



# Structural Differences and Access to Country Information (COI) at European Courts Dealing with Asylum

Written by  
Gábor Gyulai and  
Tudor Roşu



*Opinion on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*

**Summary**

Since 1 UNHCR issued the "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers" ("the April 2009 UNHCR Eligibility Guidelines")<sup>1</sup>, it was... It was... However,...

**ii. Main developments in Iraq since April 2009**

In the process of reviewing the situation and developments in Iraq, UNHCR has observed the following significant developments:

**A. Political developments**

The first parliamentary elections were held on 7 March 2010, with more than 12 million Iraqis taking part in the electoral process as candidates and voters. Preceding the elections, the Accountability and Justice Commission recommended disqualification of 28 candidates for disqualification by the Independent High Electoral Commission (IHEC). This decision was appealed to a significant number of charged candidates resulting in the reinstatement of 28 candidates by the Appeals Court. An additional 52 candidates were recommended for disqualification by the IHEC allowed them to run postponing the decision on their eligibility until after the elections. However, on 17 May 2010, the Appeals Court rejected the disqualification of these nine winning candidates (six of which were from Iyad Allawi's Iraqiya coalition), thereby upholding the final tally.<sup>2</sup> The

<sup>1</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, <http://www.unhcr.org/refugees/pdf/4d5e9250.pdf>.

<sup>2</sup> Andrew Stankiewicz, *Iraq: Trial and Disqualification*, New York Times (NYT), 11 May 2010, <http://www.nytimes.com/2010/05/11/world/middleeast/11iraqi.html>.

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Project co-financed under the European Refugee Fund

July 2011

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This report was elaborated as part of the project “COI in Judicial Practice”. The Hungarian Helsinki Committee lead the project, partners were the UNHCR Regional Representation for Central Europe, the IARLJ, the French National Asylum Court (CNDA), the Austrian Red Cross/ACCORD, the Refugee Documentation Centre Ireland and the Czech Judicial Academy.

The project was co-funded by the European Commission, Austrian Red Cross and UNHCR.



The views expressed in this publication are those of the Hungarian Helsinki Committee and do not necessarily reflect the views of researchers who contributed to this study, other project partners or the European Commission. The European Commission is not responsible for any use that may be made of the information contained in this publication.

ISBN: 978-963-88228-9-5

Published by

Hungarian Helsinki Committee

Bajcsy-Zsilinszky út 36-38.

H-1054 Budapest, Hungary

[www.helsinki.hu](http://www.helsinki.hu)

Design and layout: Judit Kovács | Createch Ltd.

Proof-reading: Eszter Timár

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# Executive Summary

A significant part of asylum claims in the EU are decided upon in judicial review procedures and a large number of protection statuses are granted by courts every year. Yet, common EU regulation on asylum hardly puts forward any specific rule regarding this stage of the asylum proceedings, and relevant procedural frameworks are largely divergent in different member states. Country information (COI) is widely considered as determinant evidence in most asylum cases, but national courts' practices relating to the access to COI and its judicial interpretation are also divergent. The present study – as a pioneering initiative – summarises the main findings of a mapping exercise focusing on these two issues and covering all EU member states and Switzerland. The scope of the research has been limited to in-merit asylum procedures.

Judicial structures that review administrative asylum decisions vary from one member state to another in terms of the number of judicial review instances, centralisation, specialisation, the scope of jurisdiction and rules that govern the procedure.

- In 16 member states two judicial instances are competent in asylum procedures; the three-instance model is applied in 7 countries, while 5 countries limit this task to only one judicial instance.
- In 16 countries all judicial instances are centralised (one court has exclusive competence in asylum matters), 3 member states have opted for a fully decentralised system, while in 9 countries the structure is mixed (decentralised at lower and centralised at higher instances).
- 9 member states have courts specialised in asylum (or asylum and immigration), specialisation being more frequent at lower instance courts and in jurisdictions with a high number of asylum claims. Informal specialisation of judges is common at most other courts, whereas very few countries reported an absolute lack of specialisation at all levels.
- The vast majority of countries observed enable at least one judicial instance to grant protection to asylum-seekers (in 10 countries all instances can do so), while highest judicial instances (in two and three-instance structures) often operate on a purely *cassation* basis.
- The personal hearing of applicants is either obligatory or granted upon request; the explicit exclusion of a hearing is rare and mainly occurs at the highest instances.
- In 19 jurisdictions all courts involved in the judicial review of asylum decisions admit new evidence; in 9 countries this is possible only at lower instances.
- In 14 countries judicial review has an automatic suspensive effect on removal measures at all instances, in 9 member states it applies only to lower instances and in 5 jurisdictions it is not foreseen at all. Judges can decide to grant suspensive effect on an individual basis in nearly all cases where it is not automatic.

- The majority of national regulations do not foresee any procedural deadlines for the judicial review of asylum cases; even when such deadlines are stipulated in law, they are hardly ever respected in practice.

The judiciary currently employs a wide range of practices to obtain COI, and there is no majority (let alone common) approach towards this issue. Judges in some jurisdictions obtain country information themselves (from the court's own COI service, the administrative asylum authority, an independent state-funded COI service, professional non-governmental COI providers or other sources) while in others they use only the COI provided by the parties.

- Currently, 3 European courts operate their own COI service (Austria, France and Switzerland), while in 6 other member states judges may obtain country information from other research services operating within their court, on a more *ad hoc* basis.
- In 10 member states, the judiciary is enabled to formulate queries to the COI unit of the administrative asylum authority, but this possibility is not used in all of these countries.
- There is only one case (Ireland) where a structurally independent, but state-funded COI service is charged to provide information to all actors involved in the asylum procedure (including the judiciary).
- In some member states, NGOs also offer COI services (e.g. query responses) to refugee law judges, either as a regular service or as an *ad hoc* form of cooperation.
- Most COI infrastructures available for the judiciary produce query responses and thematic country reports as their "main products".
- Peer review is the most common quality assurance mechanism for COI services providing information for the judiciary. Some research centres have also compiled a formal style guide.
- COI units usually have five working days to answer queries formulated by the judiciary (in some cases the deadline is two weeks).

Given the initial mapping character and the specific focus of the present research, this paper limits itself to only brief recommendations regarding what judicial and COI structures can best serve the effective observation of quality standards related to the research and use of country information:

- The specialisation of judges and courts dealing with asylum is recommendable.
- It is advised that judges dealing with asylum also participate in COI-specific training (tailor-made to their specific needs) and that COI researchers get trained on refugee law.
- If having only limited resources, it is recommended to courts to allocate these resources to an individual COI query response service, rather than to the production of more general country, thematic or periodical reports.
- Courts dealing with a significant number of asylum cases are recommended to establish a trained and well-resourced COI service or to build a cooperation scheme with a professional independent COI-provider.
- It is recommended that COI research is performed by professional researchers having the necessary language skills and that COI services providing information to judges should have sufficient capacities and resources for translation.
- Courts are encouraged to share with the parties all COI documents considered in the judicial review of asylum decisions (including those produced by the court itself) and allocate sufficient time for the parties to react to them.

# I. Introduction

## I.1 Background Information

In 1999, the heads of state and government of the European Union called for the establishment of a Common European Asylum System (CEAS). Since then, a number of legislative, political and practical measures have been taken in order to reach enhanced conformity in asylum procedures and policies. A truly common system is yet far from being achieved at the time of writing this report, yet it is incontestable that the EU asylum acquis has been harmonised at various levels. At the same time, EU member states (in cooperation with the European Commission, non-governmental actors and the UNHCR) have made significant attempts to improve and approximate practices regarding the use of country information (COI), considered as decisive evidence in many asylum cases. The COI and Evidence Assessment modules of the European Asylum Curriculum (EAC),<sup>1</sup> the Common EU Guidelines for Processing Country of Origin Information (COI)<sup>2</sup> and the EU Common Guidelines on (Joint) Fact Finding Missions<sup>3</sup> are pivotal achievements in this respect, together with dozens of transnational seminars and blended learning courses conducted by the European COI Training Network<sup>4</sup> in recent years.

Meanwhile, the impact of the above tendencies on the judiciary and the judicial review phase of asylum procedures has remained rather limited. The common conceptual framework established by the Qualification Directive<sup>5</sup> is equally relevant for administrative and judicial decision-makers; however, the Procedures Directive<sup>6</sup> clearly leaves the elaboration of the procedural framework of appeal and judicial review in state competence.<sup>7</sup> Consequently, limited attention has been paid so far to the judiciary as a key actor in European asylum procedures and its involvement in transnational practical cooperation initiatives. Most courts do not participate in asylum or COI-related international cooperation fora, and the membership of the European Chapter of the International

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1 [www.asylum-curriculum.eu](http://www.asylum-curriculum.eu)

2 Common EU Guidelines for Processing Country of Origin Information (COI), April 2008, [www.unhcr.org/refworld/docid/48493f72.html](http://www.unhcr.org/refworld/docid/48493f72.html)

3 EU Common Guidelines on (Joint) Fact Finding Missions – a practical tool to assist member states in organising (joint) fact finding missions, November 2010, [www.ecoi.net/file\\_upload/90\\_1292230919\\_20101118-ecs-ffm-guidelines-final-version.pdf](http://www.ecoi.net/file_upload/90_1292230919_20101118-ecs-ffm-guidelines-final-version.pdf)

4 [www.coi-training.net](http://www.coi-training.net)

5 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

6 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

7 Chapter V (“Appeals Procedures”) only sets some general principles in connection with the effectiveness of legal remedy, while Section 27 of the Preamble explicitly explains that “It reflects a basic principle of Community law that the decisions taken on an application for asylum and on the withdrawal of refugee status are subject to an effective remedy before a court or tribunal [...]. The effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole.”

Association of Refugee Law Judges (IARLJ)<sup>8</sup> remains quite limited in several member states. On the other hand, an important part of asylum claims are decided upon in a judicial procedure, and – even though with a significant national variation – year by year a large proportion of protection statuses are granted by courts (rather than first-instance administrative authorities).<sup>9</sup>

Recognising this gap, the Hungarian Helsinki Committee embarked on the “COI in Judicial Practices” project in 2010, funded by the European Refugee Fund Community Actions, in cooperation with the UNHCR Regional Representation for Central Europe, the IARLJ, the French National Asylum Court (CNDA), the Austrian Red Cross/ ACCORD, the Refugee Documentation Centre Ireland and the Czech Judicial Academy. The primary goal of the project was to enhance dialogue regarding evidence assessment (with particular emphasis on country information) within the European judiciary, as well as between refugee law judges and other main actors. The project intended to promote a protection-oriented harmonisation of asylum decision-making practices, based on high quality standards and effectiveness. The present publication has been prepared to this end.

## I.2 Objective and Methodology

This report strives to:

- describe the similarities and differences between **judicial review structures** in asylum cases in EU member states and the main characteristics of these systems;
- explore the manner in which European courts and refugee law judges have **access to country information** as evidence, including the identification of different models and main challenges; as well as
- provide **recommendations** based on exemplary practices.

These issues have not yet been covered by comparative research in the EU; therefore the present report plays a **pioneering role**. In light of this, it does not intend to provide a detailed academic or overwhelmingly legalistic analysis of the issues in focus; it rather aims at presenting **concise and practical comparative information**, usable in various manners.

Information for this research has been gathered from a balanced group of various experts in **all EU member states and Switzerland**, including judges, administrative authorities, non-governmental organisations and COI professionals.<sup>10</sup> In addition to desk research, the authors used a **standardised questionnaire**, completed with information obtained through **telephone interviews**. Chapter III has been further alimented by four **study visits** to COI units providing information to judicial instances in France, Belgium, Austria and Ireland.<sup>11</sup> COI specialists of the Hungarian Helsinki Committee, the French National Asylum Court (CNDA), ACCORD and the Refugee Documentation Centre Ireland participated in all study visits.

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8 [www.iarlj.org](http://www.iarlj.org)

9 According to EUROSTAT, 59 305 positive decisions on asylum were taken at the administrative stage of the procedure in 2008, while another 17 015 protection statuses were awarded at the appeal stage in the EU ([http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-09-092/EN/KS-SF-09-092-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-09-092/EN/KS-SF-09-092-EN.PDF)). In 2008, the *French Office for the Protection of Refugees and Stateless Persons* (OFPRA) granted protection to 5 153 asylum-seekers, while the French National Asylum Court (CNDA) to 6 331. The same year, the Austrian Federal Asylum Office granted protection to 3 640 asylum-seekers, while another 2 035 protection statuses were granted at the judicial appeal stage.

10 See the list of contributors on pages 25–26.

11 Austrian Asylum Court: 23 April 2010; Refugee Documentation Centre Ireland: 28 June 2010; CEDOCA Belgium: 28 May 2010; French National Asylum Court (CNDA): 9 July 2010.

As for the **terminology** used for the purposes of this report, the following clarifications should be made:

- Country information, country of origin information and COI are used as synonyms.
- A judicial instance means any court or judicial body which conducts the review of or appeal against administrative and lower-instance judicial decisions on asylum claims.
- Given the broad variety of terminology in domestic rules and legal traditions, for the purposes of this report judicial review and appeal are used as synonyms in the given context.
- The numeration of instances starts from the first judicial instance (the “first instance” in this report is, therefore, understood as the first judicial instance, which in practice may mean the second or third instance of the entire asylum procedure, if administrative instances are also counted).
- A COI service or COI unit is understood as an entity (office, unit, department, working group, etc.) that provides COI (on request) on a regular basis and in a professional manner, as its core activity.
- A COI professional or COI specialist is a person who has received training and/or is experienced in using tools of COI research and provides country information to decision-makers and/or other actors involved in the asylum procedure as her/his primary task.
- A COI query is a formal (usually written) request for country information, often containing a number of different questions relating to the same case.



## II. Structural Differences

### II.1 Scope and Limits of the Research

Comparing judicial review systems in asylum cases is a challenging exercise for a number of reasons:

- In lack of wide-reaching common procedural rules established by the EU or other sources of international law, before actually starting the research significant divergence was expected;
- Due to the complexity of asylum procedures under EU law, national courts usually deal with a number of issues under the scope of judicial review, such as in-merit procedures, admissibility procedures, fast-track procedures, “Dublin cases”,<sup>12</sup> etc.;
- Differences between juridical traditions, languages and legal terminology make it difficult to compare parallel structures in different countries;<sup>13</sup>
- No previous research is known as to this issue; therefore the present initiative had no precedent to build upon.

Based on these factors, the research:

- focused only on the judicial review of **standard, in-merit asylum procedures**, not dealing with pre-admissibility, Dublin and fast-track procedures (thus leaving room for an eventual follow-up project);
- was aimed at **“mapping”** the current structural similarities and differences concentrating on the most determinant issues, rather than embarking on a detailed academic analysis;
- emphasised issues that have the strongest influence on the **practical work** of courts and the outcome of asylum procedures, rather than analysing a number of formal, theoretical or conceptual factors.

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12 The review of asylum-seekers’ transfer to another member state ordered on the basis of Council Regulation (EC) No343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

13 For example, words as “evidence”, “hearing”, “appeal”, etc. may have different meanings in different jurisdictions. Some legal terms such as the “standard of proof” as understood in English-speaking Common Law jurisdictions, or concepts like the *intime conviction* or *cassation* in French legal tradition (and equivalents in other Romance languages) may not even have a proper translation in other languages.

## II.2 The Number of Judicial Instances

In European countries, asylum procedures are generally conducted by one administrative instance, while administrative appeal bodies are extremely rare. Meanwhile, the number of judicial review instances – this very basic characteristic not regulated by EU law – **shows significant variation** among EU member states. **In the majority of countries, two judicial instances are competent** in asylum procedures; the three-instance model is also common, while some countries limit this task to a single judicial instance.

1 judicial instance	5 countries	Denmark, Hungary, Latvia, Malta, Switzerland
2 judicial instances	16 countries	Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Finland, France, Greece, Lithuania, Luxembourg, Netherlands, Poland, Romania, Slovakia, Spain, Sweden
3 judicial instances	7 countries	Estonia, Germany, Ireland, Italy, Portugal, Slovenia, United Kingdom

**Quasi-judicial tribunals or appeal boards are rather atypical** even at the first instance; only four countries (Cyprus, Denmark, Ireland and Malta) have such an institution in place. Some of the previously operative quasi-judicial appeal bodies, such as the French Refugee Appeal Commission (*Commission des recours de réfugiés, CRR*) or the Austrian Independent Federal Asylum Senate (*Unabhängige Bundesasylsenat, UBAS*), have been transformed into courts in recent years.

## II.3 Centralisation

EU member states also **show great variation** regarding the centralised character of judicial review in asylum cases. A “centralised” court in this sense is a judicial body which has exclusive competence over asylum matters in the country, regardless of the geographical location where the asylum claim has been submitted or the lower-instance decision has been taken. Given the highly special character of asylum adjudication, as well as the specific knowledge and infrastructure it requires, **most European countries have opted for a centralised system.**

All instances centralised	16 countries	Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Ireland, Luxembourg, Malta, Netherlands, Poland, Slovenia, Spain, Switzerland, United Kingdom
Mixed (lower instance(s) decentralised, higher instance(s) centralised)	9 countries	Czech Republic, Estonia, Germany, Greece, Italy, Lithuania, Portugal, Slovakia, Sweden
No centralised body involved	3 countries	Hungary, Latvia, Romania

**A high level of decentralisation is quite rare:** in some cases a decentralised system only refers to the involvement of two (Slovakia and Estonia) or three (Sweden) courts at first instance. Germany is noted as a counter-example, with 52 administrative courts competent at first instance and 15 higher administrative courts at second instance.

In two countries (Hungary<sup>14</sup> and Latvia), only one non-centralised judicial instance is in charge of reviewing administrative decisions on asylum, without any further possibility of appeal.

<sup>14</sup> A recent (December 2010) amendment of the Hungarian asylum legislation has changed the long-standing centralised judicial review system in the country, despite vivid criticism by the UNHCR, NGOs and the judiciary.

## II.4 Specialisation

It is a commonplace that asylum adjudication **significantly differs from most other matters** a civil, criminal or administrative law judge has to deal with and it requires special skills, experience and infrastructure.<sup>15</sup> The research for this report, therefore, strived to explore to what extent European judicial systems enable the specialisation of courts and/or judges competent in asylum procedures. “Specialisation” in this context may mean different arrangements, ranging from courts entirely specialised in asylum or asylum and immigration matters, to a limited group of administrative or civil judges involved in asylum cases on a regular basis within a court of general jurisdiction. Research has revealed the following main findings:

- **9 EU member states have courts specialised in asylum or asylum and migration.** The existence of such specialised judicial bodies is **more typical at the first instance**, with only 2 countries (Sweden and the UK) having specialised second-instance courts as well.
- Formal specialisation is more common **in countries with a high number of asylum-seekers and a long-standing history of asylum.** States with lower numbers of asylum claims and/or “new asylum countries” (e.g. Southern or Central-Eastern Europe, with some exceptions) seem more reluctant to promote the formal specialisation of the judiciary. This phenomenon is particularly striking in the case of Italy, where the number of asylum claims has been high in recent years (as compared to other EU members), but no tendencies of specialisation could be witnessed.
- Formal specialisation **shows a clear correlation with centralisation**: most specialised judicial instances are centralised (Sweden is a counter-example with three regional migration courts at first instance). Centralisation, however, is far from meaning a specialised judicial instance *per se*.<sup>16</sup>
- The existence of a specialised court **does not necessarily mean that all judges are “full-time refugee law judges”** in it. In France, for example, several non-permanent judges of the National Asylum Court (CNDA) are active in other fields of the judiciary, too.
- **Informal specialisation is typical** at the majority of other European courts dealing with asylum. This usually means that a limited group of judges (or rarely a specific chamber) deal frequently or relatively frequently with asylum cases. Sometimes this may be possible because of the high number of cases (e.g. Germany and the highest instance in Austria or the UK). In other countries (such as Romania, Hungary, Slovakia and Slovenia) it is due to the smaller size of competent courts and chambers.<sup>17</sup>
- **Specialisation is less typical at highest judicial instances** (e.g. supreme administrative courts).
- **Very few countries reported an absolute lack of specialisation.**

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15 In this context, reference can be made to the particularly significant reliance on international legal sources and literature, the importance of language and intercultural skills, the scarce availability of “hard” evidence and a flexible standard of proof, the special vulnerability of applicants, the extremely grave consequences of the decision and the need for country information expertise and infrastructure.

16 Cf. Chapter II.3

17 For example: if there are only two or three administrative law judges at a court dealing with a significant number of asylum cases, it is likely that all of them will have to reach a certain level of specialisation in this field.

The following table shows the level of **specialisation at first-instance courts**:

Court or tribunal specialised in asylum	6 countries	Austria, Cyprus, Denmark, France, Ireland, Malta
Court specialised in asylum and migration	3 countries	Belgium, Sweden, United Kingdom
Chamber specialised in asylum (but not necessarily dealing only with asylum)	3 countries	Lithuania, Spain, Switzerland
Limited group of judges dealing frequently or relatively frequently with asylum	13 countries	Bulgaria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Latvia, Netherlands, Poland, Romania, Slovakia, Slovenia
No specialisation reported	3 countries	Italy, Luxembourg, Portugal

## II.5 Scope of Jurisdiction

National legal traditions that determine the characteristics of asylum procedures vary significantly throughout the European Union. It falls beyond the scope of this mapping initiative to explore all different legal aspects of the judicial review mechanisms of asylum cases (such as the inquisitorial or adversarial character of the procedure). Nevertheless, from a practical point of view one such issue appears to have particular importance: the difference between **“full jurisdiction”** (where the court itself can decide upon the asylum claim and can grant protection) and a **procedure based on a cassation principle** (where the court can only quash lower-instance decisions and order a new procedure, based mainly or purely on points of law) is an important dividing line for a number of reasons, for example:

- The ability to grant protection may often require a more complex involvement by the court in establishing facts and collecting evidence (including the necessity of obtaining and using country information) and may thus create an enhanced need for specific infrastructures (e.g. a COI service);
- If the accommodation of an appeal can only result in quashing a lower-instance decision, but not in actually “resolving” the case, such a decision leads to a significant prolongation of the asylum proceedings (as the lower-instance authority has to re-open the case and conduct a new procedure).

The borderline between the two types of adjudication is not always crystal clear. For instance, German and Portuguese administrative courts are unable to grant a protection status themselves, but may order the administrative asylum authority to do so (meaning that once this judgment is final, the administrative authority has no power to decide in any other manner). Flexibly interpreting such procedural and technical differences, the countries observed can be split into the following categories:

All judicial instances work on a purely <i>cassation</i> basis (none of them can grant protection)	8 countries	Bulgaria, Czech Republic, Estonia, Greece, Netherlands, Poland, Slovakia, Switzerland
Lower instance(s) can decide upon the grant of protection, higher instance(s) work on a purely <i>cassation</i> basis	10 countries	Austria, Belgium, Cyprus, Finland, France, Germany, Ireland, Lithuania, Luxembourg, Slovenia
All instances can decide upon the grant of protection	10 countries	Denmark, Hungary, Italy, Latvia, Malta, Portugal, Romania, Spain, Sweden, United Kingdom

While – again – **great variation** has been revealed among state practices, it is visible that:

- The **vast majority** of countries observed enable **at least one judicial instance to grant protection** to asylum-seekers;
- **Highest judicial instances** (in two and three-instance structures) nearly always operate on a **purely cassation basis**.

This question is of particular interest in the case of jurisdictions with only one judicial instance involved in the review of administrative asylum procedures.<sup>18</sup> The single review instance can grant protection in Denmark, Hungary, Latvia and Malta, but not in Switzerland.

## II.6 Personal Hearing of Applicants

The possibility of a personal hearing is also a key factor in determining the character of a judicial review procedure in asylum cases (as the applicant’s declarations often constitute decisive information or evidence in this framework). Research has revealed the following conclusive findings in this respect:

- The personal hearing of the applicant is mandatory at first-instance courts in Denmark,<sup>19</sup> Germany, Hungary, Lithuania and the United Kingdom.
- Personal hearing **may be granted by the vast majority of courts** involved in the judicial review of asylum cases in Europe.
- The **explicit exclusion of a hearing is very rare**: with a few exceptions, this only occurs at highest instances (in two and three-instance structures) provided that the court in question operates on a purely *cassation* basis.

## II.7 Admission of New Evidence

Evidentiary rules in the judicial phase of asylum procedures are **significantly divergent** throughout Europe; suffice it to refer to the dividing line between Common Law and Civil Law traditions. The admission of new evidence<sup>20</sup> in the judicial review procedure is often subject to formal or substantive conditions. However, with certain flexibility in interpreting the admissibility of new evidence it can be concluded that **the vast majority of courts admit new evidence** (in particular at first instance) and the countries observed can be split into the following categories:

New evidence admitted at all instances	19 countries	Austria, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom
New evidence admitted only at lower instance(s)	9 countries	Belgium, Cyprus, France, Germany, Greece, Ireland, Italy, Netherlands, Portugal
New evidence is not admitted at any instance	None	—

<sup>18</sup> Cf. Chapter II.2

<sup>19</sup> If the asylum-seeker requests it

<sup>20</sup> Evidence which has not been available or presented in the administrative or a lower-instance judicial procedure

## II.8 Suspensive Effect on Removal Measures

The suspensive effect on removal (expulsion, extradition and deportation) measures is also a pivotal characteristic of the judicial review procedure in asylum cases, as without a suspensive effect, the **effectiveness of the legal remedy** may, at least, raise concerns.<sup>21</sup> The central question in this context may be the **automatic character** of the suspensive effect, considering that the evident linguistic, intercultural, etc. barriers may often render it difficult for asylum-seekers to effectively make use of their rights (in this case: to request the judge to grant suspensive effect). The highly varying level of access to professional, free legal aid throughout Europe<sup>22</sup> contributes further to this conclusion.

In lack of common rules set out in EU law,<sup>23</sup> in this respect as well state practices are **quite divergent**. Again, applying some flexibility in interpreting what “automatic suspensive effect” may mean in different jurisdictions, the following general conclusions can be drawn:

- **The majority of judicial review procedures foresee an automatic suspensive effect**, particularly at lower instances:

Suspensive effect automatic at all instances (particular exceptions exist in some cases)	14 countries	Bulgaria, Czech Republic, Denmark, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovakia, Switzerland, United Kingdom
Suspensive effect automatic at the first, or the first and second instances (particular exceptions exist in some cases), but not before the highest instance	9 countries	Belgium, Cyprus, Finland, France, Ireland, Italy, Netherlands, Poland, Slovenia
No automatic suspensive effect at any instance	5 countries	Austria, Estonia, Greece, Spain, Sweden

- Judges **can decide to grant suspensive effect** on an individual basis at **nearly all instances** where it is not automatic.
- Suspensive effect is **excluded only at very few courts and only at highest instances**.

## II.9 Procedural Deadlines

European courts dealing with asylum cases have **widely varying procedural deadlines** (if they have any at all). The majority of national jurisdictions do not foresee procedural deadlines for any judicial instance, and as a general phenomenon concrete procedural deadlines are more typical **at lower-instance courts**.

21 The primary objective of judicial review in asylum cases is to prevent that erroneous decisions should result in *refoulement* or other forms of human rights violations in breach of the state’s domestic and international legal obligations. Prevention becomes obviously impossible if the person concerned has already been returned to the territory where the risk of prohibited treatment prevails.

22 See, for example: European Council on Refugees and Exiles, ECRE/ELENA Survey on Legal Aid for Asylum Seekers in Europe, October 2010, <http://www.unhcr.org/refworld/docid/4d243cb42.html>

23 Cf. Chapter I.1

No procedural deadline at any instance	17 countries	Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Lithuania, Luxembourg, Malta, Netherlands, Poland, Spain, Sweden, United Kingdom
No procedural deadline at the highest instance	4 countries	Austria, Portugal, Slovenia, Italy
Procedural deadline at all instances	7 countries	Belgium, Bulgaria, Hungary, Latvia, Romania, Slovakia, Switzerland

Procedural deadlines **vary from 10 days to 6 months**, while the Council of State (*Raad van State*) in the Netherlands (a country where no deadline is defined by law) established that a maximum period of two years is “reasonable” for the termination of the judicial review in asylum procedures. In practice, **deadlines stipulated by legislation are hardly respected**: the actual length of the procedure often exceeds these deadlines by months or even years. Among the countries concerned, a general respect to deadlines has only been reported from Slovakia. Thus the **excessive prolongation of judicial review procedures** appears to be a frequent phenomenon in a number of European states.

## III. COI Infrastructures

### III.1 Scope and Limits of the Research

It is a well-established fact that in deciding upon asylum cases, information about the situation in the asylum-seeker's country of origin has to be taken into account.<sup>24</sup> Although the Qualification and Procedures Directives did not focus extensively on concrete COI quality standards, in recent years this issue has been addressed through several other initiatives. Amongst them the ACCORD Training Manual,<sup>25</sup> a UNHCR paper from 2004,<sup>26</sup> the Common EU Guidelines for Processing Country of Origin Information<sup>27</sup> and the COI Checklist elaborated by the International Association of Refugee Law Judges (IARLJ)<sup>28</sup> deserve special mention. All these documents establish a set of concrete recommendations, or even explicit quality standards and procedural norms regarding the research and use of country information.

At the same time, the question of the best organisational structure for COI services has received less attention. The common opinion in professional circles is that COI **should be gathered by professional and specialised researchers** who are aware of and pay attention to specific quality standards and strive to provide decision-makers and other COI users with unbiased and up-to-date information. Several member states have specialised COI services in place available for administrative asylum authorities; however, only a handful extend these provisions to the judiciary. Since a significant proportion of the asylum claims lodged in the EU are decided upon by courts,<sup>29</sup> **the lack of specific legal framework for the use of COI at judicial instances may indicate a potential gap.**

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24 Article 4 (3) of 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; Article 8 (2) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status

25 Researching country of origin information – a training manual, ACCORD/Austrian Red Cross, September 2004 (hereinafter: ACCORD Manual) <http://www.coi-training.net/content/doc/en-COI%20Manual%20Part%20I%20plus%20Annex%2020060426.pdf>

26 Country of Origin Information: Towards Enhanced International Cooperation, UNHCR, February 2004, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=403b2522a&page=search>

27 Common EU Guidelines for Processing Country of Origin Information (COI), April 2008, <http://www.unhcr.org/refworld/docid/48493f7f2.html>

28 Judicial Criteria for Assessing Country of Origin Information (COI): A Checklist, IARLJ, November 2006, <http://www.iarjl.org/conferences/mexico/images/stories/forms/WPPapers/Hugo%20StoreyCountryofOriginInformationAndCountryGuidanceWP.pdf>

29 See footnote 9



The present chapter aims to look at the **existing COI infrastructures that serve (also) the judicial instances** involved in asylum procedures. The objectives of this part of the research were:

- to explore the existence of different **structures and models**;
- to identify their main **characteristics**, advantages and disadvantages;
- to describe existing forms of **cooperation** between different actors; as well as
- to provide **recommendations** based on exemplary practices.

The study has shown that in some countries COI may be obtained from a number of organisations (NGOs and international organisations), but this collaboration may be described as sporadic, rather than regular and stable.<sup>30</sup> Not considered as a “COI infrastructure”, these forms of collaboration will not be looked at in detail.

## III.2 Existing COI Infrastructures

The research clearly showed that the judiciary currently employs a **wide range of practices** to obtain COI, and **there is no majority (let alone common) approach** towards this issue. By concluding the research results, the following structural models can be distinguished as for the access of judges to COI:

### A. Judges obtain country information themselves from

- the court’s own COI service;
- the administrative asylum authority or its COI service;
- an independent, state-funded COI service (serving more than one actor of the asylum procedure);
- professional non-governmental COI providers; or
- other sources (e.g. Ministry of Foreign Affairs, independent experts, etc.).

### B. Judges use only COI provided by the parties, based on legal traditions or simply because practice developed in this direction.

It should be noted as well that in a number of member states (Bulgaria, Estonia, Finland, Latvia and Sweden) **judges are reported to perform research themselves** on a regular basis, either as the primary source of information, or as one of the different manners to obtain COI (complementary to the above-mentioned structures). Nevertheless, **the majority of European judges dealing with asylum do not seem to perform COI research.**

The staff capacity of COI infrastructures providing country information for the judiciary varies from country to country. Some units/research departments (at courts or NGOs) have only two researchers, while other offices may employ up to forty COI researchers, librarians and translators. **Capacity appears to be one of the most serious problems** that COI units are confronted with. Over the past few years, many such departments have undergone staff cuts and had to adapt their structure to this situation. One solution certain COI units opted for was to focus on some products, while allocating limited resources to other activities.<sup>31</sup>

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30 An example would be that of the Czech Republic, where the local UNHCR office can be contacted in regard to country information, but neither the judges, nor the UNHCR consider this to be a COI infrastructure for the judiciary.

31 The Refugee Documentation Centre in Ireland noted that they prioritised their query response service, to the detriment of their other products – researchable library and thematic country reports. CEDOCA (Belgium), one of biggest COI units in the EU in terms of staff, noted that staff cuts led to a reorganisation of tasks, and capacity dedicated to complementary products (researchable library, media library) was decreased.

The main structural models are briefly described as follows.

### III.2.1 Courts' Own COI Services

Currently, **three European courts have their own COI service**, namely the Austrian Asylum Court (*Asylgerichtshof*), the French National Asylum Court (*Cour Nationale du Droit d'Asile, CNDA*) and the Swiss Federal Administrative Court (*Bundesverwaltungsgericht, Tribunal administratif fédéral*). These services exist in the form of a **separate department** of the respective judicial bodies, composed of professional and specialised COI researchers, whose main task is to provide country information.

Name of COI unit	Number of researchers	Statistics for 2009
COI service of the Austrian Asylum Court	5	no statistics available
COI service of the French National Asylum Court	5 (4 full-time, 1 part-time)	367 query responses, 17 thematic country reports
COI unit of the Swiss Federal Administrative Court	4 (3 full-time, 1 part-time)	510 query responses

In a number of other member states, judges may obtain country information **from other research services** operating within their court. Researching and gathering COI is not the core task of these units,<sup>32</sup> but judges may send queries or ask the staff of these units to provide thematic seminars on specific countries. In some cases, these research units also administrate a COI library.

- At the Danish Refugee Appeals Board (*Flygtningenævnet*) the research for and compilation of COI is conducted by all the heads of section working at the Secretariat of the Board. The COI compiled by the Secretariat is published on the Board's website and includes general background material on the situation in the countries from where Denmark receives asylum-seekers.
- In Finland, the judges of the Helsinki Administrative Court (*Helsingin hallinto-oikeus*) can ask the support of the librarians working at the court in order to have access to COI.
- In Sweden, judges rely on individual assistance (legal officers) in reviewing the COI provided by the parties or already present in the file.
- Both competent regional courts (*Krajský Súd*) in Slovakia have a so-called documentation department. Among their other legal research tasks, the staff of these units (each with two employees) respond to COI requests addressed by judges.
- The Metropolitan Court (*Fővárosi Bíróság*) in Hungary operates an intranet database of COI materials and one expert lawyer working at the court (who is not a full-time COI researcher) can be approached with individual queries on an *ad hoc* basis.
- In the United Kingdom, the Immigration and Asylum Chamber has a Legal and Research Unit (LRU) which, amongst other tasks, maintains an intranet library where COI reports of various specialised sources together with the Operational Guidance Notes of the UK Border Agency<sup>33</sup> are stocked. Judges can also approach the LRU with queries.

<sup>32</sup> They carry out other (e.g. legal) research tasks, produce statistics, etc.

<sup>33</sup> Operational Guidance Notes are country-specific documents drafted by the UK Border Agency (the administrative asylum authority) and serve as the institution's policy guidelines on the adjudication of asylum claims from certain countries.

### III.2.2 COI services of Administrative Authorities

In Austria, Bulgaria, Cyprus, Estonia, Finland, Germany, Hungary, Italy, Lithuania and Romania judges have the possibility to **formulate queries to the COI unit of the administrative asylum authority**. In Germany, for example, the Federal Office of Migration and Refugees (*Bundesamt für Migration und Flüchtlinge, BAMF*) has an information desk (*Informationsvermittlungsstelle*) that judges can contact by phone and e-mail for access to the documents referred to in the administrative procedure. In addition, judges also have access to the BAMF's "MILo" database.

**The actual use of this opportunity offered by law varies significantly** within the above group of countries. In most cases this is not an exclusive manner to obtain COI: in Germany for instance courts also obtain expert opinions from the Ministry of Foreign Affairs (*Auswärtiges Amt*), from NGOs or from scientific institutions on matters of fact. In some countries (such as Hungary and Romania), this possibility foreseen by the law is hardly ever used. In Italy, the law foresees that courts dealing with asylum cases can request country information from the National Asylum Commission (*Commissione nazionale per il diritto d'asilo*).<sup>34</sup> Unfortunately, the COI service of the Commission (the so-called SERICOI) was closed down in December 2010, at least temporarily, for financial reasons (project-based funding discontinued).

### III.2.3 Other State-funded COI Services

In a model often referred to as best practice, a **structurally independent COI service is charged to provide information to all parties** involved in the asylum procedure. This model is currently only applied in Ireland, where the Refugee Documentation Centre Ireland (RDCI) answers queries of the administrative asylum authority, members of the Refugee Appeals Tribunal, legal representatives of asylum-seekers and other key organisations involved in the asylum process.<sup>35</sup> Structurally, the RDCI is a separate department of the Irish Legal Aid Board.<sup>36</sup> The RDCI employs six full-time and four part-time researchers, and answered 2 277 queries in 2009.

### III.2.4 Non-governmental COI Providers

In several member states, there are **NGOs that respond to COI queries addressed by the judiciary** as a core task. In Austria and Romania providing COI products for courts constitutes a significant part of the tasks undertaken by certain NGOs active in the asylum field, such as the Austrian Red Cross/ACCORD, the Romanian National Council for Refugees (CNRR) and the Jesuit Refugee Service Romania.<sup>37</sup> In the Netherlands, the Dutch Council for Refugees (DCR) operates an online COI database available for judges.<sup>38</sup>

It is noteworthy that a number of NGOs in other member states have COI researchers as part of their staff and provide country information to courts on an *ad hoc* basis, but this form of collaboration is neither regular, nor institutionalised.<sup>39</sup>

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34 The administrative asylum authority

35 According to the RDCI on-line information leaflet, "a query and research service is provided for the UNHCR, Refugee Legal Service and Legal Aid Board, Office of the Refugee Applications Commissioner, Refugee Appeals Tribunal, Irish Naturalisation and Immigration Service (INIS), Department of Justice, Equality and Law Reform and private practitioners associated with the above. The research service is not available to members of the public."

36 The Legal Aid Board is an independent, publicly funded organisation.

37 The two Romanian NGOs are open to queries from any judge dealing with asylum cases; however it is mostly the two courts located in Bucharest that make use of this service, while other Romanian judges seem reluctant to do so.

38 <https://www.vluchtweb.nl/livelinkvw/lisapi.dll?func=LL.getlogin&NextURL=%2Fvivelinkvw%2Fllisapi%2Edll%3FRedirect%3D1> (the service can be accessed following subscription)

39 The Human Rights League (Slovakia) and the Portuguese Refugee Council are examples of NGOs that have already provided, upon request, COI reports to the judiciary; nevertheless this has not developed into a steady form of collaboration.

### III.3 COI Products for the Judiciary

Most COI infrastructures available for the judiciary produce **query responses** and **thematic country reports**. In case of the latter, the need for a certain report can be identified by decision-makers or the COI researchers themselves. Thematic country reports are deemed necessary when the respective court has to review a **high number of asylum cases from the country in question** and the respective claims have **common elements**. Query responses for individual cases represent the main activity of most COI units that serve the judiciary, as for obvious time and capacity constraints, punctual, individualised responses are preferred to lengthy reports.<sup>40</sup>

In addition, in recent years some COI units<sup>41</sup> have also offered the judiciary tailor-made **training courses** on COI research.

Several COI and legal research units based at courts maintain **researchable databases**. These COI collections can take the form of:

- compilations of the reports of the most renowned COI sources;<sup>42</sup>
- physical libraries, where books and written reports are archived together with maps and multimedia material;
- an on-line COI database;<sup>43</sup>
- on-line collections of individualised responses to COI queries.<sup>44</sup>

### III.4 Quality Assurance

The most frequently used quality control method for COI providers is **peer review**.<sup>45</sup> In Austria, Denmark, Ireland and Romania, senior COI researchers take turns in reviewing the reports done by junior colleagues. In France, the products of the CNDA's COI unit are reviewed by the head of the unit and the president of the court. All COI units that provide country information to courts declared to have adopted the standards set by to the Common EU Guidelines for Processing Country of Origin Information.<sup>46</sup>

In addition, the RDCI and ACCORD have developed their own **style guide**. These documents set requirements as to the form, language and structure of the country information reports that the units produce. As shown in the table below, COI providers serving the judiciary also have **formal requirements regarding the procedure of**

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40 All four COI units that participated in the study visits conducted within the framework of the present research (the Austrian Asylum Court, CEDOCA Belgium, the Refugee Documentation Centre Ireland and the French National Asylum Court) reported a loss of personnel because of budget cuts. Consequently, the COI units were obliged to limit their resources allocated to thematic reports and researchable libraries (where relevant).

41 For example, the Austrian Red Cross/ACCORD, the COI unit of the French National Asylum Court and the Refugee Documentation Centre Ireland

42 The Secretariat of the Refugee Appeals Board (Denmark) and the Legal Research Unit of the Immigration and Asylum Chambers (UK) reported maintaining such databases.

43 The Austrian Red Cross/ACCORD administers the probably most widely used on-line COI research engine, [www.ecoi.net](http://www.ecoi.net).

44 In Romania, the COI unit of the administrative asylum authority (BITO) and the country research department of the Romanian National Council for Refugees upload selected query responses to an on-line database ([www.portal-ito.ro](http://www.portal-ito.ro)).

45 Peer review in this context means a method of quality control where experienced staff members review a sample of "products" (e.g. query responses, reports, etc.) delivered by other staff members and provide an evaluation thereof.

46 Common EU Guidelines for Processing Country of Origin Information (COI), April 2008, [www.unhcr.org/refworld/docid/48493f72.html](http://www.unhcr.org/refworld/docid/48493f72.html)

**requesting and providing country information.** Such guidance covers, for example, the means of transmitting queries (usually limited to a written form, by e-mail or by fax), as well as deadlines for answering them. For example:

Country	Deadline to deliver query responses
Austria	Austrian Asylum Court COI Unit: deadline decided on a case by case basis Austrian Red Cross/ACCORD: 5 working days
France	French National Asylum Court COI Unit: deadline decide on a case by case deadline
Ireland	Refugee Documentation Centre Ireland: 5 working days
Switzerland	Swiss Federal Asylum Court COI Unit: deadlines are set according to the priority level of the case(s)
Romania	Romanian Office for Immigration COI unit (BITO): minimum 5 working days Jesuit Refugee Service Romania COI service: minimum 5 working days Romanian National Council for Refugees COI service (ROCCORD): minimum 2 weeks
Hungary	Office of Immigration and Nationality Documentation Centre: 15 days

### III.5 Collaboration between COI Units

Research has revealed **some cooperation initiatives** in which the afore-mentioned COI services are involved. Some of them focus on access to information and involve sharing material and joint access to COI databases.

The COI unit of the French National Asylum Court reported to be involved in cooperation with the COI unit of the French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et des apatrides, OFPRA*) and the similar department of the administrative asylum authority in Belgium (CEDOCA). The COI research unit of the Austrian Asylum Court makes frequent use of the country information database maintained by the German Federal Office of Migration and Refugees (*Bundesamt für Migration und Flüchtlinge, BAMF*) and is involved in cooperation (access to database, exchange of COI materials, organisation of joint workshops) with the research unit of the Austrian Federal Asylum Office (*Bundesasylamt*). In Switzerland, the COI unit of the Federal Administrative Court jointly administers a common country information database with the Federal Office for Migration (*Bundesamt für Migration, Office fédéral des migrations*).

Other recent transnational cooperation projects involving some of the previously mentioned COI units have focused on training initiatives,<sup>47</sup> as well as on joint efforts in drafting guidelines<sup>48</sup> and policy papers.

Yet, there is **no specific pattern of cooperation between country research units that provide COI to judicial bodies**; this therefore remains an area of potentially enhanced cooperation in the future.

47 The European COI Training Network (coordinated by ACCORD) is a network consisting of COI researchers and trainers who have organised numerous seminars and training courses on COI for decision-makers of administrative authorities, lawyers and judges.

48 The previously mentioned ACCORD Manual was the product of the cooperation between several COI units and experienced researchers ([www.ecoi.net/7.training.htm](http://www.ecoi.net/7.training.htm)); another recent example of collaboration between COI units is the EU Common Guidelines on (Joint)Fact Finding Missions ([www.ecoi.net/file\\_upload/90\\_1292230919\\_20101118-ecs-ffm-guidelines-final-version.pdf](http://www.ecoi.net/file_upload/90_1292230919_20101118-ecs-ffm-guidelines-final-version.pdf)).

## IV. Conclusions and Recommendations

Research for this paper has shown that judicial structures involved in reviewing administrative decisions on asylum, as well as the competent courts' access to country information is largely divergent throughout Europe. A significant part of asylum cases are decided upon in the appeal phase<sup>49</sup> and country information is widely considered as determinant evidence in many asylum claims. Therefore, such divergence may easily undermine harmonisation and common quality standards. Given the initial mapping character and the specific focus of the present research, this paper does not intend to discuss what judicial review structures should look like in asylum cases in order to comply with international fair trial or *non-refoulement* requirements. It rather limits itself to brief recommendations regarding **what judicial and COI structures can best serve the effective observation of quality standards related to the research and use of country information.**

For this purpose, the authors selected the quality standards set forth in the previously mentioned ACCORD Manual for a number of reasons. Pioneering at the time of its publication, and widely used and respected since then, the ACCORD Manual's quality standards currently reflect a wide professional consensus. These standards served as basis for other guidance documents as well as for the European Asylum Curriculum (EAC) module on COI; in addition they are now well represented in both legislation and jurisprudence in a number of member states.<sup>50</sup> The four main substantive quality standards, together with the relevant recommendations and good practice examples (where available) are presented as follows.

### I. Legal Relevance

Standard in brief: Country information should be legally relevant, i.e. should help to decide on the merit whether the fear of persecution/serious harm is well-founded; and for this purpose it should be individualised and reflect the actual situation in the country in question.

Conclusions/recommendations:

- 1) Specialisation helps accumulate specific knowledge and experience both about legal issues and certain country conditions. Courts, chambers or judges specialised in asylum matters may often be more effective in identifying legally relevant COI questions. In addition, the creation of a specific COI service is an unlikely (or even impossible) option in decentralised and non-specialised judicial structures dealing with asylum. **Specialisation of judges and courts dealing with asylum is, therefore, recommendable.**

Exemplary practice: In Austria and France specialised asylum courts operate a dedicated COI service that responds to queries formulated by judges, provides thematic country reports and training, etc. These services are considered as key for the effective and high-quality functioning of the courts in question.

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49 See footnote 9

50 See Gábor Gyulai, Country Information in Asylum Procedures – Quality as a Legal Requirement in the EU, Hungarian Helsinki Committee, 2007 (an updated edition is to be published in 2011) <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?page=search&docid=479074032&skip=0&query=country%20information%20asylum%20procedures>

- 2) Long-standing experience shows that with certain (even basic) experience in country information research it is much easier to understand the scope and limits of this crucial mean of evidence, and it is more likely that research queries will be relevant and possible to answer. On the other hand, a general knowledge of refugee law may significantly enhance COI research capacities, through a better understanding of what legally relevant information means. **Therefore, it is recommended that judges dealing with asylum also participate in COI-specific training (tailor-made to their specific needs) and that COI researchers get trained on refugee law.**

Exemplary practice: A total of over 150 Austrian, Swedish, French, Italian, Spanish, Romanian, Czech, Slovak and Hungarian refugee law judges have already attended COI-specific seminars offered by the members of the COI Training Network in recent years. 75 refugee law judges from 20 EU member states participated in a conference co-organised by the Hungarian Helsinki Committee, the IARLJ and the UNHCR, focusing on COI and evidence assessment in April 2011. The evaluation of all these events by participants was outstanding.

- 3) The legal relevance of case-specific COI queries is reported to be generally higher than that of periodical country reports. This is even more so in the judicial review phase of asylum procedures, where particularly detailed or difficult questions are more likely to come up and where usually case files already include a certain amount of country information from lower instances. **Therefore, if only limited resources are available, it is recommended that courts should allocate them to an individual COI query response service, rather than to the production of more general country, thematic or periodical reports.**

## II. Reliability and Balance

Standard in brief: COI should be obtained from a variety of different reliable sources and attention should be paid to the specific character (mandate, methodology, etc.) of all sources used.

Conclusions/recommendations:

- 4) Jurisprudence of the European Court of Human Rights has established a standard according to which national authorities (including courts) must compare their own COI materials with other reliable sources (e.g. NGO and international reports, etc.) in cases assessing a risk of refoulement.<sup>51</sup> EU law also foresees the use of different COI sources in asylum procedures.<sup>52</sup> In order to comply with this standard, courts dealing with asylum claims must be equipped to retrieve materials complementing the country information provided by the parties. For this purpose, making use of some sort of internal or external COI research service appears to be crucial. **Courts dealing with a significant number of asylum cases are, therefore, recommended to establish a trained and well-resourced COI service or to build a cooperation scheme with a professional independent COI-provider.**

Exemplary practice: The French, Austrian and Swiss asylum courts operate their own COI unit. Courts dealing with asylum cases in Slovakia, Hungary and the UK have some internal capacities for COI-related support services. Irish, Romanian and Dutch refugee law judges have access to professional external COI services.

- 5) The knowledge of various languages (including English) is often a pre-condition of using a variety of different COI sources. In lack of sufficient language skills, judges may often need to rely on additional support in order to collect and translate COI materials. In addition, in many countries only those materials can be used as evidence in judicial procedures which are translated to or at least summarised in the official language of the procedure.

51 See for example: Salah Sheekh v. The Netherlands, Council of Europe: European Court of Human Rights, Para. 136, 11 January 2007, <http://www.unhcr.org/refworld/docid/45cb3dfd2.html>

52 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Article 8 (2) (b)

It is, therefore, recommended that COI research is performed by professional researchers having the necessary language skills and that COI services providing information to judges should have sufficient capacities and resources for translation.

Exemplary practice: In most cases, the COI services mentioned under recommendation no. 4 provide information in the official language of the court's procedure.

### III. Accuracy and Currency

Standard in brief: COI should be up-to-date and objectively, impartially and accurately researched (e.g. without truncation or selective quotation).

- 6) COI research is widely seen today as a separate profession, requiring specific skills and training. In order that COI research can be conducted in an accurate and high-quality manner, it is important that this task is performed by dedicated, experienced and well-resourced staff. The establishment of a COI unit responding to the specific needs of the judiciary can enhance both quality and efficiency in this respect, and may thus – among others – also contribute to faster judicial review procedures. **See recommendation no. 4.**
- 7) EU law also foresees the use of up-to-date COI (relevant at the time of the decision) in asylum procedures.<sup>53</sup> Jurisprudence of the European Court of Human Rights has established a similar standard in cases assessing a risk of refoulement.<sup>54</sup> In order to comply with this requirement, courts may often need to complete or update the COI materials already available to them in administrative or lower-instance case files. This necessitates access to dedicated (internal or external) COI services, as judges often lack the time and capacity to carry out this task themselves. **See recommendation no. 4.**

### IV. Transparency

Standard in brief: In order to ensure the equality of arms and respect due process requirements country information has to be transparent (available to all parties in the procedure) and well-referenced.

- 8) Considering the vital consequences of decisions on asylum claims, as well as relevant international standards (*non-refoulement*, fair trial, etc.) it is crucial that asylum-seekers know on what basis their claim is rejected and have a possibility to present counter-arguments. This principle is reflected in EU law, as well.<sup>55</sup> **Courts are, therefore, encouraged to share with the parties all COI documents considered in the judicial review of asylum decisions (including those produced by the court itself) and allocate sufficient time for the parties to react on them.**

Exemplary practice: The above appears to be an established practice in the majority (yet not all) EU member states.

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53 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, Article 4 (3) (a); Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Article 8 (2) (b)

54 Saadi v. Italy, Appl. No. 37201/06, Council of Europe: European Court of Human Rights, § 133, 28 February 2008, <http://www.unhcr.org/refworld/docid/47c6882e2.html>

55 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Article 9 (2)



## List of Contributors

Austria:	Andrea Jakober (ACCORD), Birgit Wittek
Belgium:	Lies Vandervoort (Office of the Commissioner-General for Refugees and Stateless Persons)
Bulgaria:	Mariya Yankova Ivanova-Vranesku (Sofia City Court), Valeria Ilareva (Legal Clinic for Refugees and Migrants)
Cyprus:	Theophano Michaelides (Asylum Review Authority), Chrystalla Katsapaou (UNHCR Cyprus)
Czech Republic:	Hana Lupačová (Supreme Administrative Court)
Denmark:	Anne-Lise Ulf Schilling (Danish Refugee Appeals Board)
Estonia:	Jelena Karzetskaja, Vadim Polestsk (Legal Information Centre for Human Rights)
Finland:	Juha Rautiainen (Helsinki Administrative Court)
France:	Martine Denis-Linton, Christophe Laurent, Florence Malvasio, Françoise Rimailho, Hélène Kummerlé, Irène Perret, Jérôme Camus, Joseph Krulić, Laurent Dufour, Martine Vezant, Pierre Begault, Faïssal Guedichi, Iskra Ilieva (French National Asylum Court)
Germany:	Michael Kalkmann (Informationsverbund Asyl und Migration)
Greece:	Spyros Koulocheris (Greek Refugee Council)
Ireland:	Eamonn Cahill (Refugee Appeals Tribunal), Niall Maher (Refugee Documentation Centre Ireland), John Stanley
Italy:	Helena Behr (UNHCR Italy)
Lithuania:	Zita Smirnoviene (Vilnius Regional Administrative Court)
Luxemburg:	Frank Wies
Malta:	Neil Falzon (Aditus)
Netherlands:	Mathilde W. Groenendijk (Haarlem Court), Hiske van den Bergh (Dutch Council for Refugees)
Poland:	Agata Foryś
Portugal:	João Vasconcelos (Portuguese Refugee Council)
Romania:	Eleodor Pîrvu (Romanian Immigration Office), Bianca Albu (Jesuit Refugee Service Romania), Alin-Valentin Morariu (Romanian National Council for Refugees)
Slovakia:	Katarína Fajnorová (Human Rights League)
Slovenia:	Boštjan Zalar (Administrative Court of the Republic of Slovenia)

- Spain: Marta García Cienfuegos (UNHCR Spain), Juan Carlos Fernández de Aguirre (National High Court)
- Sweden: John Panofsky (Migration Court of Gothenburg)
- Switzerland: Sandra Bodenmann, Anita Kanziger (Swiss Federal Administrative Court), Rainer Mattern (Swiss Refugee Council)
- United Kingdom: Hugo Storey (Upper Tribunal, Immigration and Asylum Chamber), Elizabeth Williams, Stephanie Huber (Asylum Research Consultancy)

# Annex

## Summary of Judicial Structures Dealing with Asylum

<b>Country</b>	<b>Austria</b>	<b>Belgium</b>	<b>Bulgaria</b>	<b>Cyprus</b>
3rd instance				
2nd instance	Constitutional Court	Council of State	Supreme Administrative Court (panel 5 judges)	Supreme Court
1st instance	Asylum Court	Council for Immigrant Litigation	Supreme Administrative Court (panel 3 judges)	Asylum Review Authority
<b>Country</b>	<b>Czech Republic</b>	<b>Denmark</b>	<b>Estonia</b>	<b>Finland</b>
3rd instance			Supreme Court	
2nd instance	Supreme Administrative Court		2 district courts	Supreme Administrative Court
1st instance	Regional Courts	Refugee Appeals Board	2 local administrative courts	National Asylum Court
<b>Country</b>	<b>France</b>	<b>Germany</b>	<b>Greece</b>	<b>Hungary</b>
3rd instance		Federal Administrative Court		
2nd instance	Council of State	15 high administrative courts	Council of State	
1st instance	National Asylum Court	52 administrative courts	Regional Administrative Court of Appeal	5 county courts
<b>Country</b>	<b>Ireland</b>	<b>Italy</b>	<b>Latvia</b>	<b>Lithuania</b>
3rd instance	Supreme Court	Cassation Court		
2nd instance	High Court	regional courts of appeal		Supreme Administrative Court
1st instance	Refugee Appeals Tribunal	local civil courts	regional courts	regional administrative courts
<b>Country</b>	<b>Luxemburg</b>	<b>Malta</b>	<b>Netherlands</b>	<b>Poland</b>
3rd instance				
2nd instance	Administrative Court		Council of State	Supreme Administrative Court
1st instance	Administrative Tribunal	Refugee Appeals Board	Court of the Hague	Regional Administrative Court of Warsaw
<b>Country</b>	<b>Portugal</b>	<b>Romania</b>	<b>Slovakia</b>	<b>Slovenia</b>
3rd instance	Supreme Administrative Court			Constitutional Court
2nd instance	2 Central Administrative Courts	regional tribunals	Supreme Court	Supreme Court
1st instance	12 fiscal and administrative courts	local courts	2 regional courts	Administrative Court
<b>Country</b>	<b>Spain</b>	<b>Sweden</b>	<b>Switzerland</b>	<b>United Kingdom</b>
3rd instance				Court of Appeal
2nd instance	Supreme Court	Migration Court of Appeal		Immigration and Asylum Chambers (Upper Tribunal)
1st instance	National High Court	3 migration courts	Federal Administrative Court	Immigration and Asylum Chambers (First Tier Tribunal)



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