The « Birth » of the COI concept in France

I wish to take the opportunity of my first participation in a European conference of this association, to pay a tribute to its important contribution to the vast effort of re-thinking the role of country of origin information (*COI*) in the decision making process. I would like also to say a few words concerning the situation of France's asylum judge in this matter. The introduction of the emerging COI quality standards in our day to day practice is indeed a real challenge.

It has to be promptly clarified that we're not speaking here of any lack of information: information exists, is available and abundant for our judges. As president of a national asylum court, I have to emphasize that, practically speaking, the French competent authorities on asylum matters, OFPRA (Office Français de protection des réfugiés et des apatrides) and the CNDA, have always used COI in their daily work.

Moreover, the Court has its own COI unit since 1994.

The judicial review of *OFPRA's* decision, *which is a full jurisdiction control*, implies, taking in consideration, among others, this question : did this administrative decision-maker correctly appreciate the situation in the country or in the area from which the applicant came or towards which the same claimant is supposed to return ? But it is one thing to do it and another to write it in a judicial decision: motivating a decision on the consideration that certain kinds of COI reports or information are the real (legal or factual) basis of a ruling is not something obvious, for the time being, for us, French asylum judges. To write it or not to write it: that is the question for the CNDA. And this question remains an important issue for the French asylum judge.

What is at stake is status of information concerning:

1. Its inner value and accuracy (its classification according to the Helsinki Committee, Accor and UNHCR guidelines, and obviously, the IARLJ criteria)
2. Its compelling effect for the judge: is he bound by COI findings in major decisions? Does he have to justify (and to what extent) when he departs from such findings?
3. its role in the procedure : burden of proof for the administration, obligation to introduce in the debate sources used to support administrative decision, question of confidential or restricted access documents, how to refer to sources at the drafting stage ?

A. The classical reluctance of French asylum judge towards COI references

Two main factors converge in making the « COI issue » a difficult subject for French judges.

First of all, our classical standard for ruling, whenever it concerns credibility assessment, is based on the « *intime conviction* » principle.

In the near past, many CNDA decisions used to refer to « the elements of the file » (*les pièces du dossier)* without further detail before delivering a global appreciation on such elements as a whole, may it be positive or negative. Such system provides great flexibility and allows the decision maker to avoid, for instance, endless and meaningless disputes on the probative value of grossly forged documents. On the other hand, this extensive power offers no guarantee that the cause has been correctly understood and accurately documented. Applied to asylum, a matter where the fact finding exercise is altogether complex and essential, the « intime conviction » principle is ambivalent. Once conceived to protect serenity and wisdom in the act of judging, it can be as well seen as providing no transparency and as a potential factor of inequity or unfairness.

The concision requirement in the drafting of decisions is the second key-element in France's relation towards the COI issue. The CNDA, as an administrative court specialized in asylum law, is bound by this administrative law principle. At odds with common law traditions, this standard demands that only what is strictly necessary to the understanding of the legal reasoning should appear in the decision. Hence, our decisions are easily distinguished by their great limitation of means: prohibition of what could be seen as overabundant, redundant, no explicit reference to our own jurisprudence. It is implicitly assumed that the judge has correctly assessed the case on the bases of an accurate information : why should he have to reveal his sources in a decision rendered in the name of the French people, thus taking the risk of showing partiality towards the source (s) he has cited ? Paradoxically, the reference to specific sources of information can be seen as a weakening factor for the legal authority of the decision and not as a mark of quality and accuracy, which is usually the case in other systems.

B. Recent evolutions

Before analysing the important changes that are taking place in this field, I would like to stress the noteworthy efforts from the Conseil d'Etat, our cassation judge, according to its need to know the real basis of our rulings, in trying to enhance a higher standard of motivation. Consequently, the decisions of the court have to explain not only the legal basis, but also the main factual decisive points of the ruling. Although this factual motivation is supposed to be relatively short, this requirement can be seen as a higher legal standard and as an incentive to mention COI reports or information in the core of the judicial decision.

CNDA began to feel the need for a change some years ago, when confronted to claims involving potential application of the exclusion clauses in a set of high-profile Rwandese cases. In order to fight the « serious reasons for considering » that they were involved in the perpetration of April 1994 genocide, these claimants strongly argued about the accuracy and fairness of certain accounts and analysis, therefore obliging the judge to take an explicit stand on the value of sources of information. This was made, for the first time, in the famous CNDA decision *Habyarimana*[1]

Enlightened by these particular rulings, the need for a renewed approach towards COI goes far beyond them and reaches the general cases: because relationships between the judicial system and its users are experiencing major cultural changes, the debate around documentary evidence, standard and burden of proof is gaining significance. OFPRA, the aforementioned refugee administrative authority, is constantly asked by appellants to the CNDA and their lawyers to produce the elements justifying its opinion on credibility of appellants' statements or authenticity of documents. The shape of our inquisitorial system is thus slowly incorporating some adversarial features. A small but yet significant part of our decisions[2] rely on direct references to UNHCR positions or reports from NGO's such as International Crisis Group, Human Rights Watch, considering these information as « public, relevant and precise ». This opening movement will continue and will of course generate in return the need for clear standards on the use and availability of COI material.

It has to be added to these concerns that a greater and more rational use of COI in our decisions may also serve internal goals, such as harmonization and consistency of rulings on determined situations and countries, a goal particularly difficult to reach since in our legal system, the precedent has no real binding authority. A clear and accurate understanding of the general conditions prevailing in the country of origin has to be the objective frame according to which personal credibility should be assessed : this emerging principle, strongly affirmed in *the NA v. UK decision* of the ECtHR(12/7/2008), reaffirmed in some recent decisions of the same ECHR like *YP and LP contre France(2/9/2010*, in French *)* seems to be the best guarantee that the asylum judges treat claimants with equity, and that they are consistent with themselves.

Convinced that it was the right time to take a step forward, I decided to join the "COI and judges" program elaborated, in March 2010**,** by the Hungarian Helsinki Committee. I've had the opportunity to host the last study visit of COI units in the Court's premises in Montreuil, the 9th July 2010 and I'm expecting with deep interest the next phase of the program which will involve judges along with COI specialists in a series of workshops in Brno, Madrid, Roma and Paris (the 26th November 2010) and will end in a general conference in Budapest in April 2011**.** The task is huge but

[1] Décision *Mme Habyarimana(152/2007),*

[2] See for instance, decision n°09004735, *Susbaraskam Kanapathipllai*, the 3 rd september 2010 about the situation in Sri Lanka and the criteria for investigating Tamil Sri lanka Asylum Seekers cases
and decision N°05039873, M. *Joel Todivelo Razakamahefa,* 22 july 2010 : this last ruling, about the situation in Madagascar, as the *Habyrimana* one, is referring to a case of exclusion ;

I’m confident in the positive impact of this program on the development of better, if not best, practices in decision making at the judicial level.

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