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Further Developing Asylum Quality in the EU:
Summary Project Report



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Summary Project Report





United Nations High Commissioner for Refugees, Brussels, September 2011

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ACKNOWLEDGEMENTS

“Dream a Dream that lasts longer than a Lifetime”¹

On August 22, 2011 Jack Layton, Leader of the Opposition in the Canadian House of Commons passed away after a short battle with cancer. His advice is good. It applies with a special significance to the EU’s goal of providing safe refuge to those in the world who suffer from persecution or serious harm.

This Project reflects the result of cooperation amongst people from many different countries, political ideologies, backgrounds, and dreams. UNHCR wishes to acknowledge and thank the government officials and judges in all the countries involved in this Project for their commitment, energy, and inspiration. Together we have made great strides towards improving the quality of asylum adjudication in the European Union and moved closer to a Common European Asylum System. This could never have been achieved without you.

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September, 2011

¹ Jack Layton, former Canadian politician and Leader of the Official Opposition in the Canadian Parliament.





INTRODUCTION

The EU and its Member States have undertaken, and are bound under successive EU Treaties, to establish a Common European Asylum System (CEAS) in line with the 1951 Convention and other relevant treaties.² Among other aims, the CEAS seeks to ensure that, irrespective of where an applicant for asylum makes his or her claim in the EU, he or she will have an equivalent opportunity to be granted protection in any of the Member States. It was with this aim that the EU Directives and Regulations were formulated, and seek to provide a common approach to interpreting protection criteria.

The United Nations Office of the High Commissioner for Refugees (UNHCR) as the international organization responsible for providing international protection for refugees and for seeking solutions to the problem of displacement, has as well offered its services on various fronts to help EU Member States achieve their goal of a CEAS. In 2003 at the request of the UK Home Office (subsequently UKBA), UNHCR met with the competent Minister and together they set up a quality analysis of the UK asylum system. It was the first example of UNHCR working together with a national asylum authority on quality issues in this way. Much was achieved through the UK project which is ongoing, and which was characterized by an exchange of views between the parties on particular issues in procedure and interpretation of asylum issues. UNHCR forwarded its recommendations for improvements to the UK Border Agency (UKBA) which publicly responded to them on its website. The exchange was governed by transparency and constructive discussions. Where the UK chose not to follow a particular recommendation it gave its reasons for not doing so. This mature process provided an inspiration for further quality projects.

In 2008 UNHCR, drawing upon the success of the UK project, sought and received funding from the European Refugee Fund (ERF) for the first multi-country Quality Project. The Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM) began in September 2008 and ran until February 2010. The countries involved were Austria, Bulgaria, Germany, Hungary, Poland, Romania, Slovakia and Slovenia. The project adopted an approach of gathering data and analysing the complete asylum system in each country prior to making suggestions for improvement. This approach recognized that before one can analyse a system for its effectiveness, it is important to gather extensive data about the operation of the whole system from beginning to end. This requires studying the asylum claim determination system from the moment an applicant enters the country until a review by the second instance. As all parts of the system interrelate, it is critical to have a view of the whole.

Two of the most significant achievements of the ASQAEM Project were to assist Member States to set up their own internal Quality Assessment Units (QAUs) and to develop tools to help assist decision-makers to effectively prepare for, and analyse asylum claims.

With the success of the ASQAEM Project behind it, UNHCR once again sought and obtained funds through the ERF to run the Further Developing Asylum Quality in the European Union (FDQ) Project.

The FDQ Project is a hybrid one given that the participating Member States include those from the ASQAEM Project³ as well as four new ones – Cyprus, Greece, Italy and Portugal. While the focus in the ASQAEM countries has been to solidify the achievements under that project and to help build a self-sustaining internal QAU in each country, the focus in the new countries has been on a thorough analysis of the existing state of the national asylum system and to provide assistance and training to

² European Union, *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, 30 March 2010, [OJ C 83,], Article 78, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:EN:PDF>

³ Slovenia, while initially agreeing to participate later withdrew.

help improve the quality of the current system. It has involved working with not only the national asylum authorities but also with second instance decision-makers.

Overall, the FDQ Project has sought to work together with countries to help develop asylum systems in line with international refugee law and best practice as well as the instruments of the CEAS. However, it has also sought to ensure that those persons entitled to international protection receive it, and those who are not so entitled will not receive it.

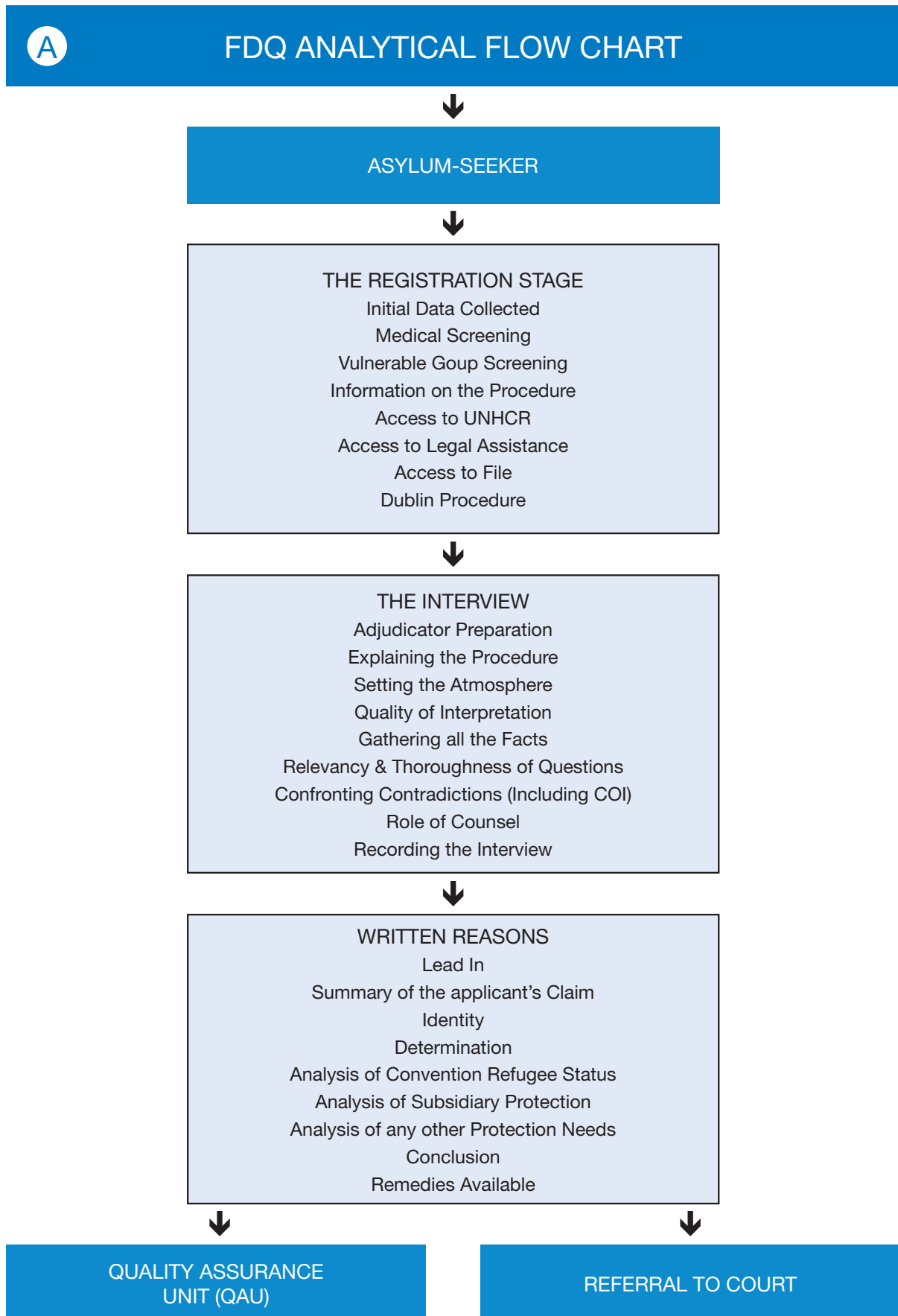
There are considerable challenges involved when running a project involving twelve countries. The project must run in a multi-country and multi-linguistic environment. It must deal with different political backgrounds, including those emerging from decades of communist rule. It must recognize and work within different legal traditions where the role of the courts, the standards of proof required, the requirement to provide reasons for a decision all may differ. It must seek to blend theoretical principles with practical application, because recommendations which are unrealistic will not be adopted.

Because of these challenges, certain principles were adopted. The Project emphasized the need for those working within it to develop mutual respect and trust. Humility is a guiding principle. The Project recognized the difficulty of asylum claim determination and encouraged all participants to learn from each other. It was essential to ensure that the research upon which a tentative recommendation is based was thorough. Collaboration was also vital to achieve the shared goal of developing and maintaining the best possible asylum systems in all respects. In this connection, some elements of the Project drew on the methodology commonly employed by an Ombudsman in many countries: listening to both sides, suggesting tentative solutions, and making decisions based upon reason.

The success of the FDQ Project lies in the achievements all have made as teachers and learners in a difficult environment, where the stakes are life and death, but where great opportunities exist to help those in our world who are seeking safety from persecution and serious harm.

As with the ASQAEM Project, FDQ analysed the work of asylum adjudication in five stages: (i) the registration; (ii) the asylum interview; (iii) the written decision; (iv) the internal quality audit of the first instance process (where this was present); and (v) the second instance appeal or review.

The chart which follows provides a graphic view of the approach:



The Report which follows is divided into four chapters. Chapter I provides a list of major steps and tasks in the project that UNHCR proposed when designing it and seeking ERF funding. The chapter outlines the fifteen tasks and provides comments to demonstrate how, for the most part, these have been achieved. Chapter II provides a brief overview of the nature of the asylum status determination system of each country in the Project.⁴ Chapter III provides some overview on major challenges that the Project has discovered, and some steps taken to help address these. Finally, Chapter IV discusses the road ahead for not only the countries involved in the Project but for other countries that are part of the EU.

⁴ A detailed report will be provided



CHAPTER I:

FDQ PROJECT ELEMENTS

The goal of the FDQ Project is to improve the quality of asylum claim determination systems and to ensure the effective and sustainable functioning of Quality Assurance Units (QAUs) in participating European Member States.

The FDQ Project Grant Application (GA) was submitted to the European Refugee Fund (ERF) in the spring of 2009. Its implementation has had to be flexible as the operational contexts of the work as well as the political and economic landscape in the EU has seen many profound changes since that time. The 1951 Convention does not specify any particular shape that a national asylum system need have – nor do the EU Directives and Regulations. Likewise this Project does not take a “one size fits all” approach. Rather its approach is flexible, as that which will need to be addressed in one country may not be needed in another. Consequently, it is the underlying goals that are common to any asylum system that FDQ has tried to support and strengthen.

Fifteen tasks are listed in the GA and the chart below presents a summary of what has been accomplished in the Project.

#	ITEM	COMMENT
1	Project Launch Meeting	Took place in Budapest on June 16 – 17, 2010.
2	Analysis and monitoring of asylum systems	Continuous throughout the life of the Project.
3	Training gaps identified	Gaps in training have been identified in all countries and training to address these gaps has been provided. See 7 below for further information.
4	Quarterly Progress Reports	Each country has provided Quarterly Progress Reports.
5	Written & oral feedback sessions	Continuous throughout the life of the Project.
6	Technical and practical exchange visits for countries in the Regional Representation for Central Europe (RRCE) region	Exchange visits took place between: Austria and Poland; Austria and Bulgaria; Germany and Slovakia; the UK and Romania; and the UK and Hungary. Between September and December 2010 each of the countries in the respective pairs visited each other culminating in a total of 10 visits.
7	Minimum two training courses per country	The number of training courses provided has vastly exceeded this number. Training and seminars have been provided to both first and second instance decision-makers.
8	Setting up and strengthening QAUs	QAUs have been set up, strengthened and become fully functional in Bulgaria, Hungary, Poland, Romania, and Slovakia. In Cyprus, Greece, Italy, and Portugal efforts have been made to work with pre-existing Quality Mechanisms (Italy), establish new QAUs (Cyprus and Greece), or to provide supportive tools for quality analysis (Portugal).
9	Mid-Term Review Meeting	Took place in Rome on January 19 – 21, 2011.
10	One Regional Training Session	Took place in Rome on January 21, 2011.
11	Facilitation of access to, and improvement of, COI	Continuous throughout the life of the Project.
12	Refugee status determination Guidelines	Existing guidelines have been updated and in many countries new asylum manuals or guidelines have been drafted .
13	Joint recommendations for follow-up after FDQ completed	Drafted and completed in most, but not all countries at the time of writing (September, 2011).
14	Manual on Assessment Methodology for asylum arcedures	A Quality Manual has been produced and will be distributed at the Closing Conference in Brussels on September 15 and 16, 2011.
15	European Union conference on quality assurance in asylum decision-making on completion of project	Scheduled for Brussels on September 15 and 16, 2011.

While the technical aspects of the GA have been met, it is in the innovations of the Member States where the Project has reached significant further value. In those countries which have fully embraced the desire to achieve high quality asylum systems progress has far outpaced the objectives of the GA. The particulars of this comment can be seen in the individual country summaries.

CHAPTER II:

COUNTRY SUMMARIES

1. Bulgaria

Bulgaria has a single refugee status procedure, based on the provisions of the 1951 Convention and the 1967 Protocol, the EU asylum legislation and the national asylum law. The State Agency for Refugees (SAR) within the Council of Ministers is responsible for determining applications for refugee status and subsidiary protection (humanitarian status).⁵ When an application is lodged anywhere on Bulgarian territory it is immediately forwarded to the SAR. In practice, most initial applications are lodged with Border police or the Migration Directorate.

The President of the Republic of Bulgaria has the *discretionary* authority to grant asylum.⁶ In the course of the asylum procedure, the SAR may establish facts and circumstances and assist the President's administration on the President's request.

By law, proceedings before the SAR begin with the registration of an applicant at the SAR. The SAR is required to decide on asylum claims within three days (accelerated procedure) or three months (general procedure) after the determination procedure has been opened. The determination procedure is considered open, when a decision enters into force that Bulgaria is the State responsible to examine the application in accordance with the Dublin II Regulation or when a subsequent application is lodged.

The SAR has a centralized structure, with a central office in Sofia, including specialized and general administration, and territorial units: a Registration and Reception Centre (RRC) in Sofia, a RRC in Banya-Nova Zagora, and a Transit Centre in Pastrogor, near the Bulgarian-Turkish border (not functioning at the time of writing).

In the past, in the general procedure, interviewers did not draft their own decisions. However, in the new procedure that is being introduced, interviewers will prepare a written reasoned draft of a decision, which will then be reviewed by the Head of the Reception and Proceedings Department, by the Director of the territorial unit and by a legal officer at the Methodology of Proceedings and Legal Services (MPLS) Directorate, before it is approved by the Director of the MPLS Directorate and the Deputy President of the SAR. It is then signed by the President of the SAR.

The SAR hires its own employees in an open public competition or through an internal procedure. The eligibility rules are the same as the one applicable to other civil servants. The hiring is usually done through a competition comprising a test and an interview. *Ad hoc* on-the-job trainings are also conducted. Supporting training events are organized in cooperation with UNHCR and under the FDQ Project.

The SAR applies two sets of the procedural rules: the Internal Rules and Regulations for Conducting the Proceedings for Granting Protection by the SAR (IRR) and the Instructions for the Use of Audio-Recording Technology and Archive of Recordings (IAR). The MPLS Directorate is responsible for elaborating

⁵ According to the Law on Asylum and Refugees (LAR), the term for subsidiary protection as per the Qualification Directive is "humanitarian status"

⁶ A claim for "asylum", as opposed to "refugee protection", initiates a separate procedure in the Bulgarian system.

instructions and guidelines in relation to the administrative proceedings under the Bulgarian asylum law and for monitoring their observance. These instructions and guidelines are approved by the President of SAR. A Training Manual has been developed under the FDQ Project.

The internal quality assessment is performed by the MPLS Directorate, which is generally responsible for quality-related activities in the SAR. One of the staff members of the MPLS is the Internal Quality Auditor (IQA) in the FDQ Project. Together with the FDQ National Project Officer (NPO), the IQA conducts parallel assessments of refugee status determination decisions and interviews and co-facilitates training activities under the Project.

The accelerated procedure is not applied to unaccompanied minors and beneficiaries of temporary protection.

A negative decision in the accelerated procedure may be appealed before the Administrative Court in the territorial jurisdiction of the registered address of an applicant, usually the Administrative Court of Sofia City (ACSC). The time limit for appeal is seven days. The decision of the ACSC is not subject to a cassation appeal.

A negative decision in the general procedure may be appealed before the ACSC within fourteen days. The decision of the ACSC may be appealed before the Supreme Administrative Court as a cassation appeal. In all cases, filing an appeal has an automatic suspensive effect, except when a Dublin procedure decision is appealed.

Dublin procedure decisions may be appealed before the ACSC within seven days. The appeal does not have an automatic suspensive effect, although suspension may be granted by the Court.

The FDQ Project introduced many positive developments. These include the Professional Development Days (PDDs) as a mode of training and regular staff meetings for exchange of good practices; assessment forms for interviews and decisions; exchange of good practices within the region; and training materials, including a Training Manual.

The current quality mechanism is not bound directly to, or dependent on, the FDQ Project, due to its strong link to the regular duties of the MPLS. The President of the SAR has expressed support and interest in future cooperation with UNHCR in quality-related activities. The SAR has indicated its willingness to continue the practice of monthly PDDs and the activities of the quality assurance unit; continue quality audit activities in all territorial units; conduct training based on the Training Manual developed under the FDQ Project; prepare monthly audit reports to be shared with UNHCR; and to organize quarterly meetings with UNHCR to discuss quality-related issues.

Statistics for 2010 applications and acceptance rates can be found in Appendix I.

2. Cyprus

Between 1998 and 2002, UNHCR assisted the government in developing its national legislation and procedure. The Refugee Law of the Republic of Cyprus came into effect in 2000 and in January 2002 the government started receiving and processing applications for international protection. Until that point, UNHCR was receiving and processing asylum applications under its Mandate and on behalf of the government of Cyprus.

In practice, the District Aliens and Immigration Offices of the police are responsible for receiving an application for asylum. The police fall under the competency of the Ministry of Justice and Public Order. Responsibility for determining a claim lies with the Asylum Service, which falls under the competency of the Ministry of Interior. An applicant who receives a negative decision may apply for administrative recourse to the Reviewing Authority or directly seek judicial recourse on a point of law at the Supreme Court.

The Reviewing Authority consists of a President and two members who are appointed by the Council of Ministers. The Reviewing Authority is an independent authority and is not subject to any Ministry, Department or Independent Service of the Government of the Republic. The Reviewing Authority, during the examination of the administrative recourse may decide to call an applicant to an interview or decide to call an applicant to a hearing, to which it can summon, *inter alia*, independent expert(s) and a representative of the Asylum Service.. Where the applicant submits “new elements”, the Reviewing Authority is bound either to invite the applicant to a personal interview or to summon the applicant to a hearing, as is deemed appropriate. The Reviewing Authority has the discretion to decide whether any elements submitted by the applicant constitute new elements. There are no regulations or internal guidelines specifying what may constitute “new elements”.

Decisions of the Reviewing Authority may be challenged to the Supreme Court of Cyprus on a point of law. Legal Aid is available for Supreme Court challenges on a means and merits test. An applicant must submit an application to the Supreme Court. The Supreme Court shall grant the legal aid where two conditions are met: (i) a report by the Welfare Office states that the financial situation of the applicant (or the guardian of a dependent applicant) is such, that he or she is not able to pay his or her own legal fees and; (ii) only if the review is likely to succeed. Access to legal aid is in practice seriously restricted due to the legally complex procedure through which the applicant must prove that he or she has a good case based on a point of law, in the absence of legal advice or assistance.

The FDQ Project in the Republic of Cyprus has audited (i) the registration process, (ii) the quality of interviews, (iii) the quality of written decisions at the Asylum Service, and (iv) the quality of written decisions at the Reviewing Authority. The findings of these audits have been presented in formal reports addressed to the respective authority; each report includes provisional recommendations. Meetings are held to discuss these provisional recommendations and to arrange a plan to address them.

In addition to the auditing, there have been four training seminars: (i) a specialized presentation on women and refugee status determination (November 2010); (ii) a specialized presentation on interviewing children (December 2010); (iii) a Status Determination Seminar (March 2011); and (iv) a seminar for the Asylum Service outlining the FDQ audit results on interviewing and decision-making (September 2011). Further, there has been individual coaching provided to Eligibility Officers in both the Asylum Service and the Reviewing Authority.

Applications for international protection in the Republic of Cyprus reached their peak in 2004 with 9,870 applications.⁷ Since 2004, asylum applications have steadily declined. Applicants come from various countries, but main source countries of origin for 2010 include Iraq, India, Egypt, Sri Lanka, and Gaza.⁸

⁷ UNHCR's Asylum Statistical Report (2004). The figure cited encompasses principal applicant and dependants.

⁸ UNHCR's Asylum Statistical Report (2010).

Statistics for 2010 applications and acceptance rates can be found in Appendix I.

In summary, by the end of the Project, the Asylum Service will be provided with three separate reports relating to the registration process, interviewing and decision-making respectively. Each report will include provisional recommendations for the improvement of the status determination process in Cyprus. The Asylum Service will also be provided with Guidelines on writing a decision. In addition, all relevant assessment audit forms will be provided with the aim that an internal quality assurance mechanism may be developed and sustained. The Reviewing Authority will be provided with a report relating to the review process and Guidelines for reviewing a decision

3. Greece

A broad reform of the national asylum system characterizes the implementation period of the FDQ Project in Greece.


Following the Greek parliamentary elections of October 2009, the newly elected government undertook a political commitment to establish a fair and efficient asylum system in Greece and to substantially reform the relevant legislation. Two legal documents have been adopted to this end. First, a Presidential Decree (PD 114/2010) regulating the asylum-procedure during a transition period was adopted in November 2010, re-establishing the administrative appeal instance. While the competence for the examination of the asylum applications at first instance remains with the police, the new PD reserves an active role for the UNHCR in both instances of the asylum procedure. Second, the Law 3907/2011 which was adopted in January 2011, provides for the establishment of a new dedicated Asylum Service under the auspices of the Ministry of Citizen Protection, which is expected to become operational in the beginning of 2012. With the establishment of the asylum service, the asylum procedure will no longer be the responsibility of the police authorities.

The FDQ Project was adapted to the on-going developments in the field of asylum in Greece, focusing on the establishment of fair and efficient refugee determination procedures and relevant quality assurance mechanisms. To this end, FDQ examined the constituent parts of the asylum system in order to identify systemic as well as technical gaps, deficiencies, problems and needs. These findings were shared with the competent authorities, in particular, with the Aliens Division at the Asylum Section of the Ministry of Citizens' Protection, in order to promote relevant solutions.

The FDQ Project in Greece took place in two phases: the first phase corresponded to the activities undertaken from April 2010 to December 2010. During this phase (regulated by the framework of the previous Presidential Decree 81/2009) activities included: (i) monitoring initial registration procedures, (ii) observation of interviews at first instance conducted mainly at the Attica Aliens Police Directorate where the majority of the claims in Greece are registered, and (iii) review of a number of first instance decisions. The findings of the monitoring activities (gaps, deficiencies, needs), along with proposals for addressing them, were discussed with the competent Greek authorities in the course of several meetings. In addition, relevant checklists developed in the FDQ Project were made available to the national authorities.

In this first phase of the Project, findings made through monitoring, and relevant proposals to address systemic and practical gaps, constituted a key tool and provided a point of reference for the implementation of the asylum procedure under the new legislation.

During the second phase (starting from January 2011 and ending in September 2011), the FDQ Project was adapted to the current circumstances, in order to address the quality needs of the new system and to propose relevant recommendations that could be immediately applied as the new asylum procedure was being implemented. FDQ also identified challenges that would affect the new Asylum Service when it comes into operation, and proposed recommendations.



During 2011, focus was also placed upon enhancing the refugee status determination capacity of the Administrative Court of Appeal judges, as the competence for judicial review of decisions of the Appeals Committees had been transferred from the Council of State to the Administrative Courts of Appeal. In this regard a training seminar on refugee status determination issues is scheduled to take place in September 2011. In June 2011, the FDQ NPO participated in a conference and two seminars addressed to judges and legal practitioners, where she spoke on refugee status determination and protection issues.

Apart from the training for the enhancement of refugee status determination capacity of judges, a refugee status determination document package will be prepared and distributed to the Appeals judges, containing, apart from the international and national legal framework, thematic presentations of relevant decisions on international protection issues, issued by national and international bodies, relevant references (websites) and guidelines, as well as more specific material (checklists) in Greek.

The Department of Human Resources and Quality Assurance of the new Asylum Service, envisaged by the Law 3907/2011, provides an important mechanism which will enable the national refugee status determination authorities to ensure a regular and institutionalized audit, in accordance with the relevant UNHCR proposals, promoted and supported within the FDQ framework. The inclusion of a department in the new Asylum Service, which will be responsible for Quality Assurance is an important contribution towards the establishment of a fair and efficient refugee status determination procedure in Greece.

The findings, tools and proposals of the FDQ Project will be shared with the new Asylum Service, in order to assist an efficient internal audit system, the structure and the regulation of which will be defined by a Presidential Decree.

During the first 6 months of 2011, 4,435 first instance asylum applications were submitted.

Statistics for 2010 applications and acceptance rates can be found in Appendix I.

4. Hungary

The new government, which took office in June 2010, has amended migration related laws. This has required updating all templates, information notes and internal guidelines to reflect the entering into force of the new legislation: the Asylum Act (24 December 2010), the Act on the General Rules of Administrative Proceedings (1 January 2011) and judicial decentralisation (1 April 2011).

The refugee status determination procedure is regulated by the Act LXXX of 2007 on Asylum and the Governmental Decree 301 of 2007 on the implementation of the Act on Asylum and by the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services which provide – as *lex generalis* – the legal framework for the procedure. The Hungarian refugee status determination procedure consists of two stages: the first instance procedure (public administrative stage) and the second instance procedure (judicial review stage).

The Office of Immigration and Nationality (OIN) is the national refugee authority and is responsible for conducting the procedure at the first instance. There are two phases: (i) the preliminary assessment procedure, in which OIN delivers its decision within thirty days – except in airport procedures where the deadline is eight days – and; (ii) the detailed assessment procedure in which OIN delivers its decision within sixty days.

In the preliminary assessment procedure the OIN examines whether the applicant is a national of an EU Member State, or has been recognized by another State, or has submitted a repeat application on the same factual grounds, or whether the possibility of protection exists with respect to a safe third country.

In the course of the preliminary assessment procedure, the application is deemed manifestly unfounded if the information presented by the applicant is minimally relevant from the point of view of the procedure, or the applicant has acted in bad faith and is unable to substantiate his or her country of origin, or did not lodge an application within a reasonable timeframe. An application may not be refused solely on the latter ground.

If the preliminary assessment procedure is positive, the authority will refer the application to the detailed assessment procedure. On the other hand, if the application is rejected at the preliminary assessment stage, the refugee status determination procedure is discontinued. In this case the asylum-seeker may file an appeal for a court review of the preliminary decision within three days of the announcement of the decision.

In the detailed assessment procedure, the applicant may present the reasons for and circumstances relating to, his or her flight in an in-depth manner. The decision made in the course of the first instance procedure is delivered to the applicant in writing and the decision is announced to him or her orally in his or her mother tongue or in any other language that he or she understands.

Applicants may initiate a judicial review of the decision by submitting an appeal to the Refugee Authority within fifteen days of the announcement of the decision. The court shall make a decision within forty five days of the receipt of the appeal. The court shall hold a hearing in the case, at which the asylum-seeker will be personally heard. At second instance, the Budapest Metropolitan Court and four County courts have the power to make the final, second instance decision in the case. The courts also have the power to change the decision of the OIN and grant protection to the applicant. There is no further legal review available against the decision served at second instance by the Court.

The number of asylum applications lodged in Hungary over the past few years has been decreasing. 4,672 applications were submitted in 2009, whereas the figure for 2010 is 2,104 – a 55% decrease. This

declining trend continued for the first five months of 2011. The great majority of asylum seekers arrived from Afghanistan both in 2010 and 2011, followed by Kosovo.

Statistics for the 2010 applications and acceptance rates can be found in Appendix I.

5. Italy

In April 2005, a decentralized refugee status determination procedure was established with the constitution of seven (later evolving to twelve) eligibility Territorial Commissions (TC). These TCs are coordinated by the National Commission (NC) for the Right to Asylum which is entrusted with the tasks of monitoring, training, setting up and maintaining a COI database, and making decisions on cessation and revocation cases.

UNHCR is represented in the four-member TCs by one UNHCR staff member with full voting rights; and a UNHCR staff member also sits in the NC with an advisory role. UNHCR's direct involvement in the refugee status determination procedure is explicitly prescribed by the law and was confirmed in the decree that transposes the EU Asylum Procedure Directive. UNHCR presence in both TCs and the NC allows the UNHCR to bring its expertise to the overall work of the TCs, to monitor the refugee status determination procedure, to identify gaps and to make targeted suggestions for improvements.

With respect to the judiciary, there are three layers of judicial review (the National Court, the Court of Appeal, and the Supreme Court), the last of which deals only with points of law. No specialization of the judiciary on refugee matters is provided for. National courts have full power to review the merits of the case and to come to their own decision as well as to comment upon any administrative shortcomings or errors committed in the first instance (e.g. lack of adequate reasoning).

Although Italy has a variety of legal instruments on asylum, the most relevant of which are the decrees transposing the EU Directives (Reception, Qualification and Procedures), there is no comprehensive asylum law. In addition, the regulation implementing the decree transposing the Procedures Directive has never been promulgated.

Specific characteristics of the Italian asylum system are: (i) all asylum applications are examined by a panel of decision makers; (ii) there is on-going capacity building by UNHCR in both the TCs and NC; (iii) the NC is a body institutionally in charge of coordination and monitoring; (iv) asylum decisions are rendered collectively by the TC which also conducts the interviews; (v) the right to an interview is always granted; (vi) and there are no special border, accelerated or admissibility procedures.

The FDQ project in Italy focused on both administrative and judicial procedures. At the administrative level, auditing and monitoring activities were carried out with regard to the registration of applications (police) and refugee status determination (Territorial Commissions). Reports on the quality of the procedure and of refugee status determination decisions, including analysis of eligibility trends and good practices, were drafted together with a set of provisional recommendations.

An ad hoc proposal for the revision of the registration form was submitted to the National Commission, which acts as the FDQ Project Implementation Board (PIB). With regard to refugee status determination, the project mainly focused on the strengthening of the internal monitoring activities, already present in the Italian asylum system, with a view to providing the NC with additional tools for coordination, internal quality control and harmonization. A decision checklist was finalized with the Project Implementation Board and circulated amongst the Territorial Commissions. A decision template was also prepared for consideration by the PIB.

Targeted training has also been undertaken. Further activities include an update of the eligibility Manual, finalization and submission of a revised interview report, credibility guidelines, and training of first instance decision-makers.

At the judicial level, collaboration with the central body for training of the judiciary was established and a first seminar on asylum was conducted in June 2011 with judges in charge of appeals against rejections of asylum applications at the administrative level. A further proposal for the insertion of modules on refugee law into the judiciary's annual training plan for 2012 is under consideration by the High Council for the Judiciary.

There has been good collaboration with the relevant authorities and this has served to assist all parties in their commitment to ensuring the best quality asylum system.

Statistics for the 2010 applications and acceptance rates can be found in Appendix I.

It should be noted that there has been a sharp increase of arrivals by asylum-seekers following the uprisings in North Africa since mid-January; this has led to an increased pressure on the refugee status determination procedure as a whole and on the reception system in particular. As a result, the findings of the project might not fully reflect the current practices. Noteworthy is that as of 20 June 2011 the total number of sea arrivals is 44,601 (24,373 Tunisian and 20,228 other nationalities, mainly from Nigeria, Ghana, Mali, the Ivory Coast, the Horn of Africa, and Bangladesh). By way of contrast, in the first six months of 2010, a total number of 524 persons had arrived by sea.⁹

6. Poland

The asylum process in Poland is governed by the provisions of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, the applicable provisions of the Constitution of Poland, the Law on Granting Protection to Foreigners in the Territory of Poland of 2003, the Administrative Procedure Code, and the applicable provisions of the Law on Foreigners of 2003.

The first instance asylum authority in Poland is the Head of the Office for Foreigners (OFF), located centrally in Warsaw. The OFF is responsible for determining asylum applications, lodged with the competent border guard unit. Applications for asylum lodged with the border guard unit contain the primary reasons for which the individual concerned is seeking refuge in Poland. Primary information on the applicable rights and duties is provided to the applicant at this stage. The application is immediately forwarded to the OFF. In the course of the procedure, an asylum interview is conducted by the OFF.

The OFF has a centralized structure, with a central office in Warsaw and a branch office in Biala Podlaska. The interviewing and the decision-drafting is usually done by the same officer, with the draft decision being reviewed by the Head of the unit, the Deputy Director and the Director of the Department for Refugee Status Proceedings (DRSP), before it is signed on behalf of the Head of the OFF.

The OFF hires its own employees in an open public competition. The eligibility rules are the same as those applicable to other civil servants. The hiring is usually done through a competition with a test and an interview. The initial training covers ten main subject areas defined by an internal order of the Director General. *Ad hoc* on-the-job trainings are also organized, including national European Asylum Curriculum (EAC) sessions, as well as training events organized under the FDQ project.

There is a training manual being developed under the FDQ Project.

⁹ Police Department, Ministry of the Interior.

The internal quality assessment is performed by an internal expert on the basis of an internal order of the Director General. Ten randomly selected case files per month are audited, a report is drafted (including recommendations regarding the identified gaps), cleared by the Director of DRSP and approved by the Head of OFF. The finalized reports are available to all decision-makers through the internal database and are also presented during staff meetings.

The OFF is required to decide on asylum claims within six months or thirty days (manifestly unfounded applications). The deadlines for issuing the decisions are as a rule observed in practice.

Appeals against the decisions of the OFF on asylum claims are determined by the Refugee Board, located centrally in Warsaw, which acts as the second instance administrative authority. An appeal has to be lodged within fourteen days after the delivery of the decision, and its lodging suspends the execution of the appealed decision. The appeal deadline with regard to cases assessed as manifestly unfounded is five days. The Refugee Board decision is required to be issued within a month.

Appeals against the Refugee Board decisions can be lodged with the Regional Administrative Court in Warsaw (WRAC). The judicial review of the decisions issued by the Refugee Board is done with regard to lawfulness of the decision, based on the facts of case available to the Refugee Board at the moment of the issuance of the decision. The court does not have the competence to grant asylum in its own right; the appealed decision may either be upheld or be quashed and remitted for re-examination. The WRAC rulings may be further appealed to the Supreme Administrative Court. The Supreme Administrative Court may either uphold the ruling of WRAC (whereupon it becomes final), or quash it and remit for re-examination by WRAC; or quash the WRAC ruling as well as the second instance decision; or quash both the second and the first instance administrative decisions and remit the case for re-examination to the respective administrative authority.

The current quality mechanism is not bound directly to, or dependent on, the FDQ project. The feedback shared with the OFF should contribute to the mechanism's further development, through the revised sampling criteria, inclusion of interview monitoring, and a more effective mechanism of implementing the audit recommendations.

Statistics for 2010 applications and acceptance rates can be found in Appendix I.

7. Portugal

The Asylum and Refugee Department (SEF), part of the Immigration and Borders Office, under the direction of the Ministry of Internal Affairs, is responsible for international protection in Portugal. A single procedure applies to the two possible forms of international protection provided for by the Portuguese legislation on international protection – refugee status and subsidiary protection.

The procedure includes an admissibility phase and a merits assessment (i.e. the eligibility phase).

The Asylum Law makes a distinction between applications submitted at the border and those made on the national territory. The legal regime is identical, but the deadlines are much shorter in the case of requests presented at border points (admissibility phase), since the asylum-seeker must stay confined in the Temporary Installation Centre (Centro de Instalação Temporária / CIT) located at the Lisbon airport.

Where a claim is declared inadmissible or refused on its merits, the decision can be challenged in the administrative court (Tribunal Administrativo de Círculo), which is not specialized in asylum issues. The decision of the first judicial instance can also be appealed to the second instance court (Tribunal Central Administrativo). In all cases, filing an appeal has an automatic suspensive effect.

Asylum-seekers who are not entitled to enter the territory wait for a decision on the admissibility of their claims while in detention. If their claim is declared not admissible (a decision which has to be issued within five days of making the claim), they are entitled to appeal but will remain in detention during the judicial review for a maximum period of sixty days.

The deadlines provided by law for the submission of an appeal vary between 72 hours (to lodge an appeal for a decision of non-admissibility when the claim was presented at a border point) and fifteen days (for final decisions refusing protection in the eligibility phase). These same deadlines apply to the courts with respect to the final decision.

Portuguese Law recognizes the important role of UNHCR and the Portuguese Refugee Council (a national NGO) in the asylum procedure. The Portuguese Refugee Council, which is the operational partner of UNHCR in Portugal, is not only responsible for hosting the asylum-seekers, but is also an active partner in the fact-finding phase of the asylum procedure. The Portuguese Refugee Council is systematically informed of all asylum applications as well as all decisions and is entitled to interview the applicants, to deliver opinions on the applications for asylum, and to provide additional information. It is also entitled to request and obtain information on the state of play of an asylum application.

The Asylum and Refugees Department has an internal quality control mechanism, which consists of the review of every decision proposed by an eligibility officer, first by a senior caseworker, and second by the Coordinator of the Department. Due to the low number of claims presented in Portugal, these reviews take place for all decisions before they are served on the applicants.

For the purposes of the Project, the procedures for recognition of international protection were analysed in three stages: (i) the Pre-Interview stage, which covers access to the procedure, registration of the claim, information provided to the asylum-seeker and preparation of the interview; (ii) the Interview, as the fundamental process for fact-finding where high standards have to be implemented and maintained; and (iii) the Written Decision and its reasoning, as the final act of the administrative procedure, where a fair procedure and the application of correct substantial criteria for the recognition of international protection should be mirrored.

The FDQ Project has introduced a series of training sessions involving the SEF and the Portuguese Refugee Council with special emphasis on interviewing, COI research and other fact finding relevant activities. As well, new support materials such as checklists and templates have been distributed for use by the administrative authorities.

The Project also focused on judicial procedures, through a training seminar for Judges and helped facilitate meetings between Judges and the staff of the SEF.

Statistics for the 2010 applications and acceptance rates can be found in Appendix I.

8. Romania

Romania has a single refugee status procedure based on the provisions of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, the Law on Asylum of 2006, the Civil Procedure Code, and the applicable provisions of the Government Emergency Ordinance regarding the regime of Aliens in Romania of 2002,¹⁰ with modifications and amendments.

The first instance asylum authority in Romania is the Romanian Immigration Office (RIO). The Directorate for Asylum and Integration (DAI) of the RIO is responsible for determining asylum applications, lodged with the competent State authority (one of the five DAI Regional Centres for Asylum Procedures, Border police units, Romanian police Units or units of the National Administration of Penitentiaries subordinated to the Ministry of Justice). The initial application takes the form of a registration and comprises mainly basic identification data. If an applicant lodges an asylum claim at a border crossing point, the rules of border procedures apply. Otherwise, a preliminary (Dublin) interview is conducted. In the absence of reasons for a Dublin transfer, a refugee status determination interview is conducted.

The DAI of the RIO is responsible for determining asylum applications. The decision is drafted and signed by the officer responsible for the determination of the case. All decisions are verified *ex ante* by the Deputy Director of the Regional Centre for Asylum Procedures. The positive decisions are verified *ex ante* by officers of the Administrative and Judicial Asylum Procedures Unit (AJAPU).

The RIO hires its own employees in the procedure applicable to the public servants with the status of a police officer. The hiring process involves an interview and a written test. There is a 3-month training period. A trial hire period for eligibility officers is twelve months. The initial training is based on a mentoring plan developed by a more experienced officer. The AJAPU coordinates training activities for eligibility officers based on an annual training plan. Other training events are organized by external stakeholders and self-study is facilitated by an on-line application called *Flux*.

There are several types of internal instructions issued in writing by the RIO management. They include: dispositions of the Director General of RIO - assigning tasks, Internal Procedures (SMAI) - establishing standard operating procedures with regard to each type of asylum procedures stipulated by the Asylum Law; and Internal Guidelines (*Circulara*) - interpreting notions/elements of the Asylum Law definitions or establishing modes of operation with regard to the asylum procedure related aspects.

The RIO is required to decide on asylum claims within thirty days (regular procedure, with a possibility of extension); three days (accelerated procedure and border procedure); or five days (admissibility procedure for applications for access to a new asylum procedure). The deadlines for issuing the decisions are, as a rule, observed in practice.

Appeals against the decisions of the RIO on asylum claims are determined by the competent courts located in the areas where the Regional Centre which issued the decision is situated. The appeal has to be lodged within ten days of the delivery of the decision, and its lodging suspends the execution of the appealed decision. The court decision is final in accelerated and border procedures. In the regular procedure a further appeal can be filed to the Tribunal, acting as a second instance judicial authority. The deadline for such an appeal is five days.

¹⁰ Government Emergency Ordinance (GEO) no. 194/2002 was last modified in June 2011

The courts in the first judicial instance decide on the merits of the case and they can grant protection in their own right. The Tribunal, adjudicating in the second judicial instance, can either uphold the decision (whereupon it becomes final) or quash the decision and remit the case for re-examination by the first judicial instance.

In Romania, a two-fold audit of asylum cases is performed within the DAI. At the regional level it is done by the Deputy Directors of the Regional Centres for Asylum Procedures, who are in charge of the *ex ante* audit of all decisions issued in the respective Centres, and provide feedback to the decision-makers. At the central level, the AJAPU has tasks relating to the assurance of the refugee status determination procedure quality, including *ex ante* audit of positive decisions, periodical checks of the activity of the Regional Centres, which include the *ex post* audit of decisions and on-the-spot checks. AJAPU provides feedback to decision-makers and identifies the best practices through the quarterly evaluation.

The FDQ project methodology additionally encompassed parallel audits by the FDQ National Project Officer based on predetermined assessment forms. The parallel audit by UNHCR will be continued beyond the FDQ project through the Joint Quality Assessment Board with UNHCR presence. The FDQ project included training and coaching sessions such as the EAC “Drafting and Decision Making Module”, credibility assessment, grounds for granting subsidiary protection along with drafting internal guidelines on both latter issues.

Statistics for 2010 applications and acceptance rates can be found in Appendix I.

Between January and June 2011, there were 692 applications for international protection filed.

9. Slovakia

Slovakia has a single refugee status procedure based on the provisions of the 1951 Convention, the applicable provisions of the Constitution of the Slovak Republic, the Law on Asylum of 2002 and the Administrative Procedure Code, as well as the Decrees of the Minister of Interior of the Slovak Republic of 2007 and 2008.

The first instance asylum authority in the Slovak Republic is the Migration Office (MO) located in Bratislava. The MO is responsible for determining asylum applications, lodged with the competent police department. The application only indicates the basic reason for which the individual is seeking asylum and is immediately forwarded to the MO. The MO informs the asylum-seeker of his or her rights and duties, and an entry interview with the asylum-seeker is conducted. When necessary, a further in-merit interview is conducted.

The MO is required to decide on asylum claims within ninety days, sixty days (inadmissible or manifestly unfounded applications), or seven days (airport procedure).

The MO has a centralized structure, with a central office in Bratislava and a reception centre in Humenne. The interviewing and the decision-drafting is usually done by the same refugee status determination officer, with the draft decision being reviewed by the Director and Deputy Director of the Procedural Department (PD), before it is signed on behalf of the Director of the MO.

The MO hires its own employees in an open public competition. The eligibility rules are the same as the ones applicable to other civil servants. The hiring is usually done through a competition with a test and an interview. *Ad hoc* on-the-job trainings are organized. Several specific training activities have also been organized under the FDQ project.

The internal refugee status determination procedure guidance instruments were developed under the FDQ Project on key aspects of refugee status determination procedure. Internal guidelines on evidence

and credibility assessment, and on assessment of acts of persecution have been developed; as well, a checklist on the analysis of subsidiary protection has been finalized along with further materials on structuring the reasoning in decisions, and opening a refugee status determination interview.

Appeals against the decisions of the MO on asylum claims are determined by the Regional Court in Bratislava and the Regional Court in Kosice. The appeal has to be lodged within thirty days of the delivery of the decision, and its lodging suspends the execution of the appealed decision. The court decisions need to be issued within ninety days. Appeals against the judicial first instance decisions can be lodged with the Supreme Court of the Slovak Republic.

The appeal deadline with regard to decisions on cessation is twenty days and no suspensive effect is provided for by the law. In those cases, appeals are lodged with the Ministry of Interior.

The judicial review of the decisions issued by the MO is done with regard to the lawfulness of the decision, based on the facts of the case available to the MO at the moment of the issuance of the decision. The courts do not have the competency to grant asylum in their own right. The decision may either be upheld, whereupon it becomes final, or be quashed and remitted for re-examination, whereupon the MO is bound by the court's legal opinion on the case.

The internal quality assessment is performed in the framework of the FDQ project by the Quality Assessment Unit (QAU), comprising three senior decision-makers of the MO, along with the NPO and the National Project Manager (NPM). The QAU prepares written assessment forms to be used to audit the quality of asylum decisions and interviews; one audit mission was held in 2010, followed with a report on the audit findings, and another audit mission followed in 2011. The results of the monitoring were presented to the decision-makers in a training session and in the form of individual feedback. Apart from these audit missions, the QAU also audited jointly with the NPO and NPM several refugee status determination decisions and interviews monthly. Results from those regular audits were communicated to the Director of PD MO and to decision-makers as well.

Emphasis will be put on the transfer of the FDQ project's tools and instruments to the regular practice of the MO and their linkage to training and capacity-building activities organized by the MO. The MO foresees adopting the quality audit mechanism by an internal order of Director of MO regulating the quality audit of first instance asylum procedure.

Statistics for 2010 applications and acceptance rates can be found in Appendix I.





CHAPTER III:

OBSERVATIONS

UNHCR takes the view that commitment to the cause of excellence in asylum determination will enable EU Member States to achieve their goal of establishing a CEAS in line with international legal and best practices standards. Over the period of the Project, a variety of good practices have been identified as well as practices that require attention.

The following are observations which have arisen as a result of the FDQ Project. They are general points some of which apply in some countries and some of which do not. Two things should be noted: the list is not exclusive to the countries represented in the Project; very many of the difficult issues raised here apply in a great many countries throughout the world.

Secondly, because the level of sophistication amongst asylum adjudicating countries varies, so do the kinds of issues that arise. As a hypothetical example, an applicant may complain that he or she is being persecuted because the persecutor believes that he or she is a member of a national NGO dedicated to the protection of the rights of children. Decision-makers in some countries may not see any connection (nexus) to a 1951 Convention ground, even though such a scenario would likely fall under Membership of a Particular Social Group (MPSG). In another country a decision-maker may see the existence of a 1951 Convention ground but reject the claim because the applicant is not *actually* a member of that NGO, even though the QD¹¹ makes clear that what is relevant is what the persecutor believes. Further along the spectrum of analysis, a decision-maker may see the connection to MPSG but disagree that membership in this NGO is “*so fundamental to identity or conscience that a person should not be forced to renounce it*”.¹² In each of these cases there is a nexus issue involved but the level of sophistication at which it occurs differs. That is why the “drill-down” checklists introduced in the FDQ Project are so useful as there can be a checklist tailored to address each of these levels of difficulties.

The issues which follow are arranged into three categories which reflect the order of analysis at first instance. After identifying each issue, the problems seen and the steps taken to address them, are described.

¹¹ QD, Article 10 (2)

¹² QD, Article 10.

The Pre-Interview Stage

1. Failing to thoroughly Prepare for the Interview.

- a. **Issue:** a decision-maker (DM) should have been given a complete compendium of information for the applicant which should have been gathered at the registration stage. Without this information the DM will not be able to properly prepare a thorough interview. This leads to poor and inefficient questioning and often necessitates a second interview.
- b. **Problems seen:** frequently, the information gathered at the registration stage was insufficient and DMs were often not well prepared.
- c. **Solutions:** firstly, a **Registration Assessment Form** has been developed which outlines what information should be captured at the registration stage. Secondly, the Project has also produced a **File Preparation Checklist** to help the DM prepare.

The Interview

2. Failing to Gather the Facts at the interview.

- a. **Issue:** the entire asylum status determination system turns on how accurately and thoroughly the DM can gather the facts relevant to the applicant's claim. Article 4 of the QD makes it clear that the DM must thoroughly gather the facts in the claim and share the burden of doing so with the applicant.
- b. **Problems seen:** far too often, DMs failed to follow up on issues arising in the interview, relying instead upon a set of pre-determined questions which, once answered, ended the interview. The burden of gathering facts was also not shared effectively in many cases.
- c. **Solutions:** a **Protection Interview Checklist** has been developed to help the DM ensure that all the relevant issues are enquired into during the interview.

3. Not Confronting Applicants with contradictions, inconsistencies and omissions at the interview; this includes COI that runs counter to the applicant's claim where a DM intends to rely upon it in the decision.

- a. **Issue:** as noted in Article 4 of the QD, the DM has a duty to gather all the facts to the best of his or her ability. Confronting a contradiction or inconsistency helps resolve the factual issues. Therefore a DM must do so in order to obtain the facts of the claim.
- b. **Problems seen:** far too many DMs do not confront contradictions or inconsistencies. Failing to do so is, apart from anything else, unfair and violates the essential principle that an applicant has the right to be able to explain him or herself and meet the case against him or her.
- c. **Solutions:** training. The excellent work of the EAC in this regard is acknowledged. Project personnel and UNHCR in general have worked closely with EAC to share experiences.

4. Failing to ensure **Proper Interpretation** at the interview.

- a. **Issue:** if getting all the facts is the cornerstone of asylum adjudication then this can only be done where the interpretation accurately reflects all of what the applicant tells the interpreter.
- b. **Problems seen:** this is an area of considerable difficulty. Interpreters were observed answering their phones during interviews, paraphrasing testimony, doing the actual questioning, and even providing DMs with their own credibility analysis after the interview has been completed.
- c. **Solutions:** in several countries within the Project, a **Code of Conduct** was created and training was provided for interpreters. Adoption of UNHCR's own **Interpreter Review Sheet**, which should be filled in by the DM after the interview, was also encouraged.

The Written Decision

5. Failing to use **COI** appropriately.

- a. **Issue:** Article 4 (3) of the QD requires that DMs use COI. Given its importance to the determination of a claim it must be used carefully and precisely.
- b. **Problems seen:** some DMs fail to use COI at all notwithstanding the EU Directive requirement; some refer to COI but provide no cite; some simply adopt the negative parts of a COI report and ignore the positive parts without explaining why they prefer one over the other; some use old or biased sources; some use "general" COI – which may not address the applicant's particular circumstances – and preferring it to the specific testimony provided by an applicant.
- c. **Solutions:** the Project has adopted – with permission – the IARLJ's **Judicial Checklist for COI** analysis and use.

6. Not applying a **Standard of Proof** when analysing the facts in a claim.

- a. **Issue:** this is an issue of great concern across the world. While Common Law countries tend to use a standard of proof, many Civil Law countries do not. As a result, some countries' applicants are required to establish their claim at a very high threshold, whereas in others that threshold is far lower. With such a difference in standards that an applicant must meet, it will not be possible to establish a CEAS.
- b. **Problems seen:** the Project has unveiled a whole range of standards which DMs are requiring applicants to attain in order to establish the credibility of their assertions. They range from requiring an applicant to establish the truth of his claim from "beyond any doubt" through "on the balance of probabilities" to "a reasonable possibility". In some countries, some DMs indicated that they determine credibility by looking for an applicant's "sweaty palms", or his or her failure to look the DM in the eye while testifying.

- c. **Solutions:** given a lack of common standards in this area, it is difficult to address. One of the things we have introduced is a **Judges' Checklist** – a one page checklist which itemises in a logical fashion what a reviewing judge should look for when faced with a refugee status determination decision. UNHCR has produced a Note¹³ on standards of proof and indicated that for establishing the credibility of statements made by an applicant about past events the “balance of probability” is to be preferred as the most common test.

7. Failing to provide Reasoning for Conclusions reached in a decision.

- a. **Issue:** the APD, Article 9 (2) requires that reasons in fact and law be given:

Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

- b. **Problems seen:** along with gathering the facts, this is a constant source of difficulty. What we have often seen is a statement of the applicant's story, a statement of statutory law, some quoted COI, and then a conclusion such as: “For these reasons there is no connection to a Convention ground”. Missing is the connection of the various quoted elements to the details of the applicant's story; or, put another way, reasons.
- c. **Solutions:** the Project has provided many training seminars and developed a series of **Protection Decision Checklists**.

Apart from the above observations there are a couple of other worrisome trends which bear noting. These are what might loosely be called “Risk Aversion” and “Decision Aversion”.

Risk Aversion refers to the belief that people always attempt to minimize *physical* risk at any cost and that physical risk trumps all other emotional demands. This comes into play particularly where a DM is attempting to understand why a person fleeing persecution might have returned to the country of persecution. In some cultures such a return might be called for on the basis of a duty which – to the applicant – may be more important than his or her personal safety. An example might be the eldest male returning to his home on the death of his father. DMs need to be aware that this is an issue which requires cultural sensitivity.

Decision Aversion, on the other hand, has to do with an increasing desire on the part of some first instance DMs to have others make their decisions for them; this happens particularly where DMs refer questions of whether someone might be persecuted upon return to his or her country to their COI unit. A frequent criticism by DMs of COI units is that they do not give clear answers. Generally, it is not the COI that is unclear but the situation in the country itself. This means that the DM must make choices based upon a very careful analysis of both the COI *and the particular applicant's circumstances* rather than relying upon a COI unit to answer the question.

¹³ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice. Key Findings and Recommendations*, March 2010, Chapter 6, at: <http://www.unhcr.org/4ba9d99d9.html>.



CHAPTER IV:

THE ROAD AHEAD

“We shall not cease from exploration, and the end of all our exploring will be to arrive where we started and know the place for the first time.”¹⁴

The FDQ Project which concludes on September 30, 2011 brings to an end the multi-country EU project on quality improvement in asylum claim determination. But, as mentioned before, it has not been the only initiative underway. The European Asylum Curriculum (EAC), developed by the EU countries themselves, has been a great success. It has brought the practical realities of asylum adjudication into the classroom. The European Asylum Support Office (EASO) will inherit this valued program and enlarge upon it.

The FDQ Project has brought to light the similarity of many challenges that need addressing across countries. The critical question becomes “How best to remedy these problems?”. There has been no shortage of training opportunities – and money provided for them – available to decision-makers across the EU to help improve asylum claim determination. What is needed as we go forward is a commitment to excellence and a focus on the critical areas of asylum claim determination. It is not the esoteric areas that require great focus but the central areas – what is a “nexus”, how do we evaluate credibility in a claim, what is COI and how do we use it, what constitutes “reasoning” in a decision, what is the role of an interpreter?

As the poet T.S. Eliot tells us in the above quote, we need to return to the basics and focus on them and once we have done so we will indeed know the concepts.

¹⁴ T. S. Eliot; Little Gidding



APPENDIX I : 2010 EU ASYLUM STATISTICS

Source: UNHCR Global Trends*

COUNTRY	Decision granting Ref. status	Other Positive Decisions	Total Positive Decisions	% Ref. Status	% Other Positive Decisions	% -ALL Positive Decisions
Austria	2977	1749	4726	16.5	9.7	26.2
Belgium	2740	809	3549	17	5	22
Bulgaria	20	118	138	3.8	22.6	26.4
Cyprus	31	395	426	1.3	16	17.3
Czech Republic	125	104	229	20.9	17.5	38.3
Denmark***	659	517	1176	21.2	16.6	37.8
Estonia***	10	5	15	25.0	12.5	37.5
Finland	181	1603	1784	6.2	54.8	61.0
France**	4081	1015	5096	10.8	2.7	13.5
Germany	6781	2347	9128	19.2	6.7	25.9
Greece	60	36	96	1.7	1.1	2.8
Hungary	74	173	247	8.3	19.4	27.6
Ireland	24	2	26	1.5	0.4	1.9
Italy ***	1617	1463	3080	16.0	14.5	30.5
Latvia	7	18	25	13.5	34.6	48.1
Lithuania	1	14	15	0.6	7.8	8.4
Luxemb.	55	14	69	17.1	4.4	21.5
Malta	44	166	210	13.3	50.3	63.6
Netherlands***	812	7191	8003	4.6	40.9	45.4
Poland	82	195	277	4.3	10.3	14.6
Portugal	6	51	57	10.5	89.5	100
Romania	89	34	123	12.0	4.6	16.6
Slovakia	15	55	70	6.5	23.8	30.3
Slovenia	21	2	23	63.6	6.1	69.7
Spain	245	368	613	10.9	16.3	27.2
Sweden	2020	7039	9059	8.5	29.4	37.9
UK****	4415	1980	6395	17.5	7.8	25.3
TOTAL	27192	27463	54655			

* Recognition rates are calculated as a percentage of decisions on the merits, that is, excluding "otherwise closed" cases. All recognition rates are calculated based on first instance decisions with the exception of Austria and Romania which include both first instance and appeals. For Germany, the rate is based on new applications only.

** For France, otherwise closed does NOT include Dublin referrals, which are not separately reported to UNHCR.

*** For Denmark, Estonia, Italy and Netherlands, no figures are available for otherwise closed cases.

**** UK figures are rounded to nearest five.

Otherwise Closed	% Otherwise closed	Rejection on Merits	% Rejection on Merits	Total Decisions	Applied During 2010	COUNTRY
2512	12.2	13290	73.8	20528	11012	Austria
1568	9.0	12592	78.0	17709	21755	Belgium
285	35.3	385	73.6	808	1025	Bulgaria
173	6.0	2032	82.7	2631	3156	Cyprus
430	41.9	368	61.6	1027	979	Czech Republic
N/A	N/A	1937	62.2	3113	4965	Denmark***
N/A	N/A	25	62.5	40	30	Estonia***
2912	50.0	1139	39.0	5835	4018	Finland
122	0.3	32571	86.5	37789	48074	France**
5121	12.7	26136	74.1	40385	41332	Germany
1326	27.8	3348	97.2	4770	10273	Greece
1492	62.6	645	72.3	2384	2104	Hungary
717	35.0	1309	98.2	2050	1939	Ireland
N/A	N/A	7016	69.5	10096	10052	Italy ***
8	13.3	27	51.9	60	61	Latvia
194	52.2	163	91.6	372	373	Lithuania
198	38.2	252	78.5	519	744	Luxemb.
10	2.9	120	36.4	340	144	Malta
N/A	N/A	9577	54.5	17580	13333	Netherlands***
2892	60.4	1617	85.4	4786	6534	Poland
90	61.2	0	0	147	160	Portugal
156	17.4	618	83.4	897	887	Romania
377	62.0	161	69.7	608	541	Slovakia
172	83.9	10	30.3	205	246	Slovenia
129	5.4	1638	72.8	2380	2744	Spain
2749	10.3	14841	62.1	26649	31823	Sweden
4400	14.8	18895	74.7	29690	22090	UK****
28033		150712		233400	240394	TOTAL

Further Developing EU Asylum Quality

A multi-phase project for Southern and Central Europe

The Further Developing Asylum Quality project (FDQ) in 2010-11 has examined and developed quality assurance mechanisms in the asylum procedures of selected Member States: Bulgaria, Cyprus, Greece, Hungary, Italy, Poland, Portugal, Romania and Slovakia. It has involved the assistance of the asylum authorities of Austria, Germany and the United Kingdom who have provided good practice advice.

The objective has been to improve the quality of asylum procedures by building the capacity of the asylum authorities responsible for examining and taking decisions on asylum applications at first and second instances, and to ensure the effective and sustainable functioning of national Quality Assurance Mechanisms (QAMs). In this way, the project has supported, through practical co-operation, the building of effective and sustainable internal review mechanisms that will regularly and objectively maintain good quality standards in EU Member States' asylum systems.



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