



COUNTRY OF ORIGIN INFORMATION WITH REGARD TO THE RIGHT TO ASYLUM (COI STANDARDS)

COI (Country of Origin Information) is very important with regard to the Asylum Law 12/2009, which, as we have already pointed out, makes recognition of asylum status for people persecuted on account of their gender conditional on “*the prevailing circumstances in the country of origin*”.

This aims to provide an “objective” or de facto element in establishing refugee status or other forms of international protection. It makes it possible to provide information on the political, social, cultural, economic and human-rights situation in countries of origin.

Until recently, COI research consisted of merely consulting the small number of reports on human rights available in printed copies. Since the end of the 1990s, its basic quality as evidence has changed due to the progress in IT and access to the Internet.

Its growing importance has created a greater demand for systematised quality standards. As it is a decisive factor in most asylum cases, it requires clear rules regarding research, documentation and use, so as to avoid unjustified decisions that might give rise, in the worst cases, to an expulsion.

The UNHCR, the Austrian Red Cross, The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), along with the COI Training Network, the International Association of Refugee Law Judges (IARLJ) and the Authorities of the member states on the subject of asylum have drawn up guidelines on COI.

The Directives on Recognition¹ and on Procedures² create obligations for member states in this matter and can therefore be considered as instruments that determine the quality standards of COI with a legally binding effect.

The European Court of Human Rights (ECHR), for its part, can rely on relevant jurisprudence concerning article 3 of the European Convention on Human Rights and the principle of non-refoulement. These rulings create obligations for the respondent State but establish principles that should be respected by all the signatory states in similar procedures.

Main quality criteria and requirements regarding COI

Basic standard: COMPULSORY USE OF COI

The EU Directives on Recognition and Procedures, the ECHR³ and some national courts have established criteria and rules on the use of COI in asylum procedures.

¹ Directive 2011/95/EU of the European Parliament and Council of the 13th of December 2011 that establishes rules regarding the requirements for recognition of nationals from third countries or stateless people as beneficiaries of international protection, a common status for refugees or for people with the right to subsidiary protection and the contents of the protection granted.

² Directive 2013/32/EU of the European Parliament and the Council of the 26th of June 2013 on common procedures for granting or revoking international protection



Standard 1: LEGAL IMPORTANCE OF COI

This must be closely linked to the “justified fear of persecution” and objectively show the facts connected with this.

To do this, the Directives on Qualification and Procedures establish two general requirements:

- Individualised examination of asylum requests:

The Qualification Directive, in article 4.3.c)⁴, establishes that when it comes to assessing the facts that may constitute persecution or serious harm, the *particular situation and personal circumstances*, including factors such as their *past, sex and age*, will be taken into account.

In the same way, the Procedures Directive, in article 10.3.a) refers to the need for an “*appropriate examination*” of requests and adds that member states shall guarantee that this is “*individual, objective and impartial*”.

The ECHR has also referred to the need to use specific individualised information⁵.

With regard to the persecution that women and the LGTTBI population undergo it is vital to interpret this from a perspective based on gender and sexual diversity, and to identify the patriarchy and heteronormativity among the causes that give rise to this and understand the specific nature of these kinds of violence.

Along the same lines, the Procedures Directive, in article 10.3. a) and b) refers to the need for an “*appropriate examination*” of requests and adds that member states shall guarantee that this is “*individual, objective and impartial*” as well as obtaining accurate up-to-date information from various sources (expressly mentioning EASO, UNHCR and organisations that defend human rights) on countries of origin and even of transit.

- Examination of laws and their real application in the country:

The Qualification Directive in article 4.3.a)⁶ establishes that a request for asylum must be assessed *individually* bearing in mind the facts regarding the country of

³ Mamatkulov ruling (“It is the Court’s repeated jurisprudence, that extradition by a contracting State may give rise to a problem by virtue of article 3, and as a result, compromise the State’s responsibility according to the Convention, whenever there are well founded reasons to believe that the person in question, if they are extradited, will face a genuine risk of being subjected to treatment contrary to article 3, in the recipient country. The establishment of this responsibility inevitable involves an assessment of the conditions in the country applying for the extradition regarding the criteria in article 3 of the Convention (...)” and Salah Sheekh (“The establishment of any responsibility on the part of the State carrying out the expulsion, by virtue of article 3 inevitable involves an assessment of the conditions in the recipient country in view of the standards in article 3 of the Convention (...)).

⁴ Article 4.3. c) of the Qualification Directive: “The assessment of a request for international protection shall be carried out individually and will mean that: (c) the applicant’s particular situation and personal circumstances shall be taken into account, including factors such as their past, sex and age, in order to assess whether, given the applicant’s personal circumstances, the acts that he/she has been or could be subjected to may constitute persecution or serious damage”.

⁵ In Venkadajalasarma, it stressed the need for an individualised assessment of information on the country: “The Court agrees with the applicant that the situation in Sri Lanka is still not stable, as shown by the recent events on the political front [...] While stability and safety are factors that must be taken into account in the Court’s assessment on the situation in the recipient country, the fact that the peace negotiations have not yet reached a satisfactory solution, does not prevent the Court from examining the applicant’s individual circumstances in view of the general current situation (...)”.



origin at the time of this, including the *legal and statutory arrangements and the way in which they are applied*.

The Procedures Directive develops this requirement regarding the concepts of safe countries of origin, safe third country and safe European third country (articles 37, 38 & 39) that require member states to not just examine the legislation, but to assess its effective application.

The ECHR, in the Muminov ruling, considers that the *existence of national laws and the ratifying of international treaties that guarantee respect for basic rights, in principle, are not in themselves enough to guarantee appropriate protection against the risk of mistreatment where (...) reliable sources have informed of practices used or tolerated by the authorities that are clearly contrary to the principles of the Convention*.

This requirement acquires special importance as far as gender-based persecution is concerned. One of the major contradictions of our time lies in the divorce between discourse and practice regarding human rights. While there is a broad range of instruments that recognise them, the vast majority of people cannot exercise these rights effectively. This situation is heightened in the case of violence against women and the LGTTBI population. There is a huge gap between the existence of laws recognising these people's human rights and their effective application.

As we mentioned in the previous section, there is a series of obstacles to be overcome to gather reliable information on these kinds of violations of human rights that, in many places, are not fully recognised (mainly with regard to sexual and reproductive rights), occur, in most cases, in the private sphere, are covered up by state and non-state entities, and where investigating to find out what happened and bring to trial the perpetrators means accepting the risk of persecution.

Standard 2: RELIABILITY AND BALANCE OF SOURCES

It must be based on a variety and broad range of sources (bearing in mind the political and ideological context of each one) that gives rise to well-founded COI recognised by all the parties that intervene in the asylum procedure.

⁶ Article 4.3 a) of the Qualification Directive: *"The assessment of a request for international protection shall be carried out individually and shall mean that: a) all the relevant facts regarding the country of origin at the time of ruling on the request are to be taken into account, including the legal and statutory arrangements in the country of origin and the way in which they are applied"*.



To do this, the following criteria are established:

- Objectivity and impartiality:

The Procedures Directive (article 10.3.a) requires states to guarantee an *individual, objective and impartial* examination.

The ECHR has not issued any rules on the way to establish whether an information source is objective. However, in its sentence on Salah Sheekh, it alluded to reliability and objectivity criteria⁷.

- Broad range of sources:

Article 10.3.b)⁸ in the Procedures Directive establishes that status shall guarantee that *accurate, up-to-date information from a broad range of sources* can be obtained on the situation in countries of origin and transit. It mentions, as examples, the EASO, the UNHCR and international organisations that defend human rights.

The same article in section d) establishes that information can be obtained from experts in specific fields, such as subjects to do with *medicine, culture, religion, or minors or gender*.

In article 37.3 in the same Directive the very same requirement is pointed out concerning the assessment to determine whether a country of origin is safe. In this case information from *other member states, the EASO, the UNHCR, the Council of Europe and other relevant international organisations* is mentioned.

Since the 1990s the ECHR has been pointing out a variety of sources as a necessary requirement when it comes to assessing the situation in the country in cases related to article 3 in the European Convention on Human Rights (Salah Sheekh Case⁹ and Gaforov Ruling¹⁰ in which it is confirmed that this requirement also applies to the asylum authorities and courts).

⁷ Salah Sheekh Ruling: "(...) With regard to materials obtained on one's own initiative, the Court considers that, given the absolute nature of the protection granted by article 3, it must be ensured that the assessment carried out by the authorities of the contracting state is appropriate and sufficiently backed up by national information, as well as by reliable and objective materials from other sources (...)"

⁸ Article 10.3 b) of the Procedures Directive: "Member states shall guarantee that rulings on requests for international protection by the decision-taking authority are to be issued after an appropriate examination. To ensure this, member States shall guarantee: b) that accurate and up-to-date information is obtained from various sources, for example, information from the EASO, the UNHCR and relevant international organisations that defend human rights, regarding the general prevailing situation in applicants' countries of origin, and if required, in those countries that they have passed through, and that this information is made available to the staff responsible for examining requests and taking decisions in this regard".

⁹ Salah Sheekh Case: "(...) With regard to materials obtained on one's own initiative, the Court considers that, given the absolute nature of the protection granted by article 3, it must be ensured that the assessment carried out by the authorities of the contracting state is appropriate and sufficiently backed up by national information, as well as by reliable and objective materials from other sources, such as, for example, other contracting or non-contracting states, UN agencies and NGOs with a good reputation. [...] it would be an excessively limited approach by virtue of Article 3, if in cases of foreigners facing expulsion or extradition, the court, as an international court of human rights, only took into account the materials made available by the national authorities of the corresponding Contracting State, without comparing these with materials from other reliable objective sources (...)"



- Guidance on selecting and assessing sources:

The ECHR, in a 2008 ruling, provides guidance on how to assess COI sources. Attention must be paid to the *independence, reliability and objectivity* of the source, and to the *reputation* of the authors, the *seriousness* of the research that the sources were compiled with, the *coherence* of the conclusions and their *contrasting* with other sources.

The European Union and Courts have not prepared a closed list of reliable sources owing to the difficulty of creating a balanced list. The UNHCR (and other UN agencies), EASO and international organisations that defend human rights are the sources mentioned most often, as well as the Council of Europe and the member states themselves.

In the case of gender-based persecution, many information sources do not interpret violations of human rights from a perspective based on gender and sexual diversity, and ignore the specific violence that women and the LGTTBI population undergo. In other cases, they focus on the most common kinds of persecution (e.g. persecution of homosexual men), and turn a blind eye to others that are more hidden (e.g. persecution of lesbians or transsexuals, transgender people or intersexuals).

Although it is not included by the Geneva Convention many member states refer to what is known as the “internal flight alternative” when it comes to rejecting applications for international protection, regardless of whether the country involved is well known for its homophobia or trans-phobia. Protection must be effective, which rules out the use of internal protection as an alternative in countries where people’s sexual orientation and gender identity are criminalised

The concealment or “discretion requirement”, based on the idea that someone is safe from being persecuted if they keep their sexual orientation or their gender identity hidden, is a practice that is contrary to the Geneva Convention, to European regulations and to the guidelines of the UNHCR itself; and it is a violation of the right to live freely according to your sexual orientation or gender identity. By acting in this way, states are, in actual fact, working in favour of the homophobic and trans-phobic attitudes that these people are fleeing from.

The EU Court of Justice itself, in a ruling issued on the 7th of November 2013, has established, with regard to article 10.1.d) of Directive 2004/83/EC (Qualification Directive) that when it comes to examining an asylum request, the competent authorities cannot reasonably expect that, to avoid the risk of persecution, the asylum

¹⁰ Gaforov ruling (2010): “(...) [None of the national courts] took any account of all the relevant information provided by independent NGOs, cited by the applicant and attached by these courts to the materials in the file, [one of the factors that led the Court to the conclusion that] the national authorities did not carry out an appropriate assessment of the risk that the applicant would run of being subjected to torture or mistreatment if they were to be extradited”.



applicant will conceal their sexual orientation in their country of origin or act discretely.

Standard 3: ACCURATE RESEARCH AND SELECTION OF UP-TO-DATE INFORMATION

This must be obtained through a variety of sources, paying special attention to the search for relevant, up-to-date information.

- Obtaining accurate information

Article 10.3 a) & b) in the Procedures Directive establishes a general rule: an *individual, objective and impartial* examination of asylum requests that is achieved through *accurate up-to-date information from various sources*.

Objectivity is therefore related to reliability and the balance of sources, but is also linked to the selection of information.

In cases of gender-based persecution, there may be justified reasons for the lack of information on the situation in the country of origin. As we have already pointed out, many of these violations occur in the private (family and community) sphere and there are problems obtaining accurate information on certain kinds of violence in certain contexts.

- Up-to-date information

Article 4.3. a) in the Qualification Directive points out that in assessing the request, the facts concerning the country of origin *at the time of ruling on the request* will be taken into account.

The COI use in asylum procedures must refer to a period that is as close as possible to the time of the ruling, either in the first instance –administrative channel- or at a later one –the judicial channel-. When certain facts involving the persecution that has occurred go back years, the COI about this period is still accurate. There is also information that often doesn't change over time, such as information that has to do with cultural or historical matters.

The ECHR has dealt extensively with the question of the topicality of information. In the cases of *Chahal*¹¹, *Ahmed & Venkadajalasarma*, & *Salah Sheekh*¹², it clearly established that the analysis must focus on the situation at the time that a decision on the request is taken.

¹¹ Chahal case: "(...) The Court must consider the specific time of the material in the case. It can be gathered from this that, although the historic position is interesting insofar as it might throw light on the current situation and its possible development, current conditions are the decisive ones".

¹² Salah Sheekh Case: "(...) on assessing a supposed risk of treatment contrary to Article 3 regarding foreigners that face expulsion or extradition, a complete ex nunc assessment is required as the situation in a country of destination may change as time goes by".



Standard 4: TRANSPARENCY AND ACCESSIBILITY OF INFORMATION

It must be available for all the agents involved in the asylum procedure through the use of a transparent method of providing references.

Compliance with the rules regarding transparency is vital to guarantee legal security in establishing refugee status as it allows applicants to have access to the information on which the ruling on their request has been based.

Article 12.1.d)¹³ in the Procedures Directive establishes that member states shall guarantee access for asylum applicants and for their lawyers to the COI used and to the information provided by experts.

For its part, article 23.1¹⁴, guarantees access for lawyers to the information contained in the asylum dossier, while establishing exceptions should this compromise *national security, the safety of the organisations or people that provide the information or of the people that the information refers to*, among others.

¹³ Article 12.1.d) in the Procedures Directive: "Member States shall guarantee, with regard to the procedures established in chapter III, that all applicants are to enjoy the following guarantees: d) neither they, nor, where appropriate, their lawyers or other legal advisers, in accordance with article 23, section 1, can be denied access to the information referred to in article 10, section 3, B), nor to the information provided by experts referred to in article 10, section 3, D), whenever the decision-taking authority has taken into account this information to take the decision on their request".

¹⁴ Article 23.1. in the Procedures Directive: "1. Member states shall guarantee that the lawyer or any other legal adviser, empowered or authorised to practise as such in accordance with national law, that assists or represents an applicant in accordance with national law, shall have access to the information in the applicant's dossier on the basis of which a ruling has been, or is going to be, adopted.

Member states shall be able to establish an exception should the spreading of information or sources compromise national security, the safety of organisations or people that provide the information or the safety of the people that the information refers to, or whenever the interests of the research regarding the examination of requests for international protection by the competent authorities of the member states or the international relations of the member states were compromised (...)"