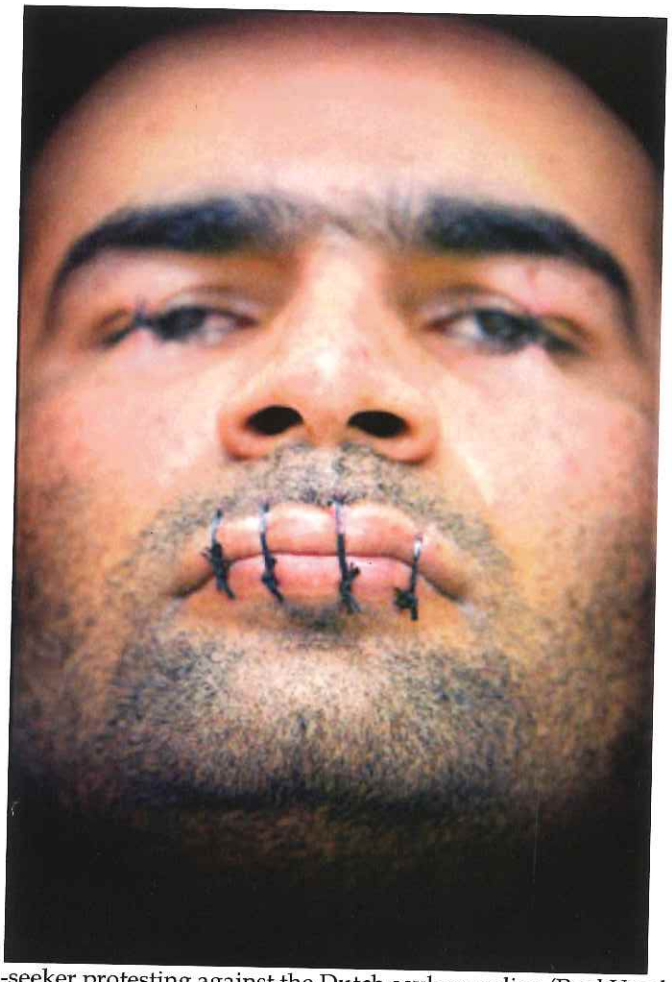
In Search of International Protection



An Iranian asylum-seeker protesting against the Dutch asylum policy (Paul Vreeker, Reuters 2004)

Country of Origin Information: The Cornerstone of Good Quality Asylum Decision-Making?

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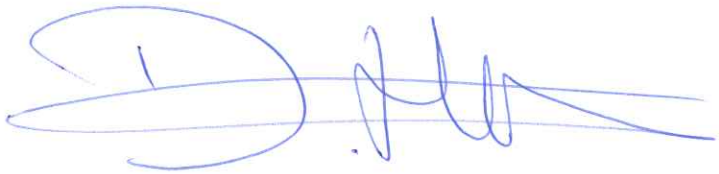

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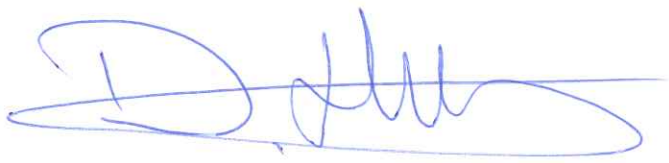

To my parents

Abstract

Country of Origin Information: The Cornerstone of Good Asylum Decision-Making?

This thesis examines the relevance and importance of country of origin information (COI) in asylum procedures. More specifically, the thesis addresses the impact of COI in the assessment of whether or not a person should benefit from international protection. COI is published by Contracting States or NGOs and specialized agencies of the United Nations for the purpose of providing valuable information on the political, social, cultural, economical and human rights conditions in countries of origin. It is used in the determination of national refugee status determination procedures and by the European Court of Human Rights in Article 3 cases of the European Convention on Human Rights. In addition to this, COI may contribute to the overall credibility of asylum applicants during the asylum decision-making procedure. Through the analysis of evidentiary assessment in international refugee law, European asylum law and policy, the jurisprudence of the European Court of Human Rights, NGO and UNHCR reports, this thesis aims to open a lively discussion on the decisive role of COI in assessing whether or not a person should benefit from international protection.

Keywords: Country of origin information (COI), refugee status determination, asylum decision-making, evidentiary assessment, well-founded fear, credibility assessment, the 1951 Refugee Convention, the EU Qualification Directive, the European Convention on Human Rights

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Abbreviations

ACCORD	Austrian Centre for Country of Origin and Asylum Research and Documentation
CEAS	Common European Asylum System
COI	Country of Origin Information
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EU	European Union
IDPs	Internal Displaced Persons
NGOs	Non-governmental organisations
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Introduction

Are homosexuals persecuted in Iran? Are individuals in Iran who have converted from Islam to another religion subjected to persecution? Is female genital mutilation widespread in Eritrea and are there any national laws prohibiting this practice? What can we tell about the 'revenge killings' perpetrated by the Shi'ite militias against the Sunni population in Iraq? What are the human rights conditions for minorities in Turkey? What are the prison conditions in Nigeria? How can decision-makers and asylum authorities assess whether members of the Ashraf tribe in Somalia are persecuted? Do former members of the police force and security service of the Communist regime in Afghanistan run the risk of being subjected to persecution or serious ill treatment?[1] In general, what is known about the human rights situation in a country of origin? These factual human rights issues are some examples raised in asylum decision-making procedures. Currently, a significant part of asylum applications are decided on the basis of evidentiary assessment rather than on a legal basis.[2]

To receive international protection from host countries, asylum applicants have to demonstrate that they have a well-founded fear of persecution for one of the reasons stated in the 1951 Geneva Refugee Convention and its 1967 Protocol relating to the Status of Refugees (1951 Refugee Convention).[3] The phrase "well-founded fear of being persecuted" consists of two main elements. The subjective element of whether the applicant fears persecution and the objective element of whether there are reasonable arguments that there is a subjective fear of persecution is

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[1] See Gyulai, G., *Country of Origin in Refugee Care*, Hungarian Helsinki Committee, January 2006. Available at http://menedek.hu/?q=node/88 (consulted on 29 March 2008).

[2] Evidentiary refers to the concepts of proof, evidence and credibility.

[3] Article 1 A (2) of the Geneva Convention and the 1967 Protocol Relating to the Status of Refugees of 28 July 1951 (189 UNTS 150).

objectively well-founded.[4] Overall, the applicant has to convince the decision-maker that their asylum claim is to be regarded as credible.[5]

Alternatively, there are a large number of individuals who do not fall within the scope of the 1951 Refugee Convention. If the asylum applicant is not recognised as a refugee, it is often the case that the applicant may claim that their return to their country of origin would be in breach of Article 3 of the European Convention on Human Rights (ECHR). Subsidiary protection in the form of Article 3 of the ECHR can offer some safety.[6] Article 3 of the ECHR is the most important article in the area of complementary protection. Most of the judgments concerning Article 3 of the ECHR are related to the issue of forced return and international protection. Many of the cases related to Article 3 of the ECHR deal within the context of asylum. The European Court of Human Rights (ECtHR) in Strasbourg has judged in case law that Contracting States cannot expel applicants to countries of origin where there are substantial grounds that demonstrates that an applicant, if removed, faces a real risk of being subjected to torture or to inhuman and degrading treatment or punishment.[7] In assessing whether the applicant runs a real risk of being subjected to treatment as prescribed by Article 3 of the ECHR, the ECtHR will assess the matter in light of all material placed before the Court.[8]

The main question is how decision-makers, legal advisers and asylum authorities of the Contracting States determine whether an asylum applicant

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[4] The UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, Reedited, Geneva, January 1992, UNHCR 1979, paras. 37-38. Available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain (consulted on 16 February 2008).

[5] Thomas, R., *Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined*, European Journal of Migration and Law, 2006, p. 79.

[6] Article 3 of the European Convention on Human Rights, Rome 4 November 1950, which states: *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

[7] ECtHR 7 July 1989, *Soering v. United Kingdom*, Series A, No. 161, Application no. 14038/88, , para. 91.

[8] ECtHR 11 January 2007, *Salah Sheekh v. the Netherlands*, Application no. 1948/04, paras. 135-136.

has a subjective fear of persecution that can be objectively well-founded or whether the applicant, if expelled, runs a real risk of being subjected to serious human rights violations as stated under Article 3 of the ECHR. In order to examine this, decision-makers, legal advisers and asylum authorities of the Contracting States make *inter alia* use of "country of origin information" (COI), "country information" or also known as official "country reports".[9] COI reports are general and case-specific. These COI reports are published by government authorities on the political, social, economic, cultural and human rights situation in the countries of origin of applicants seeking asylum or other forms of international protection.[10]

In addition to this, reputable non-governmental organisations (NGOs) or specialised agencies of international organisations, such as the Office of the United Nations High Commissioner for Refugees (UNHCR), equally produce COI on human rights conditions in countries of origin, which are often more specialised and detailed.[11] This is due to the fact that NGOs or specialised agencies of the United Nations (UN) use a variety of sources and material to compile COI. Thus, COI are necessary to assess whether a subjective fear of persecution or other serious human rights violations expressed by an applicant can be considered to be objectively well-founded.[12] Furthermore, COI illustrating human rights conditions in countries of origin perform also a crucial role in assessing the credibility of an asylum applicant.

The attention given to COI has increased in the last few years. These days, the concept of COI is at the top of the agenda of European asylum

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[9] The terms country of origin information (COI), country reports or country information are synonyms throughout this thesis.

[10] See reports of US Department of State, UK Home Office, The Dutch Ministry of Foreign Affairs.

[11] See reports of the Dutch Refugee Council, Amnesty International, Human Rights Watch, Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), the UNHCR and other specialised agencies of the United Nations.

[12] Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *ACCORD COI Network & Training. Researching Country of Origin Information: A Training Manual*, September 2004, p.14. Available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=42ad40184 (consulted on 20 April 2008).

issues. The future of harmonised asylum systems in Europe is determined in the Hague Programme, which has underlined the need for practical cooperation among European Union (EU) Member States.[13] The Hague Programme has emphasised the objective of "jointly compiling, assessing and applying information on countries of origin".

The importance of COI has never been questioned in the assessment of credibility of asylum claims; it has always been regarded as a tool to proof or supplement the applicant's own account when seeking international protection. However, COI are often seen as complementary and sometimes mere "soft evidence". Yet actual developments in relevant jurisprudence of the ECtHR demonstrate that COI are considered more and more as factual evidence.[14]

There are a number of reasons for this remarkable change. A decade ago, the assessment of asylum claims, meant limited consultation of documents on the social-political background and human rights conditions of countries of origin. These limited documents provided a general view of the human rights situation. This has changed with the evolution of the Internet and the development of information technology. The development of the Internet and also globalisation has produced an unlimited quantity of information and reports on the political, cultural, social, economic and human rights situations in countries of origin. The evolution of COI has enabled authorities to confirm the statements of individuals seeking international protection in a much more detailed manner than before.[15] Further, there has also been an increase in asylum applications in the last decade and an increase in the fact-finding missions by government representatives, NGOs and specialised agencies of

[13] The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, European Council 2005/C 53/01.
[14] Gyulai, G., *Country Information in Asylum Procedures, Quality as a Legal Requirement in the EU*, Hungarian Helsinki Committee, December 2007, p. 9. Available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=479074032 (consulted on 29 March 2008).
[15] *Ibidem*, pp. 9-10.

international organisations, which has placed a great emphasis on the importance of COI. Overall, the research of country information has evolved into an important profession for professionals of immigration offices, courts, legal advisers and NGOs.[16]

Since the quantity of COI has expanded, the need for systematic quality standards has equally increased. Hence, in order to prevent unjustifiable decisions based on inadequate or inaccurate COI, the demand for stricter rules of research, documentation and use has become higher. Key actors in the European asylum field have anticipated this demand. Certain quality standards have developed concerning COI in asylum procedures. Additionally, the ECtHR in Strasbourg has produced in relevant jurisprudence a number of quality standards related to COI, which can be regarded as of essential importance in national asylum decision-making procedures.[17]

The EU does not provide binding legislative acts on country information quality standards. Nevertheless, in forming a Common European Asylum System (CEAS), the Qualification Directive[18] and the Procedures Directive [19] established particular obligations in this respect. These Directives have created clear requirements for Member States. The obligations can be considered the only regional mechanisms regulating country information quality standards with the consequence being legally binding upon the Member States.[20] The main institution to ensure a homogenous interpretation and application of community law, is the European Court of Justice (ECJ). In this respect, the ECJ can develop jurisprudence on country information as

[16] Gyulai, *Supra* note 14, p. 10.
[17] *Ibidem*, p. 10.
[18] 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.
[19] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.
[20] Gyulai, *Supra* note 14, p. 17.

stated in the Qualification and Procedures Directive. However, the ECJ has not yet produced jurisprudence in this respect.[21]

Scope and Structure

There has been relatively little research conducted on the concept of a 'well-founded fear' of being persecuted, the assessment of credibility of asylum claims and on the role and impact of COI in asylum procedures. These issues are intertwined.

This raises a number of complex and detailed questions in the refugee status determination procedure. What procedural obligations are owed to an asylum applicant, who requests not to be sent back to his or her country of origin where he or she faces persecution or other forms of ill treatment or serious harm? How to define a 'well-founded fear'? What are the procedural requirements in an asylum procedure? What is credibility? What is the role of COI in asylum procedures? What can we say about the quality standards of COI? What is the relevance and importance of COI in asylum decision-making? In light of these questions, this thesis seeks to examine the impact of COI in the assessment of whether or not a person should benefit from international protection?

The objectives of this thesis will be examined in the following five chapters. Chapter one will examine the international principles and norms of evidentiary assessment in international refugee law. This chapter will elaborate the concept of a 'well-founded fear', its subjectivity, objectivity, its assessment of credibility and foremost, the role of COI and its effect in asylum procedures. In addition to this, certain quality standards of COI will be discussed. The point of departure is the examination of evidentiary assessment under the 1951 Refugee Convention.

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[21] Gyulai, *Supra* note 14, p. 18.

Subsequently, chapter two will deal with EU law concerning refugee protection and issues related to evidentiary assessment. Furthermore, the role of country information and the assessment of credibility under EU law will be analysed.

Chapter three will examine the developments in relation to the use and development of COI by analysing the jurisprudence of the ECtHR. As emphasised in the introduction, the ECtHR in Strasbourg has produced important judgments concerning Article 3 of the ECHR. Numerous, are those judgments that relate to individuals who are forced to return to countries of origin and who fear being subjected to torture or ill treatment. Therefore these judgments fall within the setting of asylum too. It is of the utmost interest to explore the assessment of the risk of torture or ill treatment under Article 3 of the ECHR. Moreover, in assessing whether an asylum applicant's subjective fear is based on objective grounds, COI are pivotal. Consequently, this chapter will detail the evolution of COI in Article 3 cases as developed by the ECtHR in jurisprudence. The aim of this chapter will be to demonstrate the increased attention towards COI and its assessment by the ECtHR in asylum and human rights procedures.

Chapter four will illuminate the contentious Dutch asylum practice and the debate that has emerged in the Netherlands concerning the quality of country reports issued by the Dutch Ministry of Foreign Affairs. These country reports have been criticised for various inaccuracies and constitute an important role in the initial asylum decision-making. This chapter will link the issue of credibility assessment in asylum procedures and the controversy concerning country reports used in asylum decision-making. In order to demonstrate this, reports from the Dutch Refugee Council and Amnesty International will be analysed. These NGOs representing the interests of asylum-seekers, publish their remarkable findings on the quality of country reports prepared by the Dutch Ministry of Foreign Affairs. These findings have played a crucial role in the judgment of the ECtHR concerning an

asylum-seeker from Somalia. In particular the Dutch Refugee Council has issued a critical report, in which they analysed the sources of the country report on Somalia produced by the Dutch Ministry of Foreign Affairs. This particular case has been at the centre of dispute among decision-makers, legal advisers, NGOs and the Ombudsman in the Netherlands. The analysis will reveal the discrepancies and inaccuracies of country information that can exist in practice and which can be misleading, when it comes to the assessment of asylum claims and credibility in asylum procedures.

Chapter five will summaries the previous chapters with the objective to formulate an answer to the research problematic. The chapter will present recommendations and comment on future developments, concerning COI in the EU.

Methodology

The research methodology includes the examination of relevant literature, which consisted of several sources. The main sources used were academic studies on refugee law and on the procedural obligations in assessing credibility of asylum and human rights claims, background papers on COI by the UNHCR, NGOs, international organisations, governmental reports, academic journals and essays, jurisprudence of the ECtHR, research and documentation centres. In addition to this, a number of interviews were conducted with professionals involved in asylum procedures. Furthermore, as a researcher who has dealt with COI at the Dutch Refugee Council, this author was able to share their own personal experiences.

Limitations

The limited scope of this thesis imposes a number of restrictions. The thesis shall not be able to provide a complete framework of international refugee law. It shall limit itself to merely examining evidentiary assessment as elaborated by the 1951 Refugee Convention and the UNHCR Handbook.

By the same token, the thesis shall not be able to present the entire system of complementary or subsidiary protection as adopted under international human rights law. It shall solely focus on evidentiary assessment under EU law and the increased importance of COI as stated by the ECtHR in relevant jurisprudence. Despite the inevitable limitations, this thesis shall illuminate the impact of COI in asylum and human rights claims. Moreover, it will generate awareness on the crucial importance of this concept, which has been ignored in much of the literature on asylum law.

Chapter 1
General Principles and Norms

1.1. Introduction

Individuals leave their countries of origin for many reasons; one such reason is to find refuge in other countries. They flee for persecution, war and human rights violations. Yet only few of these reasons may give rise to protection under international refugee law. If an individual asks for international protection he or she can be recognised as a refugee, if he or she can demonstrate to have a well-founded fear of persecution under one of the headings of the 1951 Refugee Convention. In the European Union, national laws and the EU Qualification Directive and the EU Procedures Directive deal with the issue of refugee protection and other forms of protection.

This chapter will specify the international principles and norms that have a bearing on evidentiary assessment in asylum claims. The basic aspects of evidence in refugee status determination procedures will be dealt with. The starting point will be the 1951 Refugee Convention. The issues related to evidentiary assessment in asylum decision-making procedures shall be fragmented. This is necessary, since these issues are complex and unambiguous. By doing this, the issues concerning evidentiary assessment such as a 'well-founded fear', objectivity, subjectivity and credibility will be clarified. Consequently, the role and function of COI in refugee status determination procedures will be explained.

1.2. Evidentiary Assessment under the 1951 Refugee Convention

The 1951 Refugee Convention is the fundamental basis of the international refugee protection regime. The Convention defines who is a refugee but it does not explicitly specify the requirements governing the refugee status determination procedure or the evidentiary assessment in particular.

Contracting States have to respect the *non-refoulement* principle that is stated in Article 33(1) of the 1951 Refugee Convention:

"No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

This provision can be regarded as an implied obligation, which is a fundamental one. It implies that if a Contracting State wishes to remove a person who claims to be a refugee, the Contracting State has to examine whether or not the requirements of Article 33(1) of the 1951 Refugee Convention are satisfied and further that Article 33(2) is not applicable to the applicant. Consequently, this result in an assessment of whether or not the applicant falls within the scope of Article 1 of the 1951 Refugee Convention, which states: [22]

"owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence [...], is unable or, owing to such fear, is unwilling to return to it."

[22] Noll, G., *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, Martinus Nijhoff Publishers, Leiden/Boston, 2005, p. 141.

1.3. Assessment under Articles 1A(2) and 33(1) of the 1951 Refugee Convention

Article 33 of the 1951 Refugee Convention is the starting point for our departure in the exploration of evidential requirements of the Convention. The obligation in Article 33(1) of the 1951 Refugee Convention lays out the fundamental responsibility of the Contracting States in international refugee law, since there are serious consequences for the applicant who might face *refoulement*. Article 33 of the 1951 Refugee Convention requires certain elements of proof. The first element is whether the applicant is a 'refugee' in the technical sense. The second element is whether the action of a Contracting State constitutes to expulsion, return or *refoulement* in the sense of Article 33(1) of the 1951 Refugee Convention. The third element is whether the applicant's life or freedom is 'threatened' on account of one of the five stated grounds as stated in Article 1 of the 1951 Refugee Convention? [23]

Any claim under Article 33(1) of the 1951 Geneva Convention demonstrate consideration of Article 1 of the 1951 Refugee Convention. However, the language of the two provisions are not compatible. Article 1A(2) refers to a 'well-founded fear of being persecuted for reasons of' one of five reasons, Article 33(1) of the 1951 Refugee Convention states the concept of *threat* and not the notion of *fear*.[24]

Article 1A(2) of the 1951 Refugee Convention elucidates the following existence of the term 'fear'. The first component is that there must be a 'well-founded fear' of being persecuted for one or more of the stated grounds. Secondly, in situations where the status is based on the applicant's disinclination to make use of the protection of their country of origin, then the reluctance must be 'owing to such fear'. Thirdly, if an applicant has more than

[23] Noll, *Supra* note 22, p. 142.
[24] *Ibidem.*

one nationality, he must demonstrate to have valid reasons based on 'well-founded fear' for not availing of the protection of one of the relevant countries.[25]

The question we must ask, what could the meaning of fear be? Professor Gregor Noll suggests 'that the existence of the notion fear and the link between fear and unwillingness, indicate that refugee status determination under Article 1A(2) of the 1951 Refugee Convention entails an applicant's own assessment of their situation upon return that is more important than the determination of a claim under Article 33(1) of the 1951 Refugee Convention'.[26]

An interesting element to consider is that the term ' threat' specified by Article 33(1) of the 1951 Refugee Convention is closely linked to the language employed in Article 3 of the UN Convention Against Torture, which expresses the term 'danger' and the formulation of 'real risk' employed by Article 3 of the ECHR. The applicant has an important role in the assessment of whether the status of refugee applies to them. The assessment of 'well-founded fear' cannot be completed without properly hearing the applicant. This allows them to express 'fear' in the sense of the Convention. Contracting States have the obligation to assess 'fear'. This entails that the notion of 'fear' includes a procedural obligation.[27]

1.4. Establishing a 'Well-Founded Fear'

We have established that the term 'fear' entails a procedural obligation. To understand the procedural obligation, this chapter shall refine the meaning

[25] Noll, *Supra* note 22, p. 143.
[26] *Ibidem*
[27] *Ibidem*, p. 144.

of 'well-founded fear of being persecuted'. The UNHCR Handbook lays strong importance on fear in the procedure for assessing refugee status and it establishes a relation between the subjectivity of fear and the requirement to concentrate on the applicant's statements in the assessment of a claim.[28] The UNHCR Handbook presents the following on subjectivity:

'Since fear is subjective, the definition involves a subjective element in the person applying for recognition as a refugee. Determination of refugee status will therefore primarily require an evaluation of the applicant's statements rather than a judgement on the situation prevailing in his country of origin.' [29]

In the following paragraph, the UNHCR Handbook introduces a link between subjectivity and objectivity:

'To the element of fear--a state of mind and a subjective condition--is added the qualification "well-founded". This implies that it is not only the frame of mind of the person concerned that determines his refugee status, but that this frame of mind must be supported by an objective situation. The term "well-founded fear" therefore contains a subjective and an objective element, and in determining whether well-founded fear exists, both elements must be taken into consideration.' [30]

Thus, to be recognised as a refugee, an asylum applicant has to establish that he or she has a 'well-founded fear' of persecution based on one of the grounds included in the Convention. The term 'well-founded fear' entails a subjective element of whether the applicant fears persecution and an objective element of whether there are reasonable grounds, when considering whether

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[28] Noll, *Supra* note 22, p. 147.
[29] The UNHCR Handbook, *Supra* note 4, para. 37.
[30] *Ibidem*, para. 38.

a subjective fear of persecution is objectively well-founded.[31] The UNHCR Handbook subsequently establishes a link between subjectivity and credibility:

'Due to the importance that the definition attaches to the subjective element, an assessment of credibility is indispensable where the case is not sufficiently clear from the facts on record. It will be necessary to take into account the personal and family background of the applicant, his membership of a particular racial, religious, national, social or political group, his own interpretation of his situation, and his personal experiences--in other words, everything that may serve to indicate that the predominant motive for his application is fear. Fear must be reasonable.' [32]

Again, the UNHCR Handbook includes in a paragraph dealing with the objective element:

'As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin--while not a primary objective--is an important element in assessing the applicant's credibility. In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there.' [33]

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[31] Thomas, *Supra* note 5, p.79.
[32] The UNHCR Handbook, *Supra* note 4, para. 41.
[33] *Ibidem,* para. 42.

What does this imply? In the case, where insufficient facts exist, the decision-maker shall search for more facts. This entails all kinds of facts that can be used in order to assess the credibility of the applicant. To determine whether an applicant faces a serious risk of being persecuted, all evidence and material of every source should be assessed.[34] This can be personal information on the applicant's background or general information on the political, social, cultural, economical and human rights situation in countries of origin.[35]
In the following paragraph, the role of COI will be explained and thereby its objectives.

1.5. Country of Origin Information (COI)

The statement of the applicant is the main point of departure in concluding a decision in refugee status determination, but *'cannot [...] be considered in the abstract, and must be viewed in the context of the relevant background situation.* This refers to relevant COI.

Next, what is the definition of COI? Asylum officers, judges, legal advisers and researchers often refer to COI. The definition of COI is not clearly defined by any international legal instrument or in jurisprudence in the field of asylum law. The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) has defined COI as follows:

'Every piece of information which is related to the country of origin of an asylum-seeker and which helps to evaluate the well-foundedness of an asylum claim can be considered as Country of Origin Information (COI)'

In other words, the main role of COI is to provide the element, which enables

[34] See Hathaway, J.C., *The Michigan Guidelines on Well-Founded Fear*, Michigan Journal of International Law, Volume 26, No. 2, 2005, p. 499.
[35] Noll, *Supra* note 22, p. 149.

the decision-maker to assess whether the asylum-seeker's *subjective* fear is based on *objective* circumstances. Thus, COI has an important role in assessing the well-foundedness of an asylum claim.[36]

Furthermore, COI can assist the refugee status determination process in a general and case-specific way. The research of COI can confirm an applicant's testimony by providing objective country information or by producing more questions that have to be verified. COI can also research human rights conditions in order to determine the status of a group of refugees. Further, objective COI is used to assess the applicant's credibility.[37] COI can also assess internal flight alternatives for asylum applicants in countries of origin. This implies that an asylum applicant could have relocated in another "safe" area in her or his country of origin and live there safely.[38]

1.6. The Role of Country of Origin Information as Evidence in Refugee Status Determination Procedures

From a procedural point of view, COI reports are evidence in refugee status determination. Relevant COI and other human rights information aide in assessing whether the subjective fear of persecution, expressed by the applicant can be objectively well-founded.[39] Thus, it is a tool to assess the risk of persecution, torture, cruel, inhuman and degrading treatment or

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[36] The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Supra* note 12.

[37] See further Asylum Aid, Country of Origin Information and Women: Researching gender and persecution in the context of asylum and human rights claims, October 2007, pp. 4-7. Available at http://www.asylumaid.org.uk/data/files/publications/68/Country_of_Origin_Information_and_Women.pdf (consulted on 15 April 2008).

[38] Mason, E., *Guide to Country Research for Refugee Status Determination*, 15 February 2001. Available at http://www.llrx.com/features/rsd.htm (consulted on 24 March 2008).

[39] The UNHCR paper, *Country of Origin Information: Towards Enhanced International Cooperation*, February 2004, pp. 1-2. Available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain (consulted on 16 February 2008).

punishment and other serious human rights violations, if an asylum-seeker were to be send back to their country of origin. COI provide valuable information in order to corroborate statements, expressed by the applicant and establishes credibility. Finally, COI can provide legal advisers, asylum adjudicators the necessary background information, which can be helpful to prepare interviews and hearings.[40]

There are specific rules and practices on the standard and burden of proof in asylum procedures. It is relevant to see how much information and which kind is needed in order to determine a well-founded fear of persecution and who is supposed to provide the needed information?

1.6.1. Standard of Proof

First of all, it is significant to highlight that refugee status determination is different than criminal and civil procedures. In asylum procedures it is difficult to prove relevant facts. Generally, asylum law judges cannot hear witnesses or judge on written evidence as in criminal and civil law procedures. In asylum procedures, the facts necessary to recognise an asylum applicant as a refugee need not be proven "beyond reasonable doubt". The applicant's story and evidence that can support his risk of persecution upon return to the country of origin should satisfy what can be considered as either "reasonably possible" or plausible.[41]

[40] The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Supra* note 12.

[41] The UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, pp. 2-3. Available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain (consulted on 16 February 2008).

1.6.2. Burden of Proof

The general principle is that the burden of proof lies on the person submitting a claim. Many times, asylum applicants cannot support their testimony by documentary or other proof. However, the duty to ascertain and evaluate all the relevant facts lies between the applicant and the examiner. The UNHCR Handbook states that the requirement of evidence should not be strictly applied, this is due to the difficulty of proving a case and also due the difficult circumstances in which an applicant has fled.[42]

1.7. Quality Standards for Country of Origin Information

The previous subchapters have determined that COI reports are considered as evidence and play a crucial role in the refugee status determination procedure. Thus, the quality of COI used when making a decision can importantly affect the outcome of the procedure and often the life of an individual seeking international protection. In the following subchapters, this thesis shall elaborate on the primary standards for high-quality COI.[43]

European professionals involved in the "Country of Origin Information (COI) Network and Training" project have in cooperation with the UNHCR and the European Council on refugees and exiles (ECRE) have developed criteria on the quality of the information itself. According to ECRE relevant, reliable, accurate and transparent COI is fundamental for a fair and efficient asylum determination process.[44] The following elements have to be met in order to have high-quality country of origin information standards in

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[42] The UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, *Supra* note 41 and see further the UNHCR Handbook, *Supra* note 4, paras. 196-197.

[43] The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Supra* note 12.

[44] See ECRE's Observations, *The Way Forward: Towards Fair and Efficient Asylum Systems in Europe*, September 2005, p. 3. Available at http://www.ecre.org/resources/policy_papers/219 (consulted on 15 March 2008).

asylum procedures:[45]

- Relevance
- Reliability and Balance
- Accuracy and Currency
- Transparency and Retrievability

1.7.1. Relevance

COI assists in assessing, whether or not an asylum applicant's fear of persecution is well-founded. Thus, it is highly important that COI research produces include legally relevant information. COI must be related to the legal substance of an asylum claim and should objectively confirm or disprove the facts.[46]

1.7.2. Reliability and Balance

COI should be based on reliable and balanced sources. Different sources are important in order to analyse a claim and base a decision. Specific sources can be biased. COI have to be based on a variety of sources, thereby remembering that sources have to be placed in a political context both in its reporting and in the aims behind publications.[47]

[45] The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Supra* note 12.
[46] Gyulai, *Supra* note 14, p. 5.
[47] *Ibidem.*

1.7.3. Accuracy and Currency

COI should not be outdated or wrong. Furthermore, COI should be accurate. This can be guaranteed by the corroboration of information and cross-checking of different information sources.

1.7.4. Transparency and Retrievability

Since COI play a decisive role in the refugee status determination procedure, COI should therefore be available for all parties in an asylum procedure by using a transparent method of referencing information. The information used in asylum procedures should be independently verified and assessed by all professionals in the field of asylum.[48]

1.8. Credibility Assessment

We have established that COI form an important element in assessing whether, the subjective fear is objectively well-founded and that this may aide in the establishment of the credibility of an asylum applicant. The issue of credibility in asylum and human rights claims raises fundamental questions. What is credibility? What are the difficulties in the assessment of credibility? When is credibility established? It is best to start with understanding the function of an asylum decision-maker itself. The asylum decision-maker has to assess whether the removal of an applicant from the country of application will constitute a possible breach of the 1951 Refugee Convention or the ECHR. The asylum decision-maker has to assess whether, there is a risk for

[48] The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Supra* note 12.

the applicant if they are send back to their country of origin.[49]

Credibility assessment is a very important step in determining whether, persons are recognised as refugees and thus benefit from international protection. However, despite its importance, making an error in the assessment of credibility exists.[50]There exists a risk of making two types of error. On the one hand, the genuine refugee applicant can be denied refugee status. On the other hand, the non-genuine refugee applicant can be accorded refugee status. In this context asylum decision-makers must assess whether or not the applicant is credible.[51] In order to assess credibility, asylum decision-makers have to analyse the facts as presented by the applicant to determine whether, they are true and whether they are relevant in reaching a decision. Asylum decision-makers have to deal with many complex and detailed factual questions and they have to examine all the relevant information when they are assessing the risk of persecution or ill treatment on return. Furthermore, asylum decision-makers have to assess the motives of seeking asylum, the political and human rights background in countries of origin and the legal tests, which are described in the 1951 Refugee Convention and the ECHR.[52]

There are three main situations under, which an asylum claim may be considered to be lacking credibility. The first situation is that the asylum applicant has inconsistencies in their narrative. The second situation is that there is inconsistency between the applicant's account and the objective evidence related to the political background or human rights conditions in the country of origin. A third situation is when an applicant's credibility may include an assessment of the plausibility or truthfulness of his or her claim. This assessment can involve a judgment by the decision-maker as to the

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[49] Thomas, *Supra* note 5, p. 80.

[50] See Kagan, M., *Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination*, Georgetown Immigration Law Journal, Spring 2003, pp. 367-370.

[51] Thomas, *Supra* note 5, p.81.

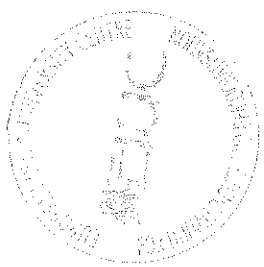
[52] *Ibidem.*

probability of an occurrence that has happened, which is based on evidence.[53]

For a number of reasons, the assessment of credibility is a difficult task. First, in contrast to civil litigation, the asylum decision-maker does not have the option to choose from two different parties presenting their version of the same story. The sole evidence normally adduced in asylum claims will be the asylum applicant's own narrative that is supplemented by country reports. Numerous asylum applicants have experienced difficult circumstances while fleeing and therefore it is very difficult for them to present other evidence than their own evidence to prove their case. Thus, the assessment of credibility of the asylum applicant is highly important in the determination of asylum and human rights claims.[54] Secondly, the process of presenting evidence can give rise to difficulties. Non-genuine refugee applicants may give evidence that appears to be credible while genuine refugee applicants may give evidence that is confused or contradictory.[55]

The number of increased asylum claims received by European countries over the last 15 years has also influenced the assessment of credibility. Consequently, the number of asylum decision-makers and immigration judges has also increased, which has raised questions on the uniformity of the credibility assessment. In addition, the increased number of asylum claims induces Contracting States to speed up the asylum procedures has an impact on the thorough assessment of person's credibility.[56] Possibly, the most contentious matter in the assessment of credibility emerges from the judgment of the asylum decision-maker. Refugee status determination is not an exact science, it is a human judgment.[57] The risk exists that asylum decision-makers may base their decision from their own western assumption and their lack of awareness of the cultural differences that exist between the

[53] Thomas, *Supra* note 5, p. 81.
[54] *Ibidem.*
[55] *Ibidem,* p. 82.
[56] *Ibidem,* p. 83.
[57] See Kagan, *Supra* note 50, pp. 374-376.



asylum applicants and themselves.[58] The barriers of culture, education and language prevent clear understanding and communication.

One of the most challenging aspects of assessing credibility of asylum applicants lies in the complication that arises from the mental state of the asylum applicant. This will affect their capability to remember and communicate precisely on certain happenings, especially if asylum applicants have experienced traumatic events.[59] Thus, in this context, objective country reports or COI may have a crucial impact on the assessment of credibility of an asylum applicant by demonstrating that unfavorable conclusions reached on the basis of an applicant's evidence can be reasonable when the political or human rights conditions in countries of origin are revealed. However, the problematic issues concerning the assessment of credibility are only further deteriorated by the controversy encompassing objective country reports or COI used in asylum and human rights claims. In the Netherlands, the debate over objective country reports, which has been contested by NGOs, has two main aspects.[60] The first aspect is that official country reports published by the Dutch Ministry of Foreign Affairs, which form the basis for the Dutch Ministry of Justice to base their initial asylum decision, have been criticised for being partisan and inaccurate. The second aspect is; while in most European countries, the facts and evidence presented are fully reviewed by the judiciary at least in the initial decision-making, in the Netherlands the assessment of credibility and evidence such as COI by NGOs is reviewed only marginally by the judiciary. The thesis will extensively elaborate on this issue in chapter four.

Finally, credibility is crucial when it comes to the validity of asylum claims. In assessing credibility, numerous elements are important to reach a

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[58] Thomas, *Supra* note 5, p. 84.

[59] Byrne, R., *Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards From The International Tribunals*, International Journal of Refugee Law, Volume 19, No. 4, 2008, pp. 624-625.

[60] Thomas, *Supra* note 5, p. 85.

decision; the reasonableness of the facts contested, the overall uniformity and coherence of the applicant's narrative, the corroborative evidence presented by the applicant in order to confirm her or his statements and the known human rights situation in the country of origin. Thus, credibility is established when the asylum applicant has demonstrated to have a story that is coherent and plausible. Contradictions or inconsistencies in the story are often the fundamental aspects of asylum claims that may undermine an applicant's credibility.[61]

1.9. Conclusion

This chapter has examined the refugee status determination procedure under the 1951 Refugee Convention and thereby focusing on the concept of 'well-founded fear', use and standards of COI and credibility assessment. It has been seen that in deciding whether or not an asylum applicant will be accorded refugee status, COI perform an important role as evidence. The role of COI is important because it provides valuable information that is necessary to corroborate the statements expressed by the asylum applicant with regard to the human rights situation in their country of origin. Another important aspect is that country reports can contribute to the credibility of asylum applicants.

Secondly, COI establishes the facts that are needed to assess whether an asylum applicant would be subjected to persecution or torture, cruel, inhuman and degrading treatment or punishment, if forcibly returned to their country of origin. Furthermore, COI provides information for asylum decision-makers or legal advisers to prepare an applicant's hearing and

[61] Gorlick, B., *Common Burdens and Standards: Legal Elements in Assessing Claims To Refugee Status*, International Journal of Refugee Law, Volume 15, No. 3, 2003, pp. 371-372.

interview.[62] Thus, COI; not only supplements the credibility of asylum applicants but also has a significant impact on the determination of asylum and human rights claims in general.

Thirdly, professionals in the field of asylum law have created certain quality standards concerning COI. These quality standards shall play an important role as guidelines for NGOs, International organisations and Contracting States who compile country reports as a tool to decide asylum claims. These quality standards are; relevance; reliability and balance; accuracy and currency; transparency and retrievability.

This chapter has clarified that although international refugee law does not explicitly regulate evidentiary assessment in asylum procedures, it contains international principles and norms that have a bearing on the refugee status determination procedure. In the next chapter, this thesis shall illuminate whether EU law regulates evidentiary assessment of refugee status determination.

[62] Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Supra* note 12, p. 23.

Chapter 2

Evidentiary Assessment under European Union Law

2.1. Introduction

The previous chapter has researched evidentiary assessment under the 1951 Refugee Convention and the UNHCR Handbook. It has been illuminated that evidentiary assessment of asylum procedures is largely unsupervised by international refugee law. This chapter will investigate whether EU law fills this lacuna.

To demonstrate, this chapter will analyse the main EU Directive in the area of evidentiary assessment of asylum procedures. The Qualification Directive[63] governs refugee protection in the EU. As the Qualification Directive shall impact domestic law of the Member States, the Directive will leave traces on the refugee status determination procedures throughout the EU. The Qualification Directive will affect evidentiary assessment in asylum procedures. Thus, it is a good reason to analyse the Qualification Directive, which is part of the Common European Asylum System.[64]

2.2. The Qualification Directive

The point of departure is Article 4 of the Qualification Directive. Looking at the different elements of Article 4 of the Qualification Directive, it clearly demonstrates three stages that can be indicated as evidentiary assessment.

The first stage is submission of information by the applicant. The applicant provides 'elements needed to substantiate the application for international protection'.

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[63] 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.

[64] Noll, G., *Evidentiary Assessment in Refugee Status Determination and the EU Qualification Directive*, European Public Law, Volume 12, Issue 2, 2005, p. 295.

The second stage describes that Member States obligation to assess the relevance of each element, which may form evidence. Thus, Member States have to identify the applicant's claim and determine the elements to be relevant to assess in cooperation with the applicant. Furthermore, there is a necessary condition in Article 4, which implies a duty to communicate. The duty to communicate entails that the applicant has sufficient understanding as what the Member State considers as 'all elements needed to substantiate the application'.[65]

The third stage entails norms of what shall be included in the asylum decision-makers assessment. Earlier persecutions or harms which can be an indicator of the applicant's well-founded fear of persecution or real risk of suffering serious harm, and evidentiary rules as whether the applicant has made genuine efforts to substantiate his application, whether all relevant elements have been submitted, whether the applicant's statements are found to be coherent and plausible and a very important element is whether credibility has been established. Ultimately, Article 4 provides a structure for the procedure asylum.[66] Let us take a closer look at the different stages.

2.3. Submitting Information

According to Article 4(1) of the Qualification Directive, the applicant has the duty to present, as soon as possible, all elements to substantiate the application for international protection. The rule consists of two parts. First, Member States are given the competence to put the obligation of presenting grounds for international protection on the applicant. Secondly, the standard contains a time rule. All evidence must be presented as soon as possible.[67]

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[65] Noll, *Supra* note 64, pp. 299-300.
[66] *Ibidem*, p. 301.
[67] *Ibidem*, p. 302.

2.4. Assessing Relevant Elements

The Member State has the obligation to assess the relevant elements of the application, in cooperation with the applicant. This norm is obligatory. The duty to cooperate with the applicant in the assessment of the relevant elements of the application means that there must be continuous communication between the authorities and the applicant.[68]

All the elements presented by the applicant must be assessed. This means that Member States have to determine the applicant's claim and establish the elements that are relevant to assess cooperation with the applicant. This indicates that the applicant must be given authorisation to information or else the applicant is not a part of the assessment procedure. The possible consequence is that classified material issued by secret service authorities, which may not shared with the applicant must be excluded from the asylum decision.[69]

2.5. The List of Elements

The list of elements in Article 4(2) of the Qualification Directive contain evidentiary material and facts, while combining the relevant elements for reconstruction of the journey expressed by the applicant and those relevant elements, which are related to international protection. Thus, the assessment of an applicant's protection by a Member State should contain at least those elements issued in Article 4(2) of the Qualification Directive.

However, the obligation of assessment by a Member State may need even more, in case the applicant gives general information on the country of origin. Besides, Article 4(2) of the Qualification Directive indicates the

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[68] Noll, *Supra* note 64, p. 304.
[69] *Ibidem.*

elements that also entail 'reasons for applying for international protection'.[70]

2.6. Individual Assessment and Evidence

It is clear from Article 4(3) of the Qualification Directive that the assessment made by a Member State needs to be on an individual basis.[71] From a COI perspective, the principle of individualised assessment points out that the information used in asylum decision-making, cannot be too general and should describe the personal situation and circumstances of an asylum applicant.[72]

2.6.1. Country Information

The individual assessment contains all relevant facts related to the country of origin at the time of making a decision on the application. This includes laws and regulations of the country of origin and the way that they are implemented and executed. The Directive demonstrates here a clear requirement on the use of COI in refugee status determination. Article 4(3)(a) states:

'The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account:

(a) *all relevant facts as they relate to the country of origin* at the time of taking a decision on the application: including laws and regulations of the country of origin and the manner in which they are applied.'

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[70] Noll, *Supra* note 64, p. 305.
[71] See Article 4(3)(a) to (e) of the Qualification Directive.
[72] Gyulai, *Supra* note 14, p. 27.

This provision indicates the importance of COI as evidence in refugee status determination procedures.[73]

2.6.2. The Applicant's Statements and Documentation

Secondly, relevant statements and documentation provided by the applicant are important and should include information on the risk of being subjected to persecution or serious harm.

2.6.3. The Applicant's Individual Situation and Personal Circumstances

Thirdly, the individual situation and personal circumstances of the applicant are significant for an individual assessment such as background, gender and age. Furthermore, whether the acts to which the applicant has or could be exposed to can result to persecution or serious harm are taken into consideration.

2.6.4. *Sur Place* Activities

Fourthly, 'whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country.' This Article relates to the *sur place* activities. [74]

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[73] Gyulai, *Supra* note 14, p. 20.

[74] See Article 4(3)(d) of the Qualification Directive.

2.6.5. Dual Citizenship

Finally, Article 4(3)(e) states: 'whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship'. In other words, Article 4(3(e) refers to the applicant's possibilities to receive protection from another country.[75]

2.7. Previously Subjected to Persecution or Serious Harm

Article 4(4) of the Qualification Directive provides a framework for evidence assessment in situations where the applicant has previously been subjected to persecution or serious harm. Previous persecution, serious harm or direct threats will be perceived as a 'serious indication of the applicant's well-founded fear of persecution or risk of suffering serious harm, unless there is good reason to consider that such persecution or serious harm will not be repeated'. The Member State has the duty to present 'good reasons' demonstrating that persecution or serious harm will not occur again. This is the task of the Member State.[76]

2.8. General Evidentiary Norm

Article 4(5) of the Qualification Directive addresses cases, where the statements of the applicant are not supported by documentary or other evidence, this type of evidence shall not need confirmation if the requirements stated in paragraphs (a) to (e) are met.[77] The conditions are the following: (a) in a case where the applicant has made true efforts to

[75] Noll, *Supra* note 64, pp. 305-306.
[76] *Ibidem*, p. 309.
[77] *Ibidem*, pp. 310-312.

substantiate his application; (b) all the relevant elements have been submitted and a good explanation has been given concerning the lack of other relevant elements; (c) the narrative and statements of the applicant are found to be coherent and plausible; (d) the application for international protection has been made at the earliest possible time by the applicant; (e) the applicant has established satisfactory credibility.

2.9. The Assessment of Credibility under EU Law

This section will explore the assessment of credibility under EU law. We have concluded in the first chapter that the assessment of credibility is a difficult task. The main article related to the assessment of an applicant's credibility under EU law is Article 4 of the Qualification Directive.

Article 4(1) indicates that Member States may consider it the task of the applicant to submit as soon as possible all elements that are necessary to substantiate the application for international protection. The Member States in cooperation with the applicant, have the task of assessing all relevant elements. These elements entail the applicant's statements and also include documentation, age, background, nationality, country and place of previous residence, previous asylum application, travel routes, identity, travel documents and the reasons for applying for international protection. This requirement is in line with the UNHCR Handbook guidance, which states while the burden of proof lies with the applicant, the task to ascertain and evaluating all relevant facts is divided between the applicant and the decision-maker.[78]

The Qualification Directive then continues to note relevant elements that are to be taken into account in the assessment of applications. Article 4(3) of the Qualification Directive states that the assessment of a claim will include

[78] Thomas, *Supra* note 5, p. 87.

taking into account: (a) all relevant facts as they relate to the country of origin at the time of taking the decision; (b) all relevant statements and documentation provided by the applicant that includes information on whether the applicant has been or may be subjected to persecution or serious harm; (c) the personal circumstances and position of the applicant. This includes elements such as background, gender and age. This is to assess whether the applicant has been or could been exposed to persecution or serious harm; (d) if the applicant's activities, upon leaving their country of origin, were involved in creating the necessary circumstances for applying for international protection. Again, this is to assess whether the applicant's activities can lead to persecution or serious harm if they were to return to his country of origin; (e) whether the applicant could reasonably be expected to avail of the protection of another country, where they could declared could have claimed citizenship.[79]

The effect of this provision: is to require that relevant elements related to the assessment of a claim, be read alongside relevant provisions in the Procedures Directive. This concerns the collecting of facts.[80] This Directive provides that Member States have a duty to ensure that applications are examined and decisions are taken individually, objectively and impartially; precise and up-to-date country information is collected; and that the responsible national authorities examining and deciding asylum applications should have the knowledge concerning the standards applicable in asylum law.[81]

Furthermore, Member States have a duty to take measures to ensure that interviews are conducted in circumstances that allows applicants to present their reasons and grounds for their applications in a thorough way

[79] Thomas, *Supra* note 5, p. 88.
[80] 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)((a)b).
[81] Thomas, *Supra* note 5, p. 88 and see further Article 13(2)(3)(a)(b) of the Procedures Directive.

and to ensure that the interviewer is sufficiently competent to take account of the personal and the general conditions related to the application. This means that the interviewer is aware of cultural differences and ensures interpretation and clear communication.[82]

The main effect of these provisions is to contribute to the positive assessment of credibility. The Directives indicate what facts have to be taken into account in the assessment of a claim. Decisions have to be taken objectively and impartially on the basis of up-to-date country information. With regard to victims of torture, the Qualification Directive provides that if an applicant has already been subjected to persecution or serious harm. If the applicant faces an immediate threat of persecution or serious harm, this threat is a serious indication of the applicant having a well-founded fear of persecution or a real risk of suffering serious harm. The exception to this; is in the case of where reasons exist, which indicate that such persecution or serious harm will not occur again.[83]

The Directives present measures that encourage the positive assessment of credibility, however there are also measures that may not so be in favour of this positive assessment. The Procedures Directive produces a list of grounds that may accelerate the examination procedure. The grounds which may accelerate the examination procedure are in the following circumstances: if an applicant has not demonstrated good reasons to comply with a duty to submit as soon as possible, elements to substantiate the application;[84] if the applicant has made inconsistent, contradictory, improbable or insufficient representations,[85] or has failed without sound reason to make their application earlier, having had the chance to do so.[86] The applicant may fail to comply with these requirements either, because they are

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[82] Thomas, *Supra* note 5, p. 88.
[83] See Article 4(4) of the Qualification Directive.
[84] See Article 23 (4)(k) of the Procedures Directive.
[85] See Article 23 (4)(g) of the Procedures Directive.
[86] See Article 23 (4)(i) of the Procedures Directive.

unwilling or unable to do so and this may mean that the claim is not assessed thoroughly.[87] There are also other provisions in the Procedures Directive, which undermine the assessment of the credibility of the applicant. The asylum interview is a highly significant element of the asylum procedure. It is considered as a critically important source of information with regard to the details of an applicant's claim and to the credibility assessment. The Procedures Directive presents safeguards, but also some limitations concerning the process of the interview, which may have an impact on the credibility assessment. The Directive only requires that "Member States shall ensure that a written report is made of every personal interview, containing at least the essential information regarding the application".[88] In addition to this, the Directive introduces an obligation on the Member States, to allow applicants the right to legal assistance and representation, however it limits access to free legal assistance to during the interview and the initial decision-making stage.[89] The consequences to the assessment of credibility are substantial. Applicants will not be in a position to pay a legal representative and therefore, not be in the position of having a legal counsellor in the interview stage, which is crucial. This could mean that the written record of interviews may not be complete or accurate and that interviews may not have been conducted correctly because of a lack of legal representation.. These limitations may have an impact on the credibility assessment of the applicant.[90]

Article 4(5) of the Qualification Directive states that "where aspects of the applicant's statements are not supported with documents or other evidence, those aspects shall not need confirmation, when the following conditions are met: (a) the applicant has made a genuine effort to substantiate

[87] Thomas, *Supra* note 5, p. 89.
[88] See Article 14 of the Procedures Directive.
[89] See Article 15 of the Procedures Directive.
[90] Thomas, *Supra* note 5, p. 89.

his application; (b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given; (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case; (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and (e) the general credibility of the applicant has been established." The aim of Article 4(5) appears to demonstrate that it is difficult for applicants to substantiate their claim by presenting documentary or other evidence and it therefore indicates those aspects of the applicant's account that do not need confirmation.[91] The provision appears to have been based on paragraphs 203 and 204 of the UNHCR Handbook, which states that there may be still a lack of evidence, however the applicant should be awarded the benefit of the doubt if the applicant has established general credibility in the eyes of the decision-maker. Furthermore, the statements of the applicant must be coherent and plausible.[92]

2.10. Conclusion

This chapter explored the framework of evidentiary assessment in asylum procedures regulated by the Qualification Directive and the Procedures Directive. By examining the provisions and its scope, we demonstrated that the Qualification Directive does not substitute or fill the unregulated paradigm of evidentiary assessment in international law, however it touches upon a number of aspects of evidentiary assessment. Article 4 of the Qualification Directive involves important complications for the Member

[91] Thomas, *Supra* note 5, p. 91.
[92] *Ibidem.*

States and their asylum procedures. It poses an important obligation on the authorities to identify the applicant's claim. This means that the authorities of the Member States have to assess each relevant elements of the application, which is highly constructive in the development of a fair and efficient asylum procedure.

The important element for this thesis is the reflection in Article 4(3)(a) of the Qualification Directive, which indicates the recognition of the need for the use of COI as evidence. The Qualification Directive considers that COI should be included in the assessment of individual asylum and human rights claims for international protection.

Furthermore, this chapter has touched upon the assessment of credibility in asylum and human rights claims. It has been demonstrated that it is a highly complex task to present a credible claim for asylum applicants and that it is extremely difficult for decision-makers to decide whether an asylum claim is credible or not. An important task for decision-makers is to take decisions that are objectively and impartially on the basis of up-to-date country information. This requirement should be taken seriously in the decision-making procedure. Objective and impartially country information, which is up-to-date may perform a crucial role in the assessment of credibility. One of the best known academic commentators on asylum policy, professor Guy Goodwin-Gill argues:

"There can be no doubting the value of accurate, in-depth, up-to-date and trustworthy information in the refugee determination context. For example, refugees may have fled a country as a result of counter-insurgency operations. The fuller picture will show the historical origins of the conflict, such as resistance to dispossession of historical land rights; the protagonists (such as the military, representing a dominant non-indigenous elite); the policies (such as institutionalized or systemic discrimination against particular ethnic, linguistic, religious, or economic groups or classes); and the tactics (such as abduction, torture, and arbitrary killing of

group representatives). A complete picture will never be available, but a comprehensive approach will contribute significantly to identifying refugee-related reasons for flight. Knowing past patterns and present conditions enables one to make reasonably accurate predictions about the future; about the way certain elements are likely to react and interact; and therefore about the degree of security awaiting those returned or returning to their country of origin."[93]

The next chapter turns to the development of COI as evidence in jurisprudence of the ECtHR. The analysis of Article 3 of the ECHR and relevant jurisprudence will reveal an increased attention of the ECtHR towards COI as an indispensable element in asylum procedures.

[93] Goodwin-Gill, G., *The Refugee in International Law*, Second Edition, Clarendon Paperbacks Oxford, 1996, pp. 353-354.

Chapter 3
Country of Origin Information and the European Court of Human Rights

3.1. Introduction

The previous chapters have dealt with refugee status determination procedure and evidentiary assessment under the 1951 Refugee Convention and under EU law. It has been seen that protection is limited to applicants recognised as refugees under the 1951 Refugee Convention. This chapter will examine when an asylum applicant is expelled to their country of origin where they may face a real risk of persecution or ill treatment. This is where Article 3 of the European Convention on Human Rights (ECHR) comes in.

The most complementary human rights framework, within the Council of Europe, is the ECHR. The rights protected under this Convention apply also to refugees, asylum-seekers and migrants. This chapter will demonstrate that Article 3 of the ECHR provides more extensive level of protection than the 1951 Refugee Convention.[94] As the core of this thesis is to investigate the increased role and importance of COI in asylum and human rights procedures, this thesis will analyse Article 3 cases of the European Court of Human Rights (ECtHR).[95]

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[94] See Ovey, C., *Prohibition of Refoulement: The meaning of Article 3 of the ECHR*, ELENA International Course on the European Convention on Human Rights in relation to Asylum, 26-28th January 2001, Strasbourg. Available at http://www.ecre.org/elenahr/art3.pdf (consulted on 21 April 2008).

[95] Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Supra* note 12, p. 15.

3.2. Article 3 of the European Convention on Human Rights

Many individuals leave their homes and seek refuge in Europe. Often they claim to be a refugee. If national asylum authorities do not recognize these applicants as refugees within the meaning of the 1951 Refugee Convention, Article 3 of the ECHR can provide protection.

According to Article 3 of the ECHR "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". The principle of *non-refoulement* is enshrined in Article 3 of the ECHR. Many of the judgments concerning Article 3 of the ECHR relate to the question of forcible return and international protection. The principle of *non-refoulement,* which is applicable to torture and ill treatment under human rights law is complementary to the general rule of *non-refoulement,* applicable under refugee law in situations where there is a well-founded fear of persecution.[96]

3.3. The Absolute Prohibition of Torture and Ill Treatment

The principle of *non-refoulement* has also explicitly been expressed in case law of the ECtHR. In *Soering* and in subsequent cases, the ECtHR has clarified that *non-refoulement* is an 'inherent obligation' under Article 3 of the ECHR in cases where there is a "real risk of exposure to inhuman or degrading treatment or punishment".[97]

The principle of *non-refoulement* enshrined in Article 3 of the ECHR applies to all persons without making a distinction of characteristics or conduct, criminal activity or terrorist offences. Article 3 of the ECHR imposes on Contracting States the duty not to torture, but also urges Contracting

[96] Erdal, U., & Bakirci, H., *Article 3 of the European Convention on Human Rights, A Practitioner's Handbook*, OMCT Handbook Series Vol. 1, Appendix 9, 2006, paras. 13-15.
[97] *Ibidem.*

States to "prevent such acts by not bringing persons under the control of other States, if there are substantial grounds for believing that they would be in danger of being subjected to torture".[98]

3.4. The General Test

When considering expulsion or extradition of asylum applicants by Contracting States under Article 3 of the ECHR, the ECtHR has tried to find whether *"substantial grounds are shown for believing that the person concerned, if expelled, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country"*.[99]

The relevant risk elements to be assessed in expulsion or extradition cases; supposing that the ill treatment falls under the subject of Article 3 of the ECHR, are: the nature and degree of the risk that activates the *non-refoulement* principle, the factors that issue 'substantial grounds' for believing that the applicant faces a risk and the standard that is to be evaluated and proved thus give rise to the existence of these 'substantial grounds'.[100]

3.4.1. Nature and Degree of the Risk

The ECtHR requires that the risk be "real", "foreseeable and "personal". The ECtHR has not explicitly established in case law of what constitutes a "real" risk. According to the ECtHR, the "mere possibility of ill treatment is not enough".[101] Furthermore, the risk must be "personal".

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[98] Erdal, U., & Bakirci, H., *Supra* note *96*, para. 15.

[99] ECtHR 26 July 2005, *N. v. Finland*, Application no. 38885/02.

[100] Erdal, U., & Bakirci, H., *Supra* note *96*, paras. 23-24.

[101] ECtHR 30 October 1991, *Vilvarajah and Others v. The United Kingdom*, Application nos. 13163/87, 13164/84, 13165/87, 13447/87 and 13448/87, para. 111.

3.4.2. Relevant Factors Assessing the Risk

What are the relevant factors to the assessment of risk? The ECtHR has emphasised that the level of examination for a claim of *non-refoulement* must be "rigorous".[102] The Contracting State must take into account "all the relevant considerations" for the assessment of risk. This implies the human rights situation in the country of return and the personal background and circumstances of the applicant.[103] The human rights situation in countries of origin is a highly significant element in almost all cases. The ECtHR has held that the situation in countries of return is not sufficient to prove risk, regard must also be given to the personal background and circumstances of applicants. It is important that the applicant demonstrate "specific circumstances" which make them personally vulnerable to torture or ill treatment. The elements that can be relevant to assess the risk of being vulnerable to torture or ill treatment, upon forcible return, are previous ill treatment or evidence of current persecution. However both are not necessary to substantiate that the applicant is 'personally' at risk.[104] In the *Vilvarajah and Others v. The United Kingdom* case, it concerned Tamil asylum-seekers, who were return from the United Kingdom to Sri Lanka and who were tortured. The ECtHR has held in this case that as *"their personal situation was [not] any worse than the generality of other members of the Tamil community or other young male Tamils who were returning to their country [...] A mere possibility of ill-treatment ... is not sufficient [...] there existed no special distinguishing features in their cases that could or ought to have enabled the Secretary of State to foresee that*

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[102] ECtHR *Chalal v. United. Kingdom* (1996) 23 EHRR 413, para. 79.
[103] Erdal, U., & Bakirci, H., *Supra* note 96, para. 28.
[104] *Ibidem*, paras. 29-30. See further Alleweldt, R., *Protection against expulsion under Article 3 of the European Convention on Human Rights*, The European Journal of International Law, Volume 4, No. 3, 1993, pp. 368-370.

they would be treated in this way."[105]

The ECtHR often uses reports compiled by governmental authorities and NGO's as evidence. For example, in examining allegations related to prison conditions, the ECtHR utilizes reports that are drafted by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. By assessing these COI, the ECtHR can take into account the human rights conditions in a Contracting Party when examining allegations of torture or ill treatment against that Party.[106]

Furthermore, in expulsion cases or extradition cases, the ECtHR may consult COI issued by the UNHCR or NGO's like Amnesty International. For example, in *Said v. the Netherlands*[107], the ECtHR held that the expulsion of the applicant to Eritrea would expose him to a real risk of being subjected to treatment contrary to Article 3 of the ECHR. The ECtHR relied on COI compiled by Amnesty International, which clearly demonstrated the existence of a risk.[108]

3.4.3. Standard and Proving the Risk

The ECtHR has held that prohibition under Article 3 of the ECHR requires that assessment of risk "must ... be a thorough one".[109] Furthermore, Contracting States have a positive duty to conduct a meaningful assessment of each claim of risk of torture and ill treatment.[110] Thus, it is not only the applicant that has the burden of proof.

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[105] ECtHR 30 October 1991, *Vilvarajah and Others v. The United Kingdom, Supra* note 101, para. 111f.
[106] Erdal, U., & Bakirci, H., *Supra* note 96, p. 252.
[107] ECtHR 5 July 2005, *Said v. the Netherlands*, Application no. 2345/02.
[108] *Ibidem*, p. 253. See further ECtHR 5 July 2005, *Said v. the Netherlands, ibidem*, paras. 31-35.
[109] ECtHR 5 July 2005, *Said v. the Netherlands, ibidem*, para. 49.
[110] ECtHR 11 July 2000, *Jabari v. Turkey*, Application no. 40035/98.

3.5. Concluding Remarks

The principle of *non-refoulement* is absolute in international law. In expulsion or extradition cases of asylum applicant's, the ECtHR has held that the risk must be real, foreseeable and personal. It attaches great weight to the human rights situation in countries of return. Thus, COI is a very significant tool in assessing a risk of torture or ill treatment. Another important factor according to the ECtHR is that the examination of risk "must ... be a thorough one".

In the following subchapters, this thesis shall examine the increased importance of COI as evidence in the jurisprudence of the ECtHR. The development of COI as factual evidence in asylum and human rights procedures shall be illuminated.

3.6. The Development of Country of Origin Information in the Jurisprudence of the European Court of Human Rights

As mentioned above, this chapter will examine the increased attention by the ECtHR towards COI as evidence and its assessment, which can be decisive in a majority of asylum and human rights cases.

The European Commission on Human Rights originally carried out the first stages of a procedure before the ECtHR, up until 1998. The first time, the ECtHR challenged this was in *Cruz Varas and Others v. Sweden* in which the ECtHR held that "only in exceptional circumstances [...] the Court will use its powers in this area. The Court is not, however, bound by the Commission's findings of fact and remains free to make its own appreciation in the light of all the material before it. In determining whether substantial grounds have been shown for believing in the existence of a real risk contrary to Article 3, the Court will assess the issue in light of all the material placed before it or, if

necessary, material obtained *proprio motu*."[111]

In a few judgments the ECtHR mentions human rights reports or evidence submitted by the government or the applicant and not discuss the source or content in detail. In most of the cases, the ECtHR refers to reports compiled by Amnesty International and the US Department of State in order to give a general overview of the situation, especially in regard to the existence of torture or in the case of an examination of the situation of individuals in the same situation as the applicant. The ECtHR compliments these reports with submitted evidence by the parties. Most of the reports are accompanied by affidavits by medical experts, country experts or human rights experts. The ECtHR underlines the necessity of detailed and specific information with regard to personal circumstances and the corroboration of the story of the applicant.[112]

In *H.L.R. v. France* [113], the ECtHR debated the importance of evidence of specific COI in a more detailed manner. The case concerned a Colombian drug trafficker who had a well-founded fear of violent reprisal from other drug traffickers in Colombia, if he were to be send back to his country. The ECtHR stated "owing to the absolute character of the right guaranteed, the Court does not rule out the possibility that Article 3 of the Convention, may also apply, where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection. Like the Commission, the Court can but note the general situation of violence existing in the country of destination. It

[111] ECtHR 20 March 1991, *Cruz Varas and Others v. Sweden*, Application no. 15576/89, paras. 47-75.
[112] Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Supra* note 12, pp. 31-32.
[113] ECtHR 29 April 1997, *H.L.R. v. France*, Application no. 24573/94.

considers, however, that this circumstance would not in itself entail, in the event of deportation, a violation of Article 3."
The ECtHR relied on written testimony by Rights International and Amnesty International, which described the general situation but the reports did not specify information on the risks to an individual, in a similar situation.

In *Mamatkulov and Abdurasulovic v. Turkey,*[114] the applicant's complained that their lives would be at risk and they would be in danger of being subjected to torture, following their extradition to Uzbekistan. With regard to the situation on Uzbekistan, Amnesty International stated in a report that "Amnesty International remains concerned that Uzbekistan has failed to implement its treaty obligations fully despite numerous, wide-ranging and officially endorsed national initiatives in the fields of human rights education and democratization and judicial and legislative reforms aimed at bringing national legislation into line with international standards." Amnesty International continued to report on the prison conditions, as "the conditions under which detainees are held pre-trial are reportedly so poor as to amount to cruel, inhuman and degrading treatment. In 1997 the Uzbek authorities admitted that conditions of detention fall far short of the UN basic minimum standards for the treatment of prisoners. Overcrowding is the norm, with at least two inmates to a bunk bed, sleeping in turns. Inadequate sanitation, shortages of food and basic medication exacerbate the risk of disease, such as tuberculosis. Former prisoners have described punishment cells as underground 'holes', one square metre with standing room only near the door. The rest of the cell is said to be only 1.5 metres in height, allowing the prisoner only to crouch or sit. Cells are also said to be overrun with vermin. As with the conditions on death row, these allegations are difficult to verify independently given the Uzbek authorities' refusal to allow access to

[114] ECtHR 6 February 2003, *Mamatkulov and Abdurasulovic v. Turkey,* Application nos. 46827/99 and 46951/99.

independent monitors." [115] The determination of the risk of being subjected to treatment contrary to Article 3 of the ECHR was examined as follows by the ECtHR:

"In determining whether substantial grounds have been shown for believing that a real risk of treatment contrary to Article 3 exists, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu*. Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition; the Court is not precluded, however, from having regard to information which comes to light subsequent to the extradition. This may be of value in confirming or refuting the appreciation that has been made by the Contracting Party of the well-foundedness or otherwise of an applicant's fears".[116]

Furthermore, the ECtHR has noted "the applicants' representatives observations on the information in the reports of international human-rights organisations denouncing an administrative practice of torture and other forms of ill-treatment of political dissidents, and the Uzbek regime's repressive policy towards such dissidents. It notes that Amnesty International stated in its report for 2001: "Reports of ill-treatment and torture by law

[115] ECtHR 6 February 2003, *Mamatkulov and Abdurasulovic v. Turkey, Supra* note 114, paras. 53-54.
[116] *Ibidem*, paras. 67-68.

enforcement officials of alleged supporters of banned Islamist opposition parties and movements ... continued... However, although these findings describe the general situation in Uzbekistan, they do not support the specific allegations made by the applicants in the instant case and require corroboration by other evidence."[117] The ECtHR affirms in this case the importance of COI by human rights organisations as weighty evidence, yet, despite this, it still it requires corroboration by other evidence.

Then, in *Venkadajalasarma v. the Netherlands*, which concerned a Tamil applicant from Sri Lanka. The ECtHR came to a conclusion, having analysed the general situation in Sri Lanka "no substantial grounds have been established for believing that the applicant, if expelled would be exposed to a real risk of ill-treatment, as the peace process looked promising and the country's human rights situation appeared to be stabilizing". The ECtHR had found that the general situation in Sri Lanka was not sufficient enough to conclude that there was a real risk for the applicant. The ECtHR analysed the country reports of the Dutch Ministry of Foreign Affairs concerning the situation in Sri Lanka and especially those on the specific the situation of the Tamils. It used reports from Amnesty International, the US Department of State, UK Home Office Guidance Note, the Medical Foundation for the Victims of Torture, the UNHCR and an excerpt from the UK Home Office October 2003 Sri Lanka Country Report summarizing information that was gathered by NGOs and Sri Lankan officials during two visits to Sri Lanka.

In addition to this, in the assessment of the facts, the ECtHR mentioned the Dutch Country Reports as well as the UK Home Office Country Reports, which referred to the situation of Tamils in Sri Lanka. On the basis of these reports, the Court found that no substantial grounds could be found for a real

[117] ECtHR 6 February 2003, *Mamatkulov and Abdurasulovic v. Turkey, Supra* note 114, paras. 54-74.

risk of torture for Tamils.[118] This is another case in which the ECtHR attaches great weight to different sources of country information concerning human rights conditions in countries of origins of applicants. The Court does not only analyse country reports of Contracting States but also country information compiled by NGOs and International organizations in assessing the facts and in assessing, whether there is a substantial risk for an applicant being subjected to torture upon return.

The major breakthrough concerning the significance of COI and the assessment of credibility in the jurisprudence of the ECtHR was in the cases of *Said v. the Netherlands*[119] and *Salah Sheekh v. the Netherlands.*[120] The first case concerned an Eritrean national who claimed to have served as a soldier in an anti-tank unit. Due to further violence, demobilisation had not occured until considerably later. In August 2000, the applicant claimed that he protested during a battalion meeting with his commanders about their performance. According to him, the commanders forced the soldiers to continue fighting in difficult circumstances, which resulted in casualties. Because of his behaviour, he was kept under surveillance by the army authorities. Then in December 2000, he was detained in a cell for five months without being interviewed, charged or brought before a military tribunal. The applicant later escaped and made his way to Sudan and eventually ended up in the Netherlands, where he applied for asylum. His claim was denied for the reason that he did not submit any documentation to establish his travel, his identity or nationality and lacked credibility in his statements. His appeals were unsuccessfully in the Netherlands. He then lodged a complaint with the ECtHR. The applicant claimed that his return to Eritrea would expose him to the risk of being subjected to torture or ill treatment. In his defense, he claimed that Article 3 of

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[118] ECtHR 17 February 2004, *Venkadajalasarma v. the Netherlands*, Application no. 58510/00.
[119] ECtHR 5 July 2005, *Said v. the Netherlands*, *Supra* note 107.
[120] ECtHR 11 January 2007, *Salah Sheekh v. The Netherlands*, *Supra* note 8.

the ECHR would be violated, if he were forced to return. The ECtHR found that his statements were consistent and plausible. The Court relied on International reports which stated that the Eritrean authorities aimed to keep their army at full strength and that his remarkable statements about his escape were credible. Furthermore, the Court relied on reports from Amnesty International, which argued that if the applicant were to be expelled to Eritrea that he would face the risk of being subjected to ill treatment.[121]

The Court argued, when weighing up of evidential merits that the applicant had demonstrated evidence to substantiate his claim that if he were to be expelled, he would be exposed to a real risk of torture or ill treatment. The ECtHR recognised that the applicant had many obstacles in presenting direct documentary evidence, however, it is also stated that "it is nevertheless incumbent on persons, who allege that their expulsion would amount to a breach of Article 3, to adduce, to the greatest extent practically possible, material and information allowing the authorities and the Court, to assess the risk a removal may entail". In this case, the ECtHR relied heavily on country reports and publications compiled by governments and international NGOs specialised on Eritrea.[122]

In *Salah Sheekh v. The Netherlands*, the ECtHR declared that expulsion of the Somali asylum-seeker Sahlah Sheekh to Somalia would be a violation of Article 3 of the ECHR. The judgment of the Court made it to the front pages of Dutch newspapers. It also contributed to a stream of commentaries by legal and political experts on the case. The increased attention, this case drew, can be traced back to three important considerations by the ECtHR. The first element to be underlined is that despite the fact the case had not been sent to the highest administrative court in the Netherlands, the ECtHR declared the case admissible. Secondly, the ECtHR challenged the country reports on

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[121] Case Comment, *Immigration and Asylum: Threatened Expulsion of Former Soldier to Eritrea*, European Human Rights Law Review, No. 6, 2005, pp. 667-669.
[122] *Ibidem.*

Somalia, compiled by the Dutch Ministry of Foreign Affairs. Asylum requests in the Netherlands are taken on the basis of these country reports being issued by the Dutch Ministry of Foreign Affairs. Administrative courts rely on the correctness and completeness of these reports. Furthermore, ECtHR admonished the Dutch authorities, for not checking the effective accessibility on an internal flight alternative in Somalia for the applicant. Final important element, which is important, is that the ECtHR indicated the grounds for application of Article 3 of the ECHR.[123]

The applicant Salah Sheekh arrived in the Netherlands, on 12 May 2003 and applied for asylum. He claimed that he was a member of the Ashraf minority and if he were expelled to Somalia, he would be exposed to the risk of being subjected to torture or ill treatment. His request was denied, by the Minister of Immigration and Integration (Minister). The Minister found that no "real risk" existed, where Salah Sheekh would be subjected to torture or ill treatment upon return to Somalia. According to the Minister, "given the general situation there, this did not amount to an unduly harsh measure since, in order to avoid any future problems, he could settle in one of Somalia's relatively safe areas".[124] His appeals were unsuccessful in the Netherlands and he lodged a complaint with the ECtHR.

The ECtHR took the following view concerning the country reports issued by the Dutch Ministry of Foreign Affairs and the practice of the highest administrative court in the Netherlands (Council of State). The ECtHR was opposed to the standing practice of the Council of State. According to the ECtHR, the application of Article 3 of the ECHR demands a "rigorous"

[123] Mak, E., *The Sheltering Sky of Strasbourg; On the ECtHR's judgement in the case of Salah Sheekh v. the Netherlands and its effects on asylum policy and adjudication in the Netherlands*, Europe and Law Journal, no.1, 2007, pp. 69-81.
[124] ECtHR 11 January 2007, *Salah Sheekh v. the Netherlands*, *Supra* note 8, paras. 30-31.

judicial assessment, which is not the situation in Dutch asylum policy.[125] The ECtHR clearly states:

"The establishment of any responsibility of the expelling State under Article 3 inevitably involves an assessment of conditions in the receiving country against the standards of Article 3 of the Convention. In determining whether it has been shown that the applicant runs a real risk, if expelled, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it, or, if necessary, material obtained *proprio motu*, in particular where the applicant or a third party within the meaning of Article 36 of the Convention provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government. In respect of materials obtained *proprio motu*, the Court considers that, given the absolute nature of the protection afforded by Article 3, it must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations. In its supervisory task under Article 19 of the Convention, it would be too narrow an approach under Article 3 in cases concerning aliens facing expulsion or extradition if the Court, as an international human rights court, were only to take into account materials made available by the domestic authorities of the Contracting State concerned, without comparing these with materials from other reliable and objective sources. This further implies that, in assessing an alleged risk of treatment contrary to Article 3 in respect of aliens facing expulsion or extradition, a full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion. In the present case, given that the applicant has not yet been expelled, the material point in time is that of the Court's consideration of the case. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities."[126]

The significance of COI as weighty evidence in asylum and human rights procedures, not only published by Contracting States, but also compiled by NGOs or agencies of the UN, has been established in this case. This judgment is a landmark decision and establishes the increased attention of the ECtHR towards COI that is published by reliable and objective sources. The Court also explains their view in the assessment of COI in asylum and human rights cases. In the case of *Said v. the Netherlands*, the ECtHR had already determined that other materials other than the country reports of

[125] ECtHR 11 January 2007, *Salah Sheekh v. the Netherlands, Supra* note 8.
[126] *Ibidem*, para. 136.

Contracting States have to be taken into account in the assessment on an asylum request.[127] In the case of *Said v. the Netherlands* and in the case *of Salah Sheekh v. the Netherlands,* the ECtHR expresses a dissenting opinion with the Administrative Jurisdiction Division of the Council of State's opinion that country reports published by the Dutch Ministry of Foreign Affairs should be judged as correct unless particular elements in these reports raise doubt as to their correctness or completeness.

Gradually, the ECtHR has been emphasising the importance of a variety of sources when assessing country information under Article 3 cases of the ECHR. The ECtHR has passed the point of solely relying on the "professional experience" of Contracting States and the materials such as the country reports presented by them. The ECtHR undertakes their own research in collecting country information.[128] The case of *Salah Sheekh* has demonstrated that COI can have a direct impact on the outcome in asylum procedures.

3.7. Conclusion

In this chapter, analysis has been given to the increased use of COI in the jurisprudence of the ECtHR. The examination had demonstrated that from the early nineties, the ECtHR has gradually; put more emphasis on the use of COI as evidence in asylum and human rights procedures. It attaches great weight to the use of a variety of sources and materials. A clear trend; is the importance given also to materials from NGOs and International organisations. The Court does not solely rely on material published by Contracting States in order to assess the risk of being subjected to torture or ill

[127] See Renneman, M., *Nieuwsbrief Asiel- en VluchtelingenWerk Nederland (NAV)*, Dutch Refugee Council, February 2007, p. 53.
[128] Terlouw, A., Law Bulletin of the Dutch section of the International Commission of Jurists, Volume 2, April 2007, p. 191.

treatment, if the applicant was to be expelled to the country of origin. The ECtHR is of the opinion that if the Court as an international judge has to decide on expulsion or extradition cases, in which the applicants invoke Article 3 of the ECHR, the ECtHR should assess all the material placed before it. The Court considers, "given the absolute nature of the protection afforded by Article 3, it must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations." This is a clear indication that COI reports are becoming more and more important in the eyes of the ECtHR in assessing asylum and human rights procedures. In determining whether it has been demonstrated that the applicant has a real risk, if he were expelled, of being subjected to treatment as stated in Article 3 of the ECHR, the role and impact of COI published by NGOs or International organisations has significantly increased.

Furthermore, the development has shown also the development of quality standards of COI in asylum and human rights procedures. The first and striking point is the use of a variety of sources and materials when assessing asylum claims. Furthermore, in assessing an alleged risk of treatment, contrary to Article 3 of the ECHR, a full and *ex nunc* assessment is needed because the situation in a country of destination may change. In other words, up-to-date country information is crucial.

The next chapter will analyse the contentious Dutch asylum practice and the debate that has emerged in the Netherlands concerning the quality of country reports, issued by the Dutch Ministry of Foreign Affairs. These country reports have been criticised for various inaccuracies, which constitute an important role in the initial asylum decision-making process. This chapter

will link the issue of credibility assessment in asylum procedures and the controversy concerning country reports used in asylum decision-making. In order to demonstrate this, reports from the Dutch Refugee Council and Amnesty International will be analysed. These NGOs representing the interests of asylum-seekers published their remarkable findings on the quality of country reports prepared by the Dutch Ministry of Foreign Affairs. The next chapter will demonstrate why it is highly important to use a variety of different sources and material when assessing whether it has been demonstrated that the applicant has a "real risk", if he were to be expelled, of being subjected to treatment as stated in Article 3 of the ECHR. By presenting a report compiled by the Dutch Refugee Council concerning country reports issued by the Dutch Ministry of Foreign Affairs, it will be demonstrated why it is crucial that courts or asylum-decision makers should not solely rely on country information produced by the defendant states.

Chapter 4

The Dutch Practice under Scrutiny

4.1. Introduction

So far, this thesis has discussed issues concerning when a subjective fear is objectively well-founded? What is credibility? What is the role of COI in asylum procedures? What quality standards should be developed for COI used in asylum procedures? These questions have given a picture of the evidentiary requirements in asylum procedures.

This chapter will analyse the Dutch asylum policy and the challenges that have arisen concerning country reports published by the Dutch Ministry of Foreign Affairs and NGOs and other legal representatives arguing that the Dutch asylum procedure limits, the judicial scrutiny of credibility assessment and that the Dutch courts rely too easily on these country reports. This chapter will actually demonstrate how important it is to produce objective and impartial country reports and what the actual impact is of country information on the outcome of an asylum applicant's claim for international protection. The debate concerning the objectivity of country reports has also been discussed in the United Kingdom.[129]

The starting point of this chapter is to give a short introduction into the Dutch asylum policy and to continue with a crucial report from the Dutch Refugee Council on the inaccuracy of country reports published by the Dutch Ministry of Foreign Affairs in a case concerning a Somali asylum-seeker whose asylum claim was rejected on the basis of these country reports.

[129] See National Coalition of Anti-Deportation Campaigns, *Lack of objectivity in Home Office Country Reports*. Available at http://www.ncadc.org.uk/resources/ias.html (consulted on 22 May 2008).

4.2. The Dutch Asylum Policy

The Council of State, the highest Dutch court in immigration and asylum appeal cases has developed a jurisprudence that puts administrative acts under minimal judicial scrutiny in immigration and asylum matters. One of the tools to this end concerns evidence. Dutch asylum policy can be characterised by three elements. The Dutch practice entails a very restrictive line of case law on accelerated procedure, a restricted judicial scrutiny and the possibility to submit statements or evidence after the initial decision.[130]

4.2.1. Accelerated Procedure

In the Netherlands, fifty percent of the asylum applications are processed in 48 working hours. This is the so-called accelerated procedure. Asylum applications are rejected in three to five days after they have been submitted. Asylum applicants in the Netherlands receive two hours to prepare their interview with legal counsel, and three hours to discuss the report of the interview with their legal representative. Translators communicate by telephone and they are often replaced. The legal representatives work in different shifts, this means that asylum applicants receive different legal counsellors. The consequence is that the applicants do not build a confidential relation with a legal counsellor and this makes it difficult for certain crucial elements in their motives to put forward.

Essentially, the risk of accelerated procedures is that applicants do not have enough time to prepare their statements, collect evidence and to prepare properly with their legal representatives for their interview.

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[130] Spijkerboer, T., *Gender, Procedural Acceleration and Marginalised Judicial Review in the Dutch Asylum System, Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, Martinus Nijhoff Publishers, Leiden/Boston, 2005, p. 89.

4.2.2. Marginal Judicial Scrutiny

In Dutch administrative law, a distinction is made between full and marginal judicial scrutiny of administrative acts. Full scrutiny means that the court may replace the administrative decision by its own. Marginal scrutiny indicates that the court will only declare an administrative act invalid if it is unreasonable. The Council of State is of the opinion that in asylum cases the matter is not, whether or not the facts that the asylum-seeker has presented have been established as the fact of the matter is that normally no evidence on important aspects of the statements will be presented. According to the Council of State, the statements of an applicant will be deemed to be true; if the applicant has fully answered the questions; if the statements are consistent on main points; if the statements are not unlikely; and if the statements are in conformity with what is generally known about the situation in the country of origin. Furthermore, the statements made by the applicant should not contain gaps, inaccuracies or inconsistencies and the flight motives must be truly convincing.[131]

Another important element of the marginal judicial review, to emphasise, is the fact that the Council of State assesses the facts in a different way to that of the ECtHR. In the previous chapter, it has been elaborated that the ECtHR, when assessing the facts, takes all the evidence and materials into account. The Council of State in the Netherlands does not consider reports compiled by NGOs or specialised agencies of the UN or other experts. The Council of State merely relies on the information provided in the country reports published by the Dutch Ministry of Foreign Affairs. For years, this matter of marginal judicial scrutiny has been a contentious debate in the Netherlands. Lawyers and professionals in the field of asylum and

[131] Spijkerboer, *Supra* note 130, pp. 90-91.

immigration have been complaining and protesting against the marginal judicial approach of the Council of State. Regularly, NGOs and scientific experts have questioned the objectivity and accuracy of country reports published by the Dutch Ministry of Foreign Affairs. Often, these country reports are not transparent and it is not clear what the reasons were for putting certain information in a country report. According to asylum lawyers, the courts should not scrutinise marginally when assessing the credibility of applicants in asylum procedures.

4.2.3. "New" Facts or Evidence

The last element is the restriction on presenting further statements or evidence after the initial decision has been taken. It is only possible to introduce new facts or evidence, if it was impossible to present them at an earlier moment in the procedure. The question then is: what does the Council of State understands of the term "new"? The Council of State argues that it qualifies as "new" those facts that have happened or evidence that has been produced after the first decision was taken, or those facts that the applicant could not possibly produce before the first decision. This approach is a very restrictive one. The administrative court can only examine whether the applicant has submitted new facts. If there is no new evidence to be submitted then, the appeal must be rejected.[132]

4.3. The Netherlands put to the Test

In the previous chapters, the general role and function of COI were discussed. The increased attention of the ECtHR towards COI as factual evidence in

[132] Spijkerboer, *Supra* note 130, pp. 93-95.

asylum and human rights procedures, the quality standards for COI have also been analysed, and the decision of the ECtHR to examine a variety of sources and to assess all the material placed in front of it, when determining the risk of being subjected to torture or ill treatment. This chapter will now analyse a report elaborated by the Dutch Refugee Council on the sources of country reports used by the Dutch Ministry of Foreign Affairs. The analysis will illuminate the inaccuracies and incompleteness of these country reports on Somalia. After all, these country reports can make a difference between expelling and keeping persons who face actual risk of persecution or ill treatment.

4.3.1. The Dutch Country Report on Somalia

Every six months, the Dutch Ministry of Foreign Affairs publishes country reports in which they elaborate human rights developments and political issues in a certain country. These country reports play a significant role as a source of information for the assessment of asylum and human rights claims. The administrative courts and national asylum decision-makers rely almost blindly on the correctness and accuracy of these reports when assessing human rights conditions and whether or not asylum applicants run the risk of being subjected to persecution or serious ill treatment in countries of destination. But there are also reports on human rights developments and political issues in countries of origin, which are compiled by NGOs, by specialised agencies of the UN and or other local organisations. Often, they are more critical on certain human rights conditions.

In the following analysis written by the Dutch Refugee Council[133], a country report published by the Dutch Ministry of Foreign Affairs on Somalia

[133] Dutch Refugee Council, *Put to the Test, part 1, Sources of the Dutch Foreign Office Country Report on Somalia*, February 2004.

in 2004[134] has been examined in detail on their accuracy and sources. Since January 2004, there have been a number of applications lodged with the ECtHR against the Netherlands for rejected asylum-seekers from Somalia. More precisely, the President of the ECtHR has questioned some question the Dutch Government, concerning the Dutch asylum policy towards asylum-seekers from Somalia and more specifically on the sources of information used by the Dutch Ministry of Foreign Affairs.[135] In the analysis made by the Dutch Refugee Council, it is highly interesting to explore the sources used for writing the country report and how these sources are referred to. In addition to this, the Dutch Refugee Council has formulated the following questions when examining the country report of March 2004 on Somalia:

1. "To what extent is the March 2004 Country Report based on observations by Foreign Office representatives in Somalia?"
2. "To what (public) sources does the Country Report refer?"
3. "How are these sources referred to in the Report?
4. "The country report refers also to the UNHCR's position paper on Somalia's human rights situation, but where and how does the March 2004 country report refer to the UNHCR's Position Paper?" [136]

The first question is answered negatively. According to the March 2004 country report of the Dutch Ministry of Foreign Affairs, the country report is based on public sources and as well as on confidential reports from the Dutch embassies in other EU countries, like Nairobi and Kenya. In other words, the country report is not compiled on the observations of a Foreign Office in Somalia itself.

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[134] Country Report on Somalia, March 2004, published by the Dutch Ministry of Foreign Affairs. Available at http://www.minbuza.nl/nl/actueel/ambtsberichten.
[135] Dutch Refugee Council, *Supra* note 133.
[136] *Ibidem.*

Secondly, as regards the public sources used in the 2004 March country report, it includes information form several UN organisations, governmental agencies, NGOs and press reports. However, Amnesty International has specified that most of the sources of information listed are out-dated. The conditions for Internal Displaced Persons (IDPs) in Puntland seem not to have been extracted from recent information. According to Amnesty International, which has made a list of recent authoritative sources were not included in the list. These sources are:

• Report for the UN Human Rights Commission by independent expert Ghanim Alnajjar, *Situation of human rights in Somalia*, 30 November 2003, E/CN.4/2004/1032.

• Report by the independent expert Alnajjar of 31 December 2002, *Assistance to Somalia in the field of human rights*, E/CN.4/2003/115. This report contains the following statement about IDP's: *(...) the provision of security, and basic sanitation and educational services remained seriously inadequate* (p.3).

• UNICEF-report, *From Perception to Reality; a Study on Child Protection in Somalia*, 10 December 2003, which states that a large number of IDP-children are confronted with rape within their families (p.29).

• US Department of State, *Somalia Country Report on Human Rights Practices 2003*, 25 February 2004, which reports serious inter- and intra-clan fighting in Puntland (p.1).

• Reports from UN Secretary-General of the Security Council on the situation in Somalia, 10 June 2003, 13 October 2003 and 12 February 2004 (S/2003/636, S/2003/987 and S/2004/115.3). In the latest report, the Secretary-General elaborates on measures to ease the tension between Puntland and Somaliland over the contested areas of Sool and Sanaag, but he rules out the possibility of armed conflict (p.7). The conclusion of Amnesty International is that the list of public sources on which the Country Report is based, is outdated and

incomplete.[137]

Concerning the third question asked by the Dutch Refugee Council, the country report uses many sources, but they are seldom referred to directly. There are many statements and conclusions in the country report that do not reference a specific source. It is unclear where the information derives from and therefore it is unclear how the country report deals with contradictions or differences between several other sources. For example, the country report mentions the following on the subject of clan protection:

"In the 'relatively safe areas' of Somalia, the local and regional authorities are generally capable of providing law and order. Members of the Darod, Hawiye, Issaq and Dir clan families (i.e. the nomadic clan families) are generally able to settle safely in their traditional clan areas insofar as these areas are located in the relatively safe part of the country, unless there are (or have been in the recent past) serious armed intra-clanconflicts (in other parts of Somalia). They can also, generally speaking, settle safely in areas where other clan families are in the majority or politically dominant, unless there are (or have been in the recent past) serious armed inter-clanconflicts (in other parts of Somalia). Protection by a person's own clan family is therefore *not always necessary*. If Somalians settle in an area where their own clan is not dominant, they are expected to conform to the existing balance of power and keep a low political and economic profile."[138]

The comment on clan protection 'not always necessary' is a reference only to the four nomadic clan families, namely Darod, Hawiye, Dir and Issaq, and it does not refer explicitly to minorities.

[137] Dutch Refugee Council, *Supra* note 133.
[138] Country Report on Somalia, March 2004, published by the Dutch Ministry of Foreign Affairs, *Supra* note 134.

On the contrary, the UNHCR January 2004 Position Paper states:

"The general pattern of human settlements prevailing in many parts of Africa, including Somalia, is often characterized by common ethnic, tribal, religious and or/cultural factors, which enable access to land, resources and protection from members of the community. Consequently, this commonality appears to be the necessary condition to live in safety. In such situations, it would not be reasonable to expect someone to take up residence in an area or community where persons with a different ethnic, tribal, religious and/or cultural background are settled, or where they would otherwise be considered as aliens. (...) *This is true also in Somaliland and Puntland.* They already host some 60,000 and 31,000 IDPs respectively, which by far exceeds their absorption capacity. *In the absence of clan protection and support*, which means weak or negligible social networks, *a Somali originating from another area would be likely to join the many other underprivileged IDPs who suffer from lack of protection,* limited access to education and health services, vulnerability to sexual exploitation and abuse and labour exploitation, eviction, destruction and confiscation of assets."[139]

Then, when we examine the reference to the UNHCR Position Paper of January 2004 made in the country report, the Dutch Refugee Council discovered a very misleading reference. The country report states on p. 63 that "UNHCR supports programs for organised voluntary return of groups of Somalians from Ethiopia, Kenya, Djibouti, Jemen and Egypt to Somaliland and Puntland. The UNHCR considers these areas to be sufficiently safe for the return of Somalians. According to the analysis, the first sentence is correct, however, the second sentence is incorrect. The UNHCR Position Paper actually states: *(...) In view of the improvements in peace, security, stability and*

[139] The UNHCR Position on the Return of Rejected Asylum-Seekers to Somalia, January 2004, pp. 7-8. Available at http://www.unhcr.se/Pdf/protect/Somalia.pdf (consulted on 2 June 2008).

governance in northern Somalia (Somaliland and Puntland), the UNHCR is promoting the voluntary repatriation of Somali refugees originating from there. The reintegration of returnees is assisted primarily through community-based activities. Voluntary repatriation of refugees who wish to return to pockets of peace in southern Somalia has been facilitated by the UNHCR on an individual basis. When the UNHCR promotes repatriation to an area, the understanding is that the factors that drove refugees out of that area have broadly ceased to exist. In the case of Somalia, the UNHCR has assessed that the majority of refugees, who fled areas that are now in the northern sector can safely return to their habitual areas of former abode, although their right to return is seriously challenged by the over-stretched absorption capacity. Also, importantly, it cannot be ruled out that some individuals originating from Somaliland and Puntland may have a well-founded fear of persecution. Claims to this effect should therefore be dealt with in line with global standards of refugee status determination."[140] Furthermore, "despite the fact that security, stability and governance prevail in Somaliland and to an increasing extent in Puntland, the conditions are not generally favourable for the forced return of large numbers of rejected asylum-seekers. While the restoration of national protection, in line with protection standards applicable to all other citizens, is not likely to be a problem for persons originating from these areas, the weak economy, which offers few employment opportunities, and the lack of sufficient basic services, result in an environment that is not conducive to maintaining harmonious relations among the population. Therefore, the UNHCR advises against indiscriminate involuntary returns."[141] Then in the conclusion the UNHCR states "with reference to what is said on the non-applicability of the internal flight alternative in Somalia (see paragraph 4.2 above), it is UNHCR's position

[140] The UNHCR Position on the Return of Rejected Asylum-Seekers to Somalia, *Supra* note 139, p. 5.
[141] *Ibidem*, p. 9.

that no Somali should be returned against his/her will to an area of the country, from where he/she does not originate. In this regard, considerations based on the prevailing clan system are of crucial importance."[142] The conclusion drawn by the Dutch Ministry of Foreign Affairs is inaccurate and incomplete.

4.4. Conclusion

What is the aim of this analysis? The aim is to demonstrate that it is of the utmost importance that COI be accurate, complete and up-to-date, because in the worst case scenario an asylum applicant can be send back to his or her country of origin, where he or she could run the risk of being subjected to persecution or ill treatment. The role of COI is to describe human rights conditions and political developments in certain countries of destination and this concept is now becoming more and more crucial as evidence. Furthermore, the jurisprudence developed by the ECtHR has also influenced the quality and the importance of transparent, accurate and up-to-date information, when it comes to the assessment of asylum claims. This analysis, which was used by the ECtHR in *the Salah Sheekh v. the Netherlands* case, clearly demonstrates how crucial country information is, in asylum and human rights procedures. The analysis has demonstrated that the sources that were used in the Dutch Ministry of Foreign affairs country reports are not accurate and indeed inadequate. The country report clearly states that the observations were not made in Somalia itself. The sources used in the country report seemed not up-to-date or complete. Then, there was no adequate reference to the sources used. Finally, the biggest mistake made and perhaps the most crucial is that the UNHCR Position Paper on Somalia has been

[142] The UNHCR Position on the Return of Rejected Asylum-Seekers to Somalia, *Supra* note 139, p. 11.

quoted falsely.[143] All in all, this analysis has proven that country information should contain a variety of sources and material, which should be examined thoroughly by courts and asylum decision-makers.

It is also significant to state that inaccurate and inadequate country information can significantly affect the credibility of an asylum applicant. Certain events that happened in countries of origin which are not included in a country report or which are reported more positively than the reality of the situation may mean that the asylum applicant, who during an interview, portraits a different picture, will not be credible in the eyes of the decision-maker, who mostly relies on the country reports of Contracting States.

[143] Dutch Refugee Council, *Supra* note 133.

Chapter 5
Summary and Conclusion

5.1. Introduction

The final chapter will summarise the previous chapters, in order to get an overall view of the elaborated subjects. Then, the problem statement will be answered based on the analysis made in this thesis. Subsequently, this thesis will provide recommendations concerning the main subject. Finally, the developments concerning COI in Europe will be discussed.

5.2. Summary

The thesis has focused on refugee status determination, evidentiary assessment, the concept of well-founded fear, credibility and the role of COI in asylum procedures. The outcome was that the role of COI in asylum decision-making is important because it provides valuable information that is necessary to corroborate the statements expressed by asylum applicants with regard to the human rights situation of their country of origin and it can contribute to the establishment of credibility of asylum applicants.

Due to the increased attention towards COI and to enhance refugee protection, professionals in the field of asylum law and policy have created certain quality standards related to COI. According to this group of professionals, COI should consist of; relevance; reliability and balance; accuracy and currency; transparency and retrievability.

Then, in the second chapter, this thesis has explored the framework of evidentiary assessment in asylum procedures regulated by the EU Qualification Directive and the EU Procedures Directive. The second chapter has examined the assessment of credibility and the role of COI under European law. It has been demonstrated that it is a highly complex task to

present a credible claim and that it is extremely difficult for decision-makers to decide whether or not an asylum applicant is credible. An important task for decision-makers is to take decisions, which are objectively and impartially on the basis of up-to-date country information. This requirement should be taken seriously in the decision-making procedure. It is important to note that objective and impartially COI which is up-to-date may perform a crucial role in the assessment of credibility and thus in the outcome of the decision for asylum applicants.

The third chapter has elaborated on Article 3 of the ECHR which gives protection if asylum applicants are not recognised as refugees but nevertheless run the risk of being subjected to torture or ill treatment in their countries of origin. This chapter has examined the increased development of COI in the jurisprudence of the ECtHR. The examination had demonstrated that from the early nineties, the ECtHR gradually has put more emphasis on the use COI as evidence in asylum and human rights procedures. It attaches great weight to the use of a variety of sources and material in assessing the risk. A clear trend is the importance given to material also from NGOs and International organisations. The ECtHR does not solely rely on material published from Contracting States in order to assess the risk of being subjected to torture or ill treatment, if the applicant were to be expelled to the country of origin. Clearly, this is a tremendous positive development and an important signal towards national courts and decision-makers assessing asylum claims.

The fourth chapter has presented an analysis of the Dutch Refugee Council who examined in detail a country report published by the Dutch Ministry of Foreign Affairs on Somalia. These country reports published by the defendant state are the basis for courts and decision-makers on asylum to decide whether or not the applicant should receive asylum in the Netherlands. Therefore one can imagine how crucial these country reports

are. The Dutch Refugee Council investigated these reports and came to the remarkable conclusion that the country reports on Somalia published by the Dutch Ministry of Foreign Affairs are inaccurate and inadequate. They have quoted statements of the UNHCR on the human rights situation in Somalia false and also important sources were missing. The ECtHR has corrected the Netherlands twice on this issue. The conclusion of this chapter is that it is of utmost importance that COI is objective, accurate, reliable, complete and up-to-date because in the worst case scenario an asylum applicant can be expelled to the country of origin where he might run the risk of being subjected to persecution or ill treatment. Thus, the role of COI as hard evidence is becoming more and more crucial.

5.3. Conclusion

This thesis has addressed the relevance and importance of COI in asylum procedures and more specifically, it has addressed the impact of COI in the assessment whether or not a person should benefit from international protection.

First of all, the relevance of COI in asylum procedures is to aide with the answering of the questions of decision-makers and legal advisers on the political, social, cultural, economical and human rights conditions and also on the humanitarian situation in countries of origin. Gradually, from the nineties, developments have been made in the fact that these reports are considered as factual evidence in asylum procedures. Due to globalisation and the development of information technology such as the Internet, a variety of information and material has become available.

In procedural terms, COI may establish, whether asylum applicant's subjective fear of persecution or ill treatment in countries of origin is objectively well-founded. An important element; is that objective and

accurate COI is crucial to the overall credibility of asylum applicants. COI or country reports may establish that the asylum claim is plausible or truthful. The only evidence in asylum procedures will be that of the applicant's own account, which should be supplemented by COI.

However, to aid decision-making process, COI must entail certain quality standards. COI need to be objective, accurate, up-to-date and as comprehensive as possible. The task for national courts and decision-makers is to assess a variety of sources of information and material and to not solely rely on country reports published by Contracting States. Thus, COI is decisive in the refugee status determination and the impact of COI in the assessment of whether or not a person should benefit from international protection is fundamental and central to good quality asylum decision-making.

5.4. Recommendations

This thesis has established that COI or official country reports describing the political, cultural, social, economic and human rights conditions in countries of origin are decisive in the refugee status determination. There are still challenges to overcome when it comes to the quality of these reports. In order to contribute to a fair and reliable asylum procedure and to enhance refugee protection, the following recommendations should be taken into account.

COI should entail:

- Include objective, accurate and up-to-date information
- Not rely on a single source, but to include a variety of sources and materials
- Use a transparent method of referencing, thus original sources and reports should be traceable
- Decision-makers, legal advisers, asylum authorities compiling COI and official country reports should communicate more with information sources

in countries of origin and not solely rely on reports from their embassies or liaison offices

5.5 Towards a Uniform Country of Origin Information System

The European Commission (EC) has also emphasised the importance of the need to establish appropriate structures involving national asylum services of the Member States. In the Hague Programme and Commission Plan Action, the EC has set out three main objectives: a joint compilation; assessment; and application of country of origin information (COI). The EC has issued a Communication to the Council and the European Parliament on strengthening practical cooperation.[144] The EC has recognised the role of COI in preserving the quality of asylum procedures and decision making in the EU Member States.

Then in June 2007, the EC launched a "Green Paper on the future of the Common European Asylum System (CEAS)" in which they refer options to construct the second phase of the CEAS. In this Green Paper, the EC indicates "examples based on the joint assessment of situations in countries of origin".[145]

In April 2008, the EC has in cooperation with different national immigration services set Common EU guidelines for processing COI. The aim of this plan is to create a common criteria on how to process transparent,

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[144] Communication From the Commission to the Council and the European Parliament, *On Strengthened Practical Cooperation New Structures, New Approaches: Improving the Quality of Decision Making in the Common European Asylum System* {SEC(2006) 189}, COM(2006) 67 final, Brussels 17 February 2006. Available at http://eurlex.europa.eu/LexUriServ/site/en/com/2006/com2006_0067en01.pdf (consulted on 12 June 2008).

[145] European Commission: *Green Paper on the future Common European Asylum System,* Brussels, 06-06-07 (COM(2007) 301 final). Available at http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0301:FIN:EN:PDF (consulted on 12 June 2008).

objective, impartial, and balanced factual COI, with the objective of facilitating global EU exchange and use of information.[146] This development is a progressive step in the reduction of different standards and procedures that exists of COI systems in different countries in the EU.[147] According to the UNHCR, "the production and use of country of origin information which is based on common principles can make an important contribution to improving quality and consistency of asylum decision-making in the EU".[148] Whether it will truly enhance the quality of good asylum decision-making and enhance refugee protection is a matter to be evaluated in the future. At least, the importance of COI has been added to the political agenda.

[146] European Union, *Common EU Guidelines for Processing Country of Origin Information (COI)*, April 2008. Available at http://www.unhcr.org/refworld/docid/48493f7f2.html (consulted on 12 June 2008).

[147] See further ICMPD, Comparative Study on Country of Origin Information Systems, April 2006, Vienna. Available at http://www.acvz.com/publicaties/VS-ComparativeStudyonCOISystems.pdf (consulted on 19 February 2008).

[148] See UNHCR Observations on the Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation – New Structures, New Approaches: Improving the Quality of Decision Making in the Common European Asylum System, (COM (2006) 67, 17 February 2006)', April 2006, p. 4. Available at http://www.unhcr.org/protect/PROTECTION/445f0abe2.pdf (consulted on 12 June 2008).

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