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1. Introduction

The European Court of Human Rights (ECtHR) case law is binding on the countries concerned and has led governments to alter their legislation and administrative practice in a wide range of areas. The ECtHR's case law on Article 3 ECHR [1] (prohibition on torture) has likewise influenced national asylum policies and practices. For example, the conclusions in the case of *Sufi and Elmi*, classified by the ECtHR as highly important (level 1), have made their way into national policy and have had an impact on individual cases on the national level. Yet, have we been critical enough of the conclusions by the ECtHR? In particular, have we made sure that the Court's assessment itself was 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 (see *Salah Sheekh v. The Netherlands* [2] App no 1948/04 (ECHR, 11 January 2007), para 136)? This article will show, on the basis of the decision in the case of *Sufi and Elmi*, [3] that the ECtHR's approach to Country of Origin Information is neither consistent nor transparent.

2. The importance of Country of Origin Information in the ECtHR case law

Country of Origin Information (COI) is defined as information which is used in procedures that assess claims to refugee status or other forms of international protection. COI supports legal advisors and persons making decisions on international protection in their evaluation of for example the human rights and security situation in the applicant's country of origin or a third country. To qualify as COI it is essential that the source of information has no vested interest in the outcome of the individual claim for international protection ([ACCORD, 2013 COI Training Manual](#) [4]).

COI plays an important role in the ECtHR assessment of an alleged violation of Article 3 ECHR. Ruling on possible violations of Article 3 ECHR, the ECtHR examines the foreseeable consequences of a removal of an applicant to a country of destination. The ECtHR considers the

foreseeable consequences in light of the general situation in the country of destination as well as the applicants' personal circumstances (*Vilvarajah and others v. the United Kingdom* [5] App no 13163/87, 13164/87, 13165/87, 13448/87 (ECHR, 30 October 1991), para 108). In assessing the general situation in the proposed receiving country or the situation of a group systematically exposed to a practice of ill-treatment, the ECtHR will rely heavily on COI to make the assessment. For this purpose, the ECtHR has in its jurisprudence set out its own framework for the approach it takes to the assessment of COI which will be discussed below.

3. The ECtHR Framework on COI

The key aspects of the ECtHR COI framework concern the collection of COI, the assessment of COI and the determination of the weight to be given to COI in relation to other COI. The ECtHR has set the following principles regarding these three aspects.

In the case of *Salah Sheekh*, the ECtHR sets out that it decides on a real risk of ill-treatment in light of all the material placed before it, or, if necessary, material obtained on its own initiative. The ECtHR will collect COI on its own initiative, 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 expelling 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 (*Salah Sheekh*, para 136).

Furthermore, the ECtHR will consider the independence, reliability and objectivity of a source to be able to determine how much weight it can attach to the COI from this source in relation to other COI. According to the ECtHR's case law the following considerations are relevant:

1. The authority and reputation of the author
2. The seriousness of the investigations by means of which they were compiled
3. The presence and reporting capacities of the author of the material in the country in question.
4. The consistency of their conclusions and their corroboration by other sources (*Saadi v. Italy*, [6] Application No. 37201/2006, (ECHR, 28 February 2008), para 143).

It follows from *Salah Sheekh* that the consistency of the conclusions of a COI report and the corroboration of these conclusions by COI information provided by other sources, is the most important indication that a COI report is reliable. After all, given the absolute nature of the protection afforded by Article 3 ECHR, the ECtHR must be satisfied that an assessment is supported by domestic materials as well as materials from other objective and reliable sources (*Salah Sheekh*, para 136). The importance of the corroboration of conclusions by COI from other sources, or the ability to cross-check COI, is emphasized by the Court in its standard with regard to the approach it takes to COI based on anonymous sources. In *Sufi and Elmi* (Somalia) the ECtHR accepted that in case of legitimate security concerns, sources may wish to remain anonymous;

However, in the absence of any information about the nature of the sources' operations in the relevant area, it will be virtually impossible for the Court to assess their reliability. Consequently,

the approach taken by the Court will depend on the consistency of the sources? conclusions with the remainder of the available information. (. . .) (*Sufi and Elmi*, Para 233)

The ECtHR held that where COI from an anonymous source is unsupported or contradictory, it will not attach weight to it (*Sufi and Elmi*, para 234).

Finally, The ECtHR has held that the weight to be attached to a COI report depends on the extent to which its assessments are couched in terms similar to Article 3 ECHR. The ECtHR attaches importance to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before it (*Salah Sheekh*, para 141). The ECtHR attaches less weight to reports which focus on general socio-economic and humanitarian considerations. The reason for that is that such considerations do not necessarily have a bearing on the question of a real risk to an individual applicant of ill-treatment within the meaning of Article 3 ECHR. This is only different where an applicant, who is wholly dependent on State support, finds himself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity? (*M.S.S. v Greece/Belgium* [7], Application No. 30696/09 (ECtHR, 21 January 2011), para. 253).

4. The ECtHR Framework on COI in Practice

A [recent study](#) [8] into the jurisprudence of the ECtHR demonstrates that the ECtHR does not apply its own standards in a transparent and consistent manner. This raises questions as to the quality of the ECtHR's assessment of the risk of a violation of Article 3. The *Sufi and Elmi* judgment is illustrative of the Courts? approach to COI and will be used to show that the ECtHR fails to comply with its own standards on the use of COI.

From the *Sufi and Elmi* decision it is not clear how the ECtHR collected the COI; what information was provided by the UK Government, and the applicants and what COI was collected by the ECtHR on its own initiative (*Sufi and Elmi*, paras 80-195). The ECtHR incorrectly relies on UNHCR Eligibility Guidelines as COI, instead it should have approached the guidelines as policy guidelines (*Sufi and Elmi*, paras 133-139).

A comparison between the cases of *Sufi and Elmi* and *K.A.B.* (*K.A.B. v. Sweden* [9] Application No. 886/11 (ECHR, 5 September 2013)), shows an inconsistent use of sources by the Court. In *Sufi and Elmi* the ECtHR concludes that the general situation in Mogadishu was of such a level of intensity that anyone in the city would be at real risk of treatment contrary to Article 3 of the Convention. The ECtHR based its decision on information from the UN Secretary-General, the Independent Expert on Somalia, Amnesty International and Human Rights Watch. In the case of *K.A.B* the ECtHR again ruled on the general situation in Mogadishu. This time, coming to a different conclusion on the situation in Mogadishu, the ECtHR relies only on the government reports from the Swedish COI unit Lifos, the Danish Immigration Service and the Norwegian COI unit Landinfo even though there were more recent and relevant reports available from the same sources relied on in *Sufi and Elmi*. It should be noted that the submissions by the applicant and the Swedish Government in *K.A.B.* only minimally referred to COI. This may have had an impact on the limited use of COI by the ECtHR. However, this is not consistent with the Courts? norm that it would be too narrow an approach under Article 3 ECHR if the Court were only to take into account materials made available by the domestic authorities without comparing these with materials from other, reliable and objective sources.

In addition, the ECtHR concluded in *Sufi and Elmi* that only a returnee with no recent experience of living in Somalia would be at real risk of being subjected to treatment proscribed by Article 3 ECHR in an Al-Shabaab controlled area, though these areas would be generally safe for Somalis that were able to ?play the game? and avoid attention by Al-Shabaab by obeying their rules (*Sufi and Elmi v. United Kingdom*

, App. No 8319/07 and 11449/07 (ECHR, 28 June 2011), para 275). This conclusion is solely based on information from a disputed fact-finding mission. The ECtHR came to this conclusion as a number of anonymous sources told the fact-finding mission that areas controlled by Al-Shabaab were generally safe for Somalis provided that they were able to 'play the game' and avoid attention from Al-Shabaab by obeying their rules (*Sufi and Elmi*, para 275). Only three out of the fourteen interviewed sources mentioned that those who abide by Al-Shabaab rules can live their lives freely under Sharia law. The anonymous sources included a security consultant, a diplomatic source and an international NGO. The ECtHR does not make a reference to any other COI that corroborates this conclusion. The information was not weighed against any other available COI.

5. Conclusion

Considering the likely impact of the outcome of the Courts' judgments on the asylum policy of many State parties, the ECtHR should really be setting a good example. To be a true best practice for national courts, the ECtHR should obey its own rules, be self-critical and make sure that its own assessment 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. Furthermore, it is important for us to have a critical eye over ECtHR decisions and to not accept the Court's decisions without properly assessing them first.

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Keywords:

Country of origin information
Assessment of facts and circumstances
Individual assessment
Inhuman or degrading treatment or punishment

Links:

- [1] http://www.echr.coe.int/Documents/Convention_ENG.pdf
- [2] <http://www.asylumlawdatabase.eu/en/content/ecthr-salah-sheekh-v-netherlands-application-no-194804-0>
- [3] <http://www.asylumlawdatabase.eu/en/content/ecthr-sufi-and-elmi-v-united-kingdom-application-nos-831907-and-1144907-0>
- [4] <http://www.coi-training.net/handbook/Researching-Country-of-Origin-Information-2013-edition-ACCORD-COI-Training-manual.pdf>

- [5] <http://www.asylumlawdatabase.eu/en/content/ecthr-vilvarajah-ors-v-united-kingdom-application-nos-1316387-1316487-1316587-1344787>
- [6] <http://hudoc.echr.coe.int/eng?i=001-85276>
- [7] <http://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609>
- [8] <http://booksandjournals.brillonline.com/content/journals/10.1163/15718166-12342104>
- [9] <http://www.asylumlawdatabase.eu/en/content/ecthr-kab-v-sweden-application-no-88611>