Para. 67  
It is the settled case-law of the Court that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. (...)
  - *Salah Sheekh v. The Netherlands* (11 January 2007), Para. 136  
The establishment of any responsibility of the expelling State under Article 3 inevitably involves an assessment of conditions in the receiving country against the standards of Article 3 of the Convention (...)
- ⇒ In addition to the obligation of using COI, several concrete **quality standards** have crystallised in practice, legislation and jurisprudence
- Country of Origin Information: Towards Enhanced International Cooperation, UNHCR, 2004  
<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=403b2522a&page=search>
  - Researching Country of Origin Information – A Training Manual, Austrian Red Cross, 2004  
<http://www.coi-training.net/content/>
  - Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist, Paper for the 7th Biennial IARLJ World Conference, Mexico City, 6-9 November 2006, by members of the COI-CG Working Party  
<http://www.iarlj.nl/cms/images/stories/forms/WPPapers/Hugo%20StoreyCountryofOriginInformationAndCountryGuidanceWP.pdf>
  - Common EU Guidelines for Processing Country of Origin Information (COI), April 2008  
<http://www.unhcr.org/refworld/docid/48493f7f2.html>

## **I. Relevance**

**Standard:** COI must be closely related to the legal substance of an asylum claim or an Article 3 risk assessment (i.e. fear of being persecuted/risk of suffering serious harm/being exposed to torture or inhuman or degrading treatment and lack of protection) and must objectively reflect (confirm or disprove) the important facts related thereto.

⇒ ECtHR standard:

The importance of examining “individual circumstances” (as opposed to the general situation) is emphasised both in *Venkadajalasarma v. The Netherlands* and *Mamatkulov and Askarov v. Turkey*.

⇒ Exemplary formulation of related requirements in national jurisprudence:

(...) general remarks on the social-political situation (...), organisations’ reports and statements from enclosed academic expert opinions are only relevant to the extent where the circumstances they describe may be directly applied to the applicant.

*Poland, Supreme Administrative Court*

The Board reminds that the refugee status determination procedure does not have as objective the *in abstracto* establishment of the human rights situation in a given country, but rather the case-by-case evaluation of whether or not an asylum-seeker has reasons to fear persecution (...)

*Belgium, Permanent Refugee Appeal Board*

Quotations from country of origin information sources cannot be summarised without giving reference to their relation with concrete facts of the case, which served for the decision-maker as the basis of considering and deciding the case.

*Slovakia, Regional Court of Košice*

(...) the Municipal Court of Budapest has already held in several guiding judgments that only those countries can qualify as safe countries of origin where the above-mentioned international legal instruments that set basic human rights guarantees are applied in practice, and where on the basis of the legal and social system the asylum-seeker can have access to effective protection.

*Hungary, Municipal Court of Budapest*

## **II. Reliability and balance**

**Standard:** Given the inevitable bias of sources, COI has to rely on a variety of different types of sources, bearing in mind the political and ideological context in which each source operates as well as its mandate, reporting methodology and the intention behind its publications.

⇒ ECtHR standard:

(...) In respect of materials obtained *proprio motu*, the Court considers that, given the absolute nature of the protection afforded by Article 3, it must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by **materials originating from other, reliable and objective sources**, such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations. (...) it would be too narrow an approach under Article 3 in cases concerning aliens facing expulsion or extradition if the Court, as an international human rights court, were only to take into account materials made available by the domestic authorities of the Contracting State concerned without **comparing these with materials from other, reliable and objective sources**. (...)

*Salah Sheekh v. The Netherlands*

⇒ Exemplary formulation of this standard in national jurisprudence:

(...) it is the task of the adjudicator not to select a particular evaluation without placing it side by side with others in order to make a qualitative assessment and arrive at a balanced overview of those materials.

*UK, Court of Appeal*

[The Board] gave great importance to the proper balance of available sources and the use of governmental, as well as non-governmental materials.

*Austria, Independent Federal Asylum Board*

⇒ Examples of critical source analysis in national jurisprudence:

From a methodological point of view, it is not sufficient for an overall perspective to consider only the country reports prepared by the Foreign Office, as "Vietnam is a focus country of German development aid policies", "Germany is one of Vietnam's most important bilateral donors" (...). Thus the informative value of the Foreign Office's country reports is highly limited because the recent developments in Vietnam, as it is reported by other sources, is insufficiently perceived and described.

Accordingly, especially in view of the special relationship between Germany and Vietnam and the insufficient informative value of the Foreign Office's country reports, other evidence – if possible, from a wide range of sources – has to be included and evaluated in a balanced judicial assessment.

*Germany, Administrative Court of Lüneburg*

I do not consider that placing total reliance on reports, and even more so, on extracts from reports, furnished to the governments or State Departments of the United States of America or Great Britain is always a sufficient compliance with the need to ascertain and evaluate relevant circumstances in the country of origin of a particular applicant. The reasons for and the background to these reports could seriously limit their value as independent indicators of the circumstances in the country of origin of the particular applicant.

*Ireland, High Court*

### **III. Accuracy and currency**

**Standard:** COI has to be obtained and corroborated from a variety of sources, with due attention paid to finding and filtering the relevant and up-to-date information from the sources chosen and without any distortion of the content.

⇒ ECtHR standard:

(...) the material point in time must be that of the Court's consideration of the case. It follows that, although the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive.

*Chahal v. The United Kingdom (similarly in Ahmed v. Austria and Venkadajalasarma v. The Netherlands)*

(...) in assessing an alleged risk of treatment contrary to Article 3 in respect of aliens facing expulsion or extradition, a full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time.

*Salah Sheekh v. The Netherlands*

⇒ Exemplary formulation of the accuracy standard in national jurisprudence:

(...) the situation of the asylum-seeker in his country of origin has to be assessed objectively, because otherwise there is a procedural fault (...). First of all, it is not permitted to proceed in such a way that only those facts and findings from the reports are taken into account which correspond to the final decision of the administrative body. In the present case, the Supreme Administrative Court found that the method of using the information on the country of origin was not objective, because the claimant selectively pointed out only certain areas of the claim and did not deal with the other information relevant in this case. (...)

*Czech Republic, Supreme Administrative Court*

[the fact that the first-instance authority failed to consider and attach to the file a relevant part of a report otherwise widely considered in the given case] (...) not only gives rise to serious doubts as to the correctness of the conclusions made by the authority and makes the decision uncontrollable by the Court, but it also renders justifiable the applicant's allegation that the authority used the given report in a selective way.

*Poland, Regional Administrative Court of Warsaw*

⇒ Exemplary formulation of the currency standard in national jurisprudence:

The Court's task is to assess the conformity of administrative decisions with the law. Conclusive in this respect is the date when the decision was issued. But if the evidence material assessed in this decision dates back from several months or years preceding the issuance of the decision, it is a flaw of the administrative procedure if the appeal authority does not supplement the data on facts with the knowledge on the evolution of circumstances in the applicant's country of origin

*Poland, Regional Administrative Court of Warsaw*

(...) the Administrative Courts dealing with asylum matters are principally obliged to ascertain *ex officio* whether a new country report is available and gives account of considerable changes in the political circumstances in the respective country, which are relevant in terms of asylum law.

*Germany, Federal Administrative Court*

### **IV. Transparency**

**Standard:** Given its role as decisive evidence, COI has to be – as a general principle – made available for all parties involved in refugee status determination, principally through the use of a transparent method of referencing. Original sources and reports should therefore be retrievable and their content and meaning should not be distorted in the process of paraphrasing or translating.

⇒ Exemplary formulation of this standard in national jurisprudence:

[Both the first and second-instance authority] justified the refusal of admission to procedure by saying that the available information does not indicate that the authorities authorised or remained inactive in front of the persecution alleged by the asylum-seeker, but neither communicated details about such "available information", nor they attached documents or other elements from which the source or the content of such information could have become known. Consequently, such information can only be considered as gratuitous and unsusceptible to support the refusal of admission to procedure.

*Spain, Supreme Court*

(...) – in order that the applicant has the indispensably necessary elements for his/her defence – if the administrative authority questions the verisimilitude of the latter's allegations as they do not correspond to the disposable objective information on the country of origin, it is desirable that the authority should indicate this contradiction and disclose in the case file the sources considered when coming to such a conclusion.

*Spain, Supreme Court*

Sources of information, which serve as basis for statements concerning the facts, have to be found in the file of the case, together with translation of the fragments important for the case. (...) Defects in the evidence material make the Court's verification of the findings and assessments in the decision impossible. (...) A general reference to unspecified data from a country of origin information centre and a Human Rights Watch report does not fulfill the criteria for indicating the evidence, on which the findings as to the facts were based (...). The lack of evidence, on which the findings concerning the facts were based, not only disables the Court to control the assessment of the credibility of the evidence, but it also makes impossible for the applicant to question the credibility of the evidence.

*Poland, Supreme Administrative Court*