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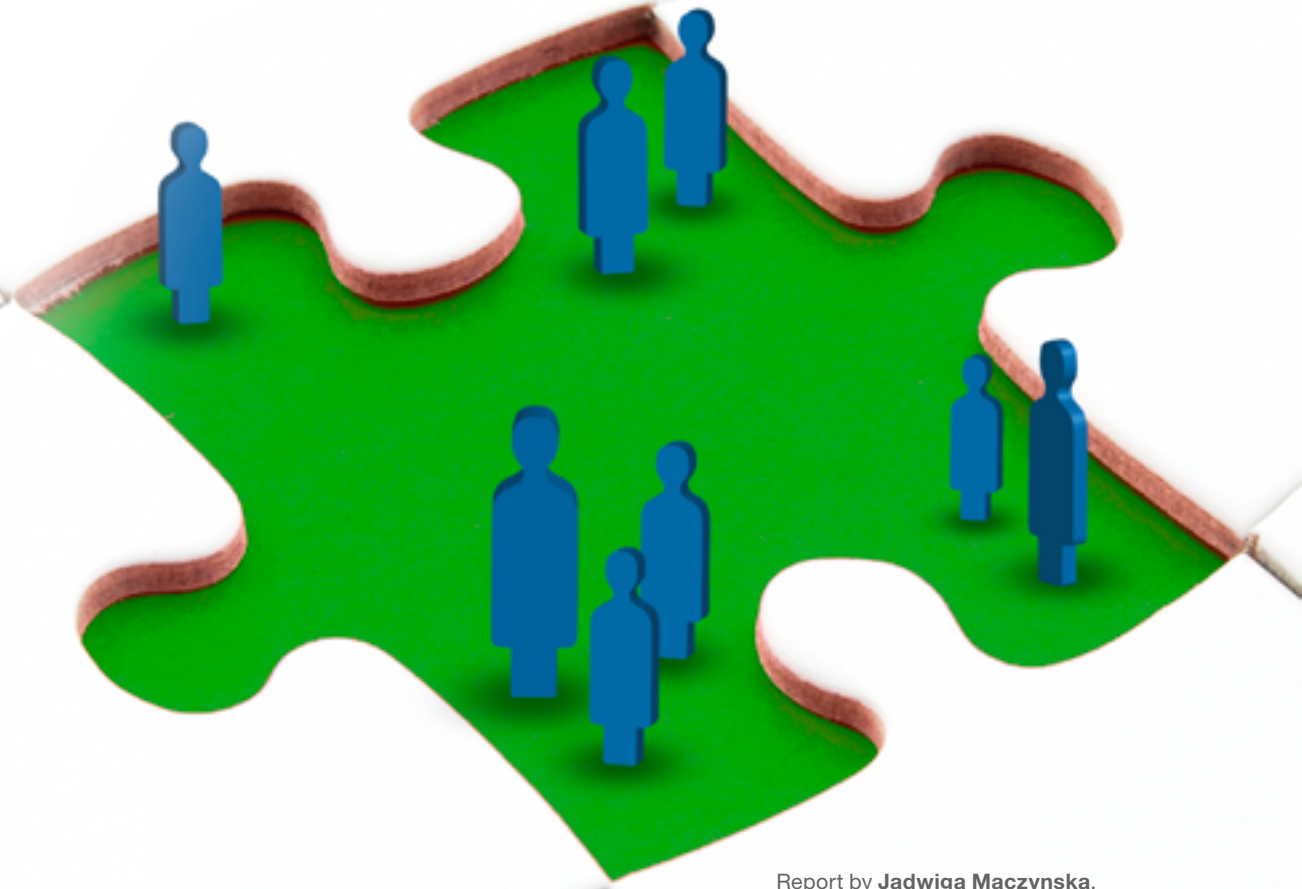
The Internal Flight Alternative Practices

A UNHCR Research Study in Central European Countries



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1. Introduction

From October to December 2011, the United Nations High Commissioner for Refugees (UNHCR) Regional Representation for Central Europe (RRCE) undertook the *Study on the Practice on the Internal Flight Alternative in Central European Countries.* The present Report presents and analyses the results of the Study and aims to contribute to the promotion of high standards in the asylum procedures of the seven countries of the region: **Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovak Republic** and **Slovenia**. The Study is in line with UNHCR's mandate and the agency's supervisory role, as defined in Article 35 of the 1951 Geneva Convention Relating to the Status of Refugees (hereinafter "the 1951 Convention") and Article II of the 1967 Protocol Relating to the Status of Refugees (hereinafter "the 1967 Protocol)[1] and Article 8 of the UNHCR Statute.[2]

The Study analyses the concept of Internal Flight Alternative (IFA)[3] as practiced in Central Europe against benchmarks and standards prescribed in the European Union asylum *acquis,* the UNHCR guidance, and advocacy statements of the international civil society.

To reflect the regional character of the Study, a corresponding uniform methodology was adopted. The methodology included an in-depth analysis of national IFA practices through a detailed examination of sampled asylum decisions and supplementary materials issued in 2010 and 2011, an assessment of the findings in light of international standards put forward by the European Union in its legislation and promoted by UNHCR as well as recommendations and practical guidance.

An important element of the Study is a mutually corresponding analysis of national legal provisions of material law relevant to IFA, and respective asylum procedural standards to assess their joint impact on the quality of the decision-making process.

The present Report summarises the findings of the Study at the regional level, providing comprehensive information on the elements and scope of the Study as well as an overview of the national legal and policy framework. This Report assesses the scope and context of the application of IFA against selected quality benchmarks, and analyses the judicial review of IFA. The Report closes with concrete recommendations for better practice.

In addition, this Report aims to provide in-depth case studies of key evolving IFA concepts in contemporary asylum law, to provide all stakeholders with more insight into the asylum procedures in the region. This should also support on-going targeted advocacy on the application of the EU asylum *acquis* with the aim to ensure international protection for those in need.

The Study samples 609 asylum decisions invoking IFA, issued in the seven countries of the Central European region (thus one-fourth of the EU Member States). Many of the findings of the Study reach beyond the sole application of IFA, touching upon more comprehensive issues and underlying challenges of a general nature. Coming out in January 2012, little more than a month after the adoption of the Recast EU Qualification Directive (hereinafter "Recast QD"), which introduced a revised provision on IFA, the Study is intended to contribute to extensive advocacy to ensure that the Recast QD is transposed into national legal systems in an appropriate manner.

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1 Convention of 28 July 1951 Relating to the Status of Refugees, Article 35: *Co-operation of the national authorities with the United Nations 1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall* ***in particular facilitate its duty of supervising the application of the provisions of this Convention.*** [emphasis added] *2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations,* ***the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:(a) The condition of refugees, (b) The implementation of this Convention, and; (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.*** [emphasis added]. The text of Article II of the Protocol of 31 January 1967 Relating to the Status of Refugees is equivalent to that of Article 35 of the Geneva Convention. Full text of both documents available at: http://www.unhcr.org/3b66c2aa10.html.

2 Article 8 of the UNHCR Statute: *The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by (a) Promoting the conclusion and ratification of international conventions for the protection of refugees,* ***supervising their application and proposing amendments thereto*** [emphasis added]; *(b)* ***Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees*** [emphasis added] *and to reduce the number requiring protection; (c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities, (d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States; (e) Endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement; (f)* ***Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them*** [emphasis added] *(g) Keeping in close touch with the Governments and inter-governmental organizations concerned; (h) Establishing contact in such manner as he may think best with private organizations dealing with refugee questions; (i) Facilitating the co-ordination of the efforts of private organizations concerned with the welfare of refugees.* Full text of UNHCR Statute available at: http://www.unhcr.org/3b66c39e1.html.

3 The concept of Internal Flight Alternative is often referred to as "internal protection (alternative)" or "internal relocation alternative." For reasons of clarity and ease of reference, as done in former UNHCR reports on the subject, the present report uses the term "Internal Flight Alternative" (IFA). This remains in line with the *UNHCR Master Glossary of Terms,* defining IFA as a factual determination that an asylum seeker could have avoided persecution in his/her country of origin by relocating to another part of the same country. *UNHCR Master Glossary of Terms,* June 2006, Rev.1, http://www.unhcr.org/refworld/docid/42ce7d444.html. The term is used broadly to describe all situations involving relocation to avoid persecution or harm or to gain protection.

2. Executive Summary

UNHCR Regional Representation for Central Europe (RRCE) commissioned research on the practice on IFA in Central European countries, covering the administrative and judicial instances conducting asylum practice in Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia. Some 609 decisions issued in 2010 and 2011 covering 42 countries of origin were analysed under a uniform methodology and along common guiding principles to produce a set of seven national reports accompanied with practical guidance materials. The Study was conducted from October to December 2011.

The concept of IFA – also referred to as "internal protection alternative" or "internal relocation alternative" – represents a factual determination that an asylum seeker could access meaningful protection in his/her country of origin by relocating to another part of the same country, instead of relying on international protection. The concept is absent from the 1951 Convention and the 1967 Protocol. UNHCR's primary position is that the possibility of IFA is relevant to asylum procedures only in certain limited cases. Even when it is relevant, its application depends on full consideration of all aspects of the refugee claim. An inappropriate application of IFA may result in the improper denial of access to asylum procedures or *refoulement,* to the detriment of the people in need of international protection.

The international standards used in the analysis encompass European Union legislation, in particular the Qualification Directive (hereinafter "QD") and the Recast QD of December 2011, and UNHCR guidelines on IFA, in particular the 2003 *UNHCR Guidelines on International Protection: "Internal Flight or Relocation Alternative."*

The Report centers on providing comprehensive information on the national IFA legal framework, policy and doctrine. The quality of the practical application of IFA is analysed in detail and assessed in light of international standards. A separate section deals with the judicial practice of IFA.

The main findings of the Report:

- All countries in the region recognize the concept of IFA in their national asylum legislation;
- National guidance on IFA in terms of policies, doctrine and case law and available training is rather limited;
- IFA is most often used as a secondary argument to deny a claim, supporting the established lack of need for international protection. It is rarely used to refuse protection that would otherwise be granted. At times, IFA is applied conditionally, in cases where the credibility of the applicant or presence of persecution or serious harm is disputed. Where these questions are resolved to the benefit of the applicant, IFA would still be applicable;
- Although the legal frameworks for IFA in the countries surveyed do not raise major concerns, the practice reveals that IFA analysis in the region is often superficial and fragmentary. Incorrect applications of the IFA concept are often found in asylum decisions, possibly leading to confusion as to the actual motives behind the decision reached in individual cases;
- UNHCR guidance is invoked to a limited extent or used selectively to support specific statements made by the asylum authorities in asylum decisions (particularly, UNHCR Eligibility Guidelines on asylum seekers from given countries/situations);
- Standards of relevance and the reasonableness of IFA, as well as standards of analysis of general circumstances in the country of origin and the personal circumstances of the applicant, are not comprehensively applied. The analysis often lacks an indication of a concrete location for IFA, casting doubt on the thoroughness of any further examination;
- A significant lack of uniformity was revealed both within the asylum practice of each country and region-wide, with little dissemination of good practices;
- The analysis of IFA during asylum interviews is often performed as a matter of fact, without an informed opportunity for the applicant to comment or rebut it, if needed;
- The Country of Origin Information (COI) used is not IFA-specific and thus the analysis is overly focused on the past experiences of the applicant, and is not forward-looking or prospective; and
- The judiciary often does not address the analytical gaps of the administrative (first instance) level. Alongside positive examples of comprehensive analysis, confusion regarding basic concepts and notions can be observed.

The Report provides a set of 15 regional recommendations, summarised under the following headings:

1. Appropriate and full transposition of the EU asylum *acquis,* including on the IFA concept;

2. Full application of all statutory norms and guarantees in practice;

3. Application of IFA in an in-merit procedure only;

4. IFA only used if and when applicable, in a fully transparent manner;

5. Forward-looking focus of IFA analysis;

6. Accessibility of IFA taken into consideration irrespective of the agent responsible for the issuance and execution of the decision on expulsion;

7. COI fully up to standards and IFA-specific;

8. Standards of evidence in asylum proceedings applied to ensure individual and participatory analysis of IFA;

9. Effective use of asylum interviews to determine IFA;

10. Promotion of appropriate standards of IFA analysis linked with capacity-building activities among asylum officers and decision makers;

11. Enhanced access to UNHCR guidance and feedback on its practical application;

12. Comprehensive response through existing mechanisms promoting quality asylum procedures;

13. Uniformity of practice in similar IFA cases ensured;

14. Exploration of external specialist expertise on interdisciplinary elements of IFA analysis; and

15. Full UNHCR involvement in practice monitoring and targeted advocacy.

3.1. UNHCR Operation in Central Europe

UNHCR-RRCE was established in 2005 to coordinate UNHCR operations in Hungary, Poland, Slovakia and Slovenia. Romania and Bulgaria joined the region in 2008 and the Czech Republic in 2009. RRCE has four main regional goals, one of which is provision of support, advice and advocacy to ensure that asylum procedures are fair and efficient, and that asylum legislation and the work of asylum authorities are in accordance with international legal standards.[4] This Study is directly linked to this regional goal.

All project countries are State Parties to both the 1951 Convention and the 1967 Protocol.[5] All of them are Member States of the European Union,[6] bound by the provisions and framework of the EU asylum *acquis* and the Common European Asylum System, which they fully implement without any opt-out mechanisms.

3.2. General Institutional and Legal Framework for Asylum in Central Europe

Each of the countries in the region has an established asylum system, defined by national law. The asylum procedures are conducted in the first instance by administrative authorities[7] (except in Poland, where the administrative stage of the asylum procedure consists of two stages[8]). Appeals against negative administrative decisions may be lodged with a judicial body.[9] Judicial decisions of the first instance may be subject to cassation claims to a higher court.[10]

All countries in the region maintain a single uniform asylum procedure, whereby applicants for refugee status who are found to lack sufficient grounds for that status, are *ex lege* considered for subsidiary protection and other forms of permission to remain in the territory.[11] In some countries, the application for international protection is filed with an authority other than the authority determining the application at the first instance,[12] with varying levels of detail required at this stage from the applicant, which may in turn affect the analysis and examination of the claim. All countries maintain a procedure to establish whether the respective country is responsible for the determination of the asylum application under the Dublin II Regulation, and this procedure is performed either prior to the initiation of an asylum procedure or at the first stage.

4 Comprehensive information on the mission statement and operation of UNHCR RRCE can be found at: http://www.unhcr-centraleurope.org.

5 The countries of the region acceded to the Geneva Convention and the New York in late eighties/early nineties of the 20th century: **Bulgaria** on 12 May 1993, **Czech Republic** on 11 May 1993 (by succession), **Hungary** on 14 March 1989, **Slovakia** on 4 February 1993 (by succession), **Slovenia** on 6 July1992 (by succession), **Poland** on 27 September 1991, **Romania** on 7 August 1991.

6 The Czech Republic, Hungary, Poland, Slovakia and Slovenia acceded to the European Union in 2004, Bulgaria and Romania in 2007. All countries are fully implementing the EU asylum *acquis* and the Common European Asylum System.

7 The following administrative authorities are competent to determine applications for asylum in the countries of the region: **Bulgaria** - the President of the State Agency for Refugees with the Council of Ministers of the Republic of Bulgaria, **Czech Republic** - Department of Asylum and Migration Policy of the Ministry of Interior, **Hungary** – Office for Immigration and Nationality, **Poland** – Head of the Office for Foreigners, **Romania** - Directorate for Asylum and Integration of the Romanian Immigration Office, **Slovakia** – Migration Office of the Ministry of Interior, **Slovenia** – Migration and Integration Directorate of the Ministry of Interior.

8 The Refugee Board determining appeals against negative decisions by the Head of the Office for Foreigners and its decisions being, in turn, subject to appeal before the Regional Administrative Court in Warsaw. The Refugee Board conducts a *de novo* procedure, i.e., an independent determination of the case. The Board may nullify the first instance decision and send it back to Head of the Office for Foreigners for reconsideration, grant either form of international protection or uphold the first instance decision.

9 **Bulgaria** - Administrative Court of Sofia City, Administrative Court of Sliven, **Czech Republic** – the Regional Court, **Hungary** - Budapest Metropolitan Court, the Csongrád County Court in Szeged, the Hajdú-Bihar County Court in Debrecen, the Győr-Moson-Sopron County Court in Győr and the Baranya County Court in Pécs, **Romania** - Judecătoria sectorului 4 – Bucharest, Judecătoria Galati, Judecătoria Radauti, Judecătoria Baia Mare, Judecătoria Giurgiu and Judecătoria Timisoara.

10 **Czech Republic** - Supreme Administrative Court, **Poland** – Supreme Administrative Court, **Bulgaria** – Supreme Administrative Court, **Romania** – the respective local Tribunal,

11 E.g., **Bulgaria** – humanitarian status, **Hungary** and **Poland** – tolerated stay permit.

12 **Bulgaria** – an asylum application can be lodged before any administrative authority and is later transferred as appropriate, **Czech Republic** - the Immigration Police (in specific case an application can be filed directly with the Ministry of Interior), **Poland** – the Border Guard, **Romania** – (alongside the structures of RIO itself) the Border Police, the Romanian Police or the Units of the National Administration of Penitentiaries (subordinated to the Ministry of Justice), **Slovakia** – the Police.

4. Methodology of the Study

The Study is a desk research exercise encompassing:

- collection of a pool of asylum decisions;[13]
- creating a sample for analysis through identification of asylum decisions that refer to the IFA concept;
- detailed analysis of the sample and its evaluation against a pre-determined set of criteria and guiding principles for analysis provided through the regional level in a uniform format for all countries;
- drafting national reports to present the Study findings at the national level, according to a uniform template provided through the regional level, including recommendations of better practice and proposed follow-up activities;
- drafting national practical guidance materials, aimed at a presentation of a recommended course of action in applying IFA in the national context, based on the findings of the Study, with due consideration for identified existing gaps and good practices; and
- drafting the present Regional Report to put forward an overall analysis of the Study findings in a regional advocacy context.

Depending on the national context, the Study also includes capacity-building exercises. A professional development day[14] was organized in Bulgaria whereby case officers of the State Agency for Refugees were acquainted with the findings of the Study and a comprehensive presentation of various aspects of IFA was provided and discussed with the participants. In Romania, the findings of the Study at the court level were presented to judges adjudicating in asylum matters during an annual judges meeting, where the UNHCR Representation in Romania was present as a co-facilitator.

The analysis and evaluation as well as reporting at the national level was performed by contracted external researchers and closely coordinated and supervised by UNHCR-RRCE. A working meeting was organized upon the finalization of the analysis and evaluation activities to discuss the initial findings and fine-tune the reporting format.

In recognition of the diversity within the volumes of asylum applications and the structure of asylum-seeking populations in the countries, the number and types of decisions selected for analysis in each of the countries was designed to capture the characteristics of the asylum-seeking population in the country. Due to significant differences in the number of asylum applications filed in the countries of the region and their fluctuations over a period of time, the Study does not aspire to provide a quantitative analysis of a representative sample, but rather a qualitative analysis of a comprehensive random sampling of asylum decisions. The findings of the Study therefore, do not provide a statistical examination of the frequency of applying IFA, but rather an overview of identified issues and practices. From the pool of asylum decisions collected for the purposes of the Study, a sampling of 609 decisions was selected, consisting of asylum decisions issued at various levels in the project countries, where a reference to the concept of IFA was identified.

The sampled decisions proved to cover a wide range of 42 countries of origin, including (in alphabetical order): Afghanistan, Algeria, Armenia, Azerbaijan, Bangladesh, Belarus, Bosnia and Herzegovina, Burundi, Cameroon, China, Democratic Republic of Congo, Egypt, Ethiopia, Georgia, India, Iran, Iraq, Ivory Coast, Kazakhstan, Kosovo, Kyrgyzstan, Lebanon, Moldova, Mongolia, Nepal, Nigeria, Pakistan, Palestine, Russian Federation, Senegal, Serbia, Sierra Leone, Sri Lanka, Sudan, Syrian Arab Republic, Tanzania, Togo, Turkey, Ukraine, Uzbekistan, Vietnam and Yemen.

The Study takes into account the existing research in the field,[15] most notably the ELENA/ECRE 1998 study on the concept of the Internal Protection Alternative,[16] as well as important publications in legal journals[17]. IFA-relevant findings of studies of a more general nature were also taken into account.[18]

The case law analysis focused on the jurisprudence of the European Court of Human Rights, primarily the landmark decision relevant to the concept of IFA passed in the case of *Salakh Sheek*.[19]

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13 In Romania and Hungary the Refugee Status Determination (RSD) interview records concerning the sampled cases were also analysed as supplementary material.

14 A professional development day is an in-house capacity-building activity, including presentations and discussions on current issues in asylum law. This practice was initiated in the State Agency for Refugees (SAR) in the framework of the ERF/UNHCR funded "Further Developing Asylum Quality in the European Union" project (2008-2010) and is currently continued by SAR on a regular basis.

15 Asylum Aid, *Relocation, Relocation. The impact of internal relocation on women asylum seekers,* November 2008, http://www.unhcr.org/refworld/docid/4933cab72.html.

16 ELENA (European Legal Network on Asylum)/ECRE (European Council on Refugees and Exiles), *Research Paper on the Application of the Concept of Internal Protection Alternative* (London, November 1998), updated as of autumn 2000, http://www.unhcr.org/refworld/pdfid/3ae6b3514.pdf.

17 James C. Hathaway and Michelle Foster, *Internal protection/relocation/flight alternative as an aspect of refugee status determination,* in: UNHCR *Refugee Protection in International Law. UNHCR Global Consultations on International Protection,* ed. by Erika Feller, Volker Turk and Frances Nicholson, (Cambridge University Press 2003), pp. 357-417, http://www.unhcr.org/419db69d4.pdf.; Ninette Kelley "Internal Protection/ Relocation/ Flight Alternative: Is It Reasonable?" *International Journal of Refugee Law,* vol. 14 no.1 (Oxford University Press 2002), pp. 4-44., abstract available at: http://ijrl.oxfordjournals.org/content/14/1/4. abstract; Ruth Khalastchi *The Internal Flight Alternative: Additional Hurdle or Realistic Option? The United States' Approach* October 2001, http://www.icva.ch/doc00000447.html.

18 UNHCR *Improving Asylum Procedures. Comparative Analysis and Recommendations for Law and Practice* March 2010, pp. 14 and 67, http://www.unhcr.org/4ba9d99d9.html; ECRE/ELENA *The Impact of the EU Qualification Directive on International Protection* October 2008, pp.17-19, *http://www.unhcr.org/4ba9d99d9.html*; UNHCR Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum Seekers Fleeing Indiscriminate Violence, 27 July 2011, pp. 78-85, http://www.unhcr.org/refworld/docid/4e2ee0022.html.

19 Case of *Salah Sheekh v. The Netherlands,* Council of Europe: European Court of Human Rights, 11 January, 2007, http://www.unhcr.org/refworld/docid/45cb3dfd2.html.

5. Applicable International Quality Standards in the Practice of Internal Flight Alternative

The focus of the analysis derives from the fact that the mistaken application of IFA may result in the improper denial of access to asylum procedures or in violating the principle of *non-refoulement.*[20] UNHCR points out that the term itself *"is not favoured by UNHCR as it is often used to limit access to status determination procedures or to deny refugee status. UNHCR's position is that the possibility of internal relocation is relevant to status determination only in certain limited cases. Even when it is relevant, its application will depend on a full consideration of all aspects of the refugee claim."*[21]

As the present Report draws upon a sampling of asylum decisions issued in 2010 and 2011, the quality benchmarks applied in the present analysis stemmed from two primary sources at the time: the standards prescribed by the European Union in the QD[22] and the respective UNHCR IFA Guidelines,[23] elaborating on the general statement included in the UNHCR Refugee Status Determination (RSD) Handbook.[24]

It should be noted that after the analysis for the present Study had been completed, the Recast QD[25] was adopted. To reflect on the amendments brought about by the Recast QD, sub-section 5.1 of this Report discusses the EU legal framework as of the time of the Study, tying in the UNHCR guidance on specific elements of that legal framework and beyond, whereas sub-section 5.2 looks at the amendments brought about by the Recast QD and UNHCR comments provided during the legislative process of the of the passage of the Recast QD.

5.1 The Framework of the EU Qualification Directive and Respective UNHCR Guidance

At the time this Study was completed, the QD remained the primary source of legal standards relevant to IFA analysis at the EU level, having been transposed into national asylum systems of all countries covered by the present Study and governing their practice.

Article 8 of the QD reads as follows:

Article 8
Internal protection

1. *As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.*
2. *In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.*
3. *Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.*

[20] UNHCR Executive Committee emphasized the link and possible impact of the concept of IFA in its Conclusion No. 87 (L) of 1999, where it was stated that the Committee *(j) reiterates that the institution of asylum is of crucial importance to the international protection of refugees; re-emphasizes the importance of ensuring access to asylum procedures; recalls Conclusions No. 15 (XXX) of 1979 and No. 58 (XL) of 1989 on refugees without an asylum country and irregular movement of asylum seekers; and affirms, in this regard, that notions such as "safe country of origin", **"internal flight alternative"*** [emphasis added] *and "safe third country", should be appropriately applied so as not to result in improper denial of access to asylum procedures, or to violations of the principle of non-refoulement,"* UNHCR Thematic Compilation of Executive Committee Conclusions, June 2011 (sixth edition) p. 15, http://www.unhcr.org/refworld/docid/4e8006a62.html. UNHCR also stated, *"The use of this notion to deny access to refugee status determination, rather than situating it within the framework of the status determination analysis, is wrong in UNHCR's view, and has the potential seriously to distort refugee law."* UNHCR Position Paper Relocating Internally as a Reasonable Alternative to Seeking Asylum (The So-Called "Internal Flight Alternative" or "Relocation Principle") February 1999, paragraph 2, http://www.unhcr.org /3b83c6e64.pdf.

[21] Comments to the definition of *"Internal Flight Alternative (or: "Relocation Principle")"* in *UNHCR Master Glossary of Terms,* June 2006, Rev.1, p.13, available at: http://www.unhcr.org/refworld/docid/42ce7d444.html.

[22] *Council Directive 2004/83/EC of 29.4. 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* (published in the Official Journal of the European Union L 304/12 of 30.9.2004). Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083: EN:HTML. Referred to throughout the present report as: **QD**.

[23] *Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (HCR/GIP/03/04 of 23.7.2003). Available at: http://www.unhcr.org/3f28d5cd4.html. Referred to throughout the present report as: **UNHCR IFA Guidelines**

[24] UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (UNHCR 1979, re-edited Geneva, January 1992, HCR/IP/4/Eng/REV.1), paragraph 91. Available at: http://www.unhcr.org/refworld/docid/3ae6b3314.html. Referred to throughout the present report as: **UNHCR RSD Handbook**.

[25] *Directive 2011/95/EU of the European Parliament and of the Council of 13.12. 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)* (published in the Official Journal of the European Union L 337, of 20.12.2011). Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:01:EN:HTML. Referred to throughout the present report as: **Recast QD**.

UNHCR has provided specific comments on the QD.[26] While generally supportive of the language of the QD, UNHCR has emphasized the need to first establish whether the determination of the relocation alternative is relevant to the individual case. If not, there is no need to undertake consideration of IFA (e.g., with regard to state agents of persecution). Also, UNHCR points to the necessary consideration of a safe and reasonable relocation, without undue hardship to the applicant, whereas the exact language of the EU provisions refers to "reasonableness", without additional elaboration. A major discrepancy between the UNHCR guidance and the QD arose with regard to the proposed applicability of internal relocation or flight alternative in cases where return to the proposed part of the country is not possible due to "technical obstacles to return."

The main international standards of IFA analysis prescribed by the two sources (UNHCR guidance and the QD) can be summarised in the following elements:

- **The need to ensure the relevance of the IFA concept, as a prerequisite for its application.** This was evident from the formulation of Article 8 (1) of the QD stating; *"if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm," which* implies that the presence of a well-founded fear was established with regard to other parts of the country of origin. The UNHCR comment stated to the same effect that *"in analyzing the applicability of an internal relocation alternative, it has to be determined first whether the issue is of any relevance to an individual case. Otherwise there is no need to examine whether or not the proposed area would be a reasonable alternative."*

- **Identification of a particular "safe" location within the country of origin;** Article 8 of the QD employed the notion of "a part of the country of origin" stating in paragraph 1 that *"as part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if* ***in a part of the country of origin*** [emphasis added] *there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in* ***that part of the country*** [emphasis added] and further in paragraph 2 that *"In examining whether* ***a part of the country of origin*** [emphasis added] *is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant."* Concurrently, UNHCR IFA Guidelines on p. 3 refer to "a particular area" stating that *"if internal flight or relocation is to be considered in the context of refugee status determination, a particular area must be identified."*

- **Establishing that in this particular location there is no well-founded fear of being persecuted or, respectively, no real risk of suffering serious harm.** The QD made this standard explicit in paragraph 1 stating that: *"as part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin* ***there is no well-founded fear of being persecuted or no real risk of suffering serious harm*** [emphasis added] *and the applicant can reasonably be expected to stay in that part of the country."* UNHCR IFA Guidelines on p. 3-5 define the relevance of IFA in a more complex manner through the recommended examination of the following criteria: practical, safe and legal accessibility of the location to the applicant; the agent of persecution being a state or a non-state agent; exposure to a risk of being persecuted or other serious harm upon relocation (including the original or any new form of persecution or other serious harm).

- **Establishing that the applicant can reasonably be expected to stay in that part of the country.** The QD stated to that effect in Article 8 (1): *"As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and* ***the applicant can reasonably be expected to stay in that part of the country*** [emphasis added]. The notion of reasonableness is also indicated in the UNHCR Handbook in paragraph 91, stating: *"The fear of being persecuted need not always extend to the whole territory of the refugee's country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances* ***it would not have been reasonable to expect him to do so*** [emphasis added]." On p. 6-7, the UNHCR IFA Guidelines further elaborate on the elements of the reasonableness analysis, including assessment of personal circumstances of the applicant, past persecution, safety and security, respect for human rights and economic survival, all elements linked to the question of whether the applicant, in the context of the country concerned, can lead a relatively normal life without facing undue hardship.

[26] *UNHCR Annotated Comments on the EC Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (OJ L 304/12 of 30.9.2004)* (January 2005). Available at: http://www.unhcr.org/refworld/docid/4200d8354.html. Referred to throughout the present report as: **UNHCR Annotated Comments on Qualification Directive.** An insight into the implementation of the QD into national legal systems is provided in UNHCR *Asylum in the European Union. A Study of the Implementation of the Qualification Directive,* November 2007, available at: http://www.unhcr.org/ refworld/docid/473050632.html.

- **Demonstrating due consideration of the general circumstances prevailing in that part of the country at the time of taking the decision and of the personal circumstances of the applicant at the time of his/her decision.** The QD made this requirement evident in Article 8 (2), stating: *"In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the **general circumstances prevailing in that part of the country and to the personal circumstances of the applicant*** [emphasis added]."

Additional elements of the quality of IFA application can be derived from the Preamble to the QD and its provisions additional to Article 8, such as:

- **The relevance of other human rights instruments applicable in the context.** Recital (25) of the Preamble to the QD specifies that *"It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognized as eligible for subsidiary protection. Those criteria should be drawn from **international obligations under human rights instruments and practices existing in Member States**"* [emphasis added].

- **Specific situation of minor applicants and their best interest, including the assessment of the fear of persecution/serious harm and the consequences of possible relocation.** Recital (25) of the Preamble to the QD states that *"the 'best interests of the child' should be a primary consideration of Member States when implementing this Directive" and "It is necessary, when assessing applications from minors for international protection, that Member States should have regard to child-specific forms of persecution."*

Additional elements of the quality of IFA application can be found in UNHCR Guidelines, which prescribe specific procedural requirements for IFA analysis, such as:

- **Appropriate distribution of the burden of proof.** UNHCR IFA Guidelines state in paragraph 33: *"The use of the relocation concept should not lead to additional burdens on asylum seekers. The usual rule must continue to apply, that is, the burden of proving an allegation rests on the one who asserts it. This is consistent with paragraph 196 of the* [UNHCR RSD] *Handbook which states that '… while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his [or her] disposal to produce the necessary evidence in support of the application.'" Additionally, the guidelines state in paragraph 34: "On this basis, the decision maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case. If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned."*

- **Application of IFA in the regular (in-merit) mode of proceedings.** UNHCR IFA Guidelines provide a clear indication in paragraph 36 that: *"Given the complex and substantive nature of the inquiry, the examination of an internal flight or relocation alternative is not appropriate in accelerated procedures, or in deciding on an individual's admissibility to a full status determination procedure."*

- **Providing the applicant with an effective opportunity to comment on the application of IFA in his/her case.** UNHCR IFA Guidelines state in paragraph 35: *"Basic rules of procedural fairness require that the asylum seeker be given clear and adequate notice that such a possibility is under consideration. They also require that the person be given an opportunity to provide arguments why (a) the consideration of an alternative location is not relevant in the case, and (b) if deemed relevant, that the proposed area would be unreasonable."*

5.2 The Recast EU Qualification Directive

The adoption of the Recast QD in December 2011 further strengthened the framework of the application of IFA by providing for the following, more explicit standards.

The reading of Article 8 of the Recast QD is as follows:

Article 8. Internal protection

1. *As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she: (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or (b) has access to protection against persecution or serious harm as defined in Article 7, and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.*

2. *In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office".*

Several comments may be made with respect to the above:

- The amendments to Article 8 introduced in their final wording by the Recast QD are in general in line with UNHCR comments provided to the Recast proposal during the respective legislative process.[27]

- The Recast QD expands the criteria for qualification of a part of the country of origin as an IFA location, by providing for a joint alternative formulation of *"if in a part of the country of origin he or she* [the applicant]*: (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm;* ***or*** [emphasis added] *(b) has access to protection against persecution or serious harm as defined in Article 7"* (instead of the former reading of: *"if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm").*

- When referring to the relocation process itself, the Recast QD elaborates more on the reasonableness condition, by stating: *"…and he or she* [the applicant] *can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there",* instead of the former more limited formulation of: *"and the applicant can reasonably be expected to stay in that part of the country."* This reflects elements from the test established by the European Court of Human Rights in its *Salah Sheekh* judgment[28] and is in line with UNHCR comments provided during the legislative process.

- The former reading of *"Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant"* was amended with an explicit reference to Article 4 as a necessary criterion. Also, a new condition has been added stating *"To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office",* highlighting the role of UNHCR.

- Finally, the clause relating to the possibility of IFA being applicable *"notwithstanding technical obstacles to return to the country of origin"* has been abandoned and the whole of the former Article 8 (3) embedding this clause has been abolished. The Recast QD contains no corresponding provision elsewhere; therefore, the clause is no longer applicable. UNHCR agreed with this deletion stating that otherwise the effect of this provision would be to deny international protection to persons who have no practical, accessible protection alternative.

[27] Provided in *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (COM(2009)551, 21 October 2009),* July 2010. Available at: http://www.unhcr.org/refworld/docid/ 4c503db52.html. It should be noted that at the time of the present report being finalized, there was no comprehensive UNHCR position available on the Recast QD as adopted.

[28] See footnote 19.

6. National Legal Framework, Policy and Doctrine Relevant to the Internal Flight Alternative

National legislation in each of the countries of the region regulates the specific forms of international protection available, and prescribes procedural rules for the examination of applications for international protection. This section concerns matters specific to the analysis of IFA.

6.1 National Legal Provisions

National asylum legislation tends to take the form of separate specialized asylum acts at the statutory level.[29] In all project countries, the concept of IFA is primarily regulated therein, notwithstanding acts or implementing legislation established at lower levels that set out the application of the asylum acts in a more detailed manner.

The exact definition of IFA varies among the countries. IFA is either defined in a uniform provision pertinent to refugee status as well as subsidiary protection,[30] or in two separate provisions which refer to refugee status and subsidiary protection separately, although the essential meaning and application of the provision remains the same.[31] Slovenian law regulates IFA with regard to generally defined international protection.[32] Hungarian law provides additional legislative guidance on the application of IFA in the government decree implementing the Hungarian Asylum Act.[33]

The nature of IFA regulation varies in the region. The Bulgarian, Czech, Hungarian and Polish regulations qualify the availability of IFA as indicative of the fact that well-founded fear of persecution/real risk of serious harm is not present. The Bulgarian and Hungarian laws focus on the availability of internal protection in the IFA location, and the Polish law focuses on the lack of persecution/serious harm. The Czech and Slovenian laws both refer to internal protection interconnected with the lack of persecution/serious harm. The Romanian law is quite specific as it links the establishment of IFA to the manifestly unfounded character of the concerned application and, consequently, relegates such cases to the accelerated procedure.

In all surveyed countries, the asylum procedure is an administrative procedure and is thus strongly influenced by national general administrative procedural rules.[34] Therefore, when applying the IFA concept in an individual case, the authorities are bound by procedural rules stemming from the national general administrative procedure, unless the asylum law explicitly prescribes otherwise.

[29] **Bulgaria** – Law on Asylum and Refugees of 2002, referred to throughout the present report as: **Bulgarian Asylum Act**; **Czech Republic** – Act no. 325/1999 Coll. on asylum, referred to throughout the present report as: **Czech Asylum Act**; **Hungary** – Act LXXX of 2007 on Asylum, referred to throughout the present report as: **Hungarian Asylum Act**; **Poland** - Law of 13 June 2003 on Granting Protection to Foreigners on the Territory of the Republic of Poland, referred to throughout the present report as: **Polish Protection Act**; **Romania** – Law no. 122/2006 of 4 May 2006 on Asylum in Romania, referred to throughout the present report as: **Romanian Asylum Act**; **Slovakia** – Law no. 480/2002 Coll. on Asylum and on Amendments of Some Acts, referred to throughout the present report as: **Slovak Asylum Act**; **Slovenia** – International Protection Act of 2010 (ZMZ-UPB2), referred to throughout the present report as: **Slovene International Protection Act**.

[30] **Czech Asylum Act** Article 2 (10),: *"Persecution or serious harm shall not be deemed a situation in which an alien considering his/her personal position, may get efficient protection in another part of the country of which the alien is a citizen, or in case of a stateless person, in another part of the country of his/her last permanent residence, provided the fear of persecution or of serious harm applies only to a part of the country;"* **Hungarian Asylum Act** Article 63 sub-section 2 *"Protection defined in Sub-Section (1) may also be regarded as duly granted if in the state from which the applicant is forced to flee, the requirement of well-founded fear of being persecuted or the real risk of serious harm does not prevail in a part of the country, and the applicant can reasonably be expected to stay in that part of the country."* **Polish Protection Act:** Article 18 *"1. If in a part of the territory of the country of origin there are no circumstances justifying the foreigner's fear of persecution or suffering serious harm and it may be reasonably presumed that the foreigner will be able to settle within that part of the territory without obstacles, it shall be deemed that there is no well-founded fear of persecution or real risk of suffering serious harm in the country of origin. 2. Assessment of whether the situation in the part of the territory of the country of origin is in line with section 1 shall account for circumstances prevailing on that part of the territory of the country, as well as the individual situation of the foreigner."* **Romanian Asylum Act:** Art. 76 (1) *"An asylum application is considered to be manifestly unfounded if the following are ascertained: a). the lack of a foundation to claim a fear of persecution or exposure to a serious risk in the country of origin, under the conditions of article 23 (1), or of article 26; b). (the fact that applicant is) deliberately leading astray the authorities qualified in matters of refugees or abusively, with ill-faith, resorting to the asylum procedure. (2) The lack of a foundation to claim a fear of persecution or exposure to a serious risk in the country of origin exists in the following cases: a). the applicant does not claim any fear of persecution in the sense of article 23 (1) or an exposure to a serious risk in the sense of article 26; b). the applicant does not offer data or information, in the sense that he/she is exposed to a fear of persecution or a serious risk or his/her accounts do not contain circumstantial or personal details, c). the application manifestly lacks credibility, in the sense that the account of the applicant is not coherent, is contradictory or flagrantly untrue regarding the situation in his/her country of origin; d).* ***the applicant had the internal flight alternative, recognized by the United Nations High Commissioner for Refugees (UNHCR) as well*** [emphasis added].

[31] **Bulgarian Asylum Act**: Article 8 (8) *"Refugee status may be rejected, when in one part of the country of origin there does not exist a reason for fear of persecution with regard to the alien, in case s/he can, without impediment and durably, avail him/herself of effective protection there," Article 9 (5) "Humanitarian status may be rejected, when in one part of the country of origin there does not exist a real risk for the alien to suffer serious harm, in case s/he can without impediment and durably avail him/herself of effective protection there."* **Slovak Asylum Act:** § 13 art. 4 (d) states that Migration Office will deny granting asylum when: "[the] *applicant could have availed himself/herself of an effective protection in a different part of the country of origin, if there is no well-founded fear of his/her persecution in this part of the country and the applicant can reasonably be expected to stay there; at that the Ministry shall have regard to the general circumstances prevailing in that part of the country and to personal circumstances of the applicant."* § 13c art. 4 (b) states that Migration Office will deny provision of subsidiary protection when: "[the] *applicant could have availed himself/herself of an effective protection in a different part of the country of origin, if there is no well-founded fear of a serious harm in this part of the country and the applicant can reasonably be expected to stay there; at that the Ministry shall have regard to the general circumstances prevailing in that part of the country and to personal circumstances of the applicant."*

[32] **Slovene International Protection Act:** Article 68 section VII "Concepts of safe countries and other institutions": *"Internal protection means protection in a part of the applicant's country of origin where there is no well-founded risk from being persecuted and no well-founded risk from suffering serious harm if the applicant can be expected to reside in that part of the country. In examination general circumstances prevailing in that part of the country are considered as well as the applicant's personal circumstances."*

[33] Article 92 (1) *"When Section 63 (2) of the Act is being applied the refugee authority a) shall examine whether protection is available for the applicant in the case of return to the State from which they were forced to flee; b) shall specifically name the part of the country where their view is that protection is available. (2) The applicant can be reasonably required to return to the part of the country concerned with regard also to his/her personal circumstances if a) the applicant can access that part of the country in a lawful, safe and practical way, b) the applicant has family relations or ties of kinship in the given part of the country or if the applicant s basic subsistence and accommodation are ensured by any other means, and* [continue on next page]

6.2 National Policy Instruments

For the purpose of this Study, internal policy instruments include a variety of instruments officially adopted as policy guidance by the asylum authorities with the intention of regulating the practice, irrespective of the nature and character of the specific instrument. Further, sub-sections present the identified policies contained in quality assessment mechanisms, internal guidance materials and external guidance applied, as well as general legal doctrine and jurisprudence.

6.2.1 Quality Assessment Mechanisms

The quality assessment mechanisms can be seen as having impact on the practice, as based on their findings and recommendations, new guidelines or internal instructions can be adopted, procedures can be modified and training programs can be carried out to address the respective training needs.

Out of the seven countries covered in this Study, Hungary, Poland and Romania maintain written instruments serving as reference tools in the quality assessment processes and including criteria relevant to the IFA. In Hungary, the internal quality assurance mechanism[35] is based on the Quality Manual, which is a tool developed by the Hungarian Office for Immigration and Nationality and aimed at fostering and ensuring high quality asylum decision making at the first instance. The manual contains a separate chapter on the application of the IFA.[36] The quality assurance system in Poland[37] includes quality criteria for asylum decisions and asylum interviews, which include separate sections on IFA (five assessment criteria with regard to asylum decisions and one assessment criterion with regard to asylum interviews), with the respective quality control standard taking into account UNHCR guidance regarding both the substantive and procedural elements of IFA analysis. The quality evaluation methodology used by the Romanian Immigration Office includes specific evaluation forms including quality criteria for both decisions and interview notes (with sections related to IFA). With regard to an obligation of establishing facts of the claim, the evaluation form focused on the interview note assesses whether the eligibility officer has correctly identified if IFA was applicable in relation to the asylum seeker's individual profile. The decision evaluation form also assesses whether the IFA concept has been correctly applied, by using a relevance and reasonability test.

c) there is no threat that the applicant will suffer persecution or serious harm or other serious infringement of human rights in that part of the country, irrespective of whether these are connected with the reasons for fleeing presented in his/her application. (3) When the provisions of Sub-Section 2 are applied the refugee authority shall assess in particular the applicant s health, need for special treatment, age, gender, religious affiliation, nationality and cultural ties as individual circumstances. (4) The protection identified in Section 63 (2) of the Act is not guaranteed if the State or the party or organisation controlling the State from which the applicant was forced to flee is behind the persecution or serious harm. Article 93 The refugee authority shall take into account the guidance provided by the Council (of the European Union) when examining whether the State from which the applicant was forced to flee, or a substantial part thereof, is controlled by an international organisation and whether such organisation guarantees to the applicant the protection as described in Section 63 of the Act."

34 **Bulgaria** – Administrative Procedures Code of 2006; **Czech Republic** – Act no. 500/2004 Coll. Administrative Order; **Hungary** – Act CXL of 2004 on the General Rules of Administrative Proceedings and Services; **Poland** - Law of 14 June 1960 – the Administrative Procedure Code; **Slovakia** – Law no. 71/1967 Coll. Administrative Code; **Slovenia** – Act of General Administrative Procedure of 2006.

35 Developed within the ERF/UNHCR-funded Further Developing Asylum Quality in the EU (FDQ) Project (2010-2011). Summary project report is available at: http://www.unhcr.org/refworld/docid/4e85b41f2.html

36 The respective chapter of the Manual reads as follows *"The assessment of the IFA* [lit. "internal protection"] *takes place if and only when it may be established that the applicant would be subject to persecution or serious harm in his/her original residence or temporary residence. If the applicant is subject to the risk of persecution in connection with Convention grounds the IFA shall be assessed in the context of recognition as a refugee; if s/he was subject to serious harm then it shall be assessed in the context of recognition as a beneficiary of subsidiary protection. The reason for the above is that Section 63(1)* [of Hungarian Asylum Act] *stipulates that "protection against persecution or serious harm may be regarded as duly granted", that is, the existence of persecution or serious harm is the precondition of the assessment. - The Decision shall clearly stipulate the circumstances with respect to which the decision-maker finds persecution or serious harm substantiated. - The reason for the negative decision, therefore it cannot be exclusively based on the fact that IFA is available; first, it shall always be established whether the risk of persecution or serious harm prevails. In case the answer is positive, the assessment of IFA is necessary; in case the answer is negative, it is unnecessary. - If, however, persecution or serious harm are established then the asylum authority is always obliged to examine (in every case) whether international protection is indeed justified and internal protection alternative is not available. - If the asylum authority establishes that the government or the party controlling the whole of the state is behind the persecution or serious harm, then it shall disregard the assessment of IFA and shall record what is laid down in Section 92(4) of the Gov. decree, that is, IFA cannot be regarded granted. If IFA applies, both in the detailed assessment and at the end of the Decision it is justified to refer to the relevant legal provisions. The Decision shall examine and support the COI as well as the declarations of the applicant that from among the conjunctive conditions in Section 92(2) of the Gov. decree all of them are fulfilled or not, and only in this case shall the IFA be established. This assessment shall only take place in the detailed assessment procedure.*

37 By virtue of internal order (by-law) of the Director General of the Office for Foreigners no. 38 of 13 September 2011. The mechanism itself is in operation since July 2009.

6.2.2 Internal and External Guidance

As far as internal guidance documents are concerned, the Study shows that such documents used by the countries of the region (at least those that are publicly available) are either limited or they contain no IFA-specific guidance. There are certain decision templates confirmed to be in use for drafting first instance decisions, but only a few of them contain references to the concept of IFA. An exception is the Romanian standard template for asylum administrative decisions,[38] which contain a separate section regarding the analysis of the availability of state protection and IFA (prompting the eligibility officers, when assessing the fear of persecution of an asylum seeker, to analyse whether state protection is available in certain places within the applicant's country, and whether he/she could avail him/herself of it in the respective safe area). Similarly, the RSD interview template[39] used by the Romanian Immigration Office includes several standard questions in relation to the availability of IFA.

As for external guidance, the research shows that while UNHCR materials are at times invoked as guidance documents, their practical application is limited when it comes to IFA. References to the UNHCR RSD Handbook and UNHCR IFA Guidelines[40] were identified in the Study samples, but with certain practical limitations in the application of the respective UNHCR guidance, which is elaborated on later in the present Report.

Decisions most frequently referred to UNHCR country-/situation-specific Guidelines, particularly concerning Chechnya,[41] Iraq,[42] and Afghanistan.[43] Despite the number and range of UNHCR documents published on European asylum practices since then, there was an occasional reference to other relevant UNHCR documents, such as the Overview of Protection Issues in Western Europe 1995,[44] which includes a separate excerpt on IFA.

6.3. National Legal Doctrine and Jurisprudence

References in relevant literature devoted specifically or primarily to the concept of IFA in national asylum laws are rare and rather brief. There are no articles in legal journals focusing on IFA or discussing the concept. Similarly, references to IFA in publications of a more comprehensive character (such as commentaries to the national asylum acts) were scarce.

Polish sources seem to be the most comprehensive in the region, including a commentary to the asylum and foreigners law published in 2006 which provides a concise overview of the IFA concept, with an emphasis on the need to ascertain facts of the case pertinent to IFA while referencing the UNHCR IFA Guidelines, and the UNHCR 1992 Handbook.[45] An updated 2008 commentary to the asylum law states that the inappropriate application of the IFA concept can lead to exclusion from protection, and emphasizes that its application requires due consideration for the "individual situation of the foreigner" (such as lack of self-reliance or economic hardship), which might exclude the applicant from IFA. A 2011 publication on procedural aspects of asylum procedure mentions the UNHCR IFA Guidelines alongside the Michigan Guidelines,[46] as documents focusing on substantive analysis of protection grounds, which nonetheless include guidance regarding selected procedural issues pertinent, for example, to the issue of burden of proof. When it comes to case law digests, a Polish case law compilation of 2007 cites one IFA-related thesis from a judgment of the Warsaw Regional Administrative Court.

38 Developed in the framework of the cooperation between the Romanian Immigration Office and UNHCR under the ERF/UNHCR-funded *Asylum Systems Quality Assurance and Evaluation Mechanism* (ASQAEM) Project (2007-2009). Summary project report available at: http://www.unhcr.org/4e60a4549.pdf.

39 Developed in the framework of the cooperation between the Romanian Immigration Office and UNHCR under the ERF/UNHCR-funded *Further Developing Asylum Quality in the EU* (FDQ) Project (2010-2011).

40 The UNHCR IFA Guidelines are available in the national language in Hungary and Poland. No national language version of the Guidelines is available in Slovakia.

41 UNHCR, *Interim Guidance for Assessing the International Protection Needs of Asylum Seekers from the Chechen Republic of the Russian Federation,* 16.3.2009, referred to throughout the present report as: **UNHCR 2009 Interim Guidance on Chechnya**.
Available at: http://swigea56.hcrnet.ch/refworld/docid/49bf67352.html

42 UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers,* April 2009, referred to throughout the present report as **UNHCR 2009 Eligibility Guidelines for Iraqi Asylum Seekers**. Available at: http://www.unhcr.org/refworld/docid/49f569cf2.html. A *Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers* was issued on 28 July 2010, available at: http://www.unhcr.org/refworld/docid/4c4fed282.html.

43 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan* of 17.12.2010, available at: http://www.unhcr.org/refworld/docid/4d0b55c92.html, which replaced the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan,* July 2009, available at: http://www.unhcr.org/refworld/docid/4a6477ef2.html. Referred to throughout the present report as: **UNHCR Eligibility Guidelines of asylum seekers from Afghanistan**

44 UNHCR, *An Overview of Protection Issues in Western Europe: Legislative Trends and Positions taken by UNHCR,* 1.9.1995, 1 European Series 3, available at: http://www.unhcr.org/46e65e1e2.html.

45 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees,* January 1992, available at: http://www.unhcr.org/refworld/docid/3ae6b3314.html.

46 *The Michigan Guidelines on the Internal Protection Alternative* drafted at the First Colloquium on Challenges in International Refugee Law convened by the Program in Refugee and Asylum Law, The University of Michigan Law School April 9-11, 1999.
Available at: http://www.refugeecaselaw.org/documents/Internal_Protection.pdf.

In the Czech Republic, no major publication or article was found that discusses IFA in any detail. However, the *Commentary to the Law on Asylum* discusses the concept of IFA and interprets the term "persecution" in light of the transposition of Article 8 of the QD, and in the context of a discussion of the notion of a well-founded fear of persecution, where the term IFA is explained and simplified, and relevant case law is quoted. In other specialized literature, the concept of IFA is only found in connection with an analysis of the transposition of Article 8 or the Procedural Directive in the Czech Asylum Act.

No major publications including commentaries to the asylum law or mentioning the concept of IFA have been identified in Bulgaria,[47] Hungary,[48] Romania, Slovakia or Slovenia.[49]

When it comes to the use of case law, all of the countries covered by the Study are countries of the continental legal system, where statutes are the primary source of legal regulations (as stipulated in the national system of sources of law, set forth at the constitutional level) and court judgments have no binding force outside specific legal proceedings,[50] and have no precedence. National jurisprudence can nonetheless be referred to as setting the parameters of the interpretation of the law when the adjudicating line adopted by courts is constant and uncontroversial; however, there is no formal binding impact of standpoints taken by the court in its decisions on the practice of the administrative authorities.[51]

47 The only major textbook on asylum law published in 2006 by Prof. Veselin Tsankov does not deal with IFA.

48 The Hungarian Helsinki Committee published an information note, *The assessment of the Internal Flight Alternative in individual cases* for their Sarlospuszta refugee law course in 2008.

49 This may be attributed to the fact that the current Slovene international protection legislation was only passed in 2010.

50 Certain mechanisms are also in place when it comes to the highest instance judicial institutions (e.g., Poland, Slovenia), where certain principle legal opinions on questions can be formed that are important for uniformed application of laws, however even those principles only have interpretative value and no binding force as case law.

51 Due to that fact the present study does not make major references to case law of countries other than the ones covered by the study, However, ample digests of such case law including pronouncement on IFA are available e.g., on the University of Michigan Law School Refugee Caselaw Site at: http://www.refugeecaselaw.org or on UNHCR Refworld website at: http://www.unhcr.org/refworld/category,LEGAL,,,,,0.html.

7. The Quality of the Application of the Internal Flight Alternative

The quality of the application of IFA was examined with regard to the international standards defined above. In view of the diverse approaches and structures of analyses applied in the specific countries of the region, the present section introduces the context of the application of the IFA concept as revealed in the analysed sample. This section also provides information on the uniformity of the practice to further contextualize the actual assessment findings presented later in the Report. Section 7 refers to the application of IFA at the administrative level, with findings regarding the application of IFA at the judicial levels summarised in section 8.

7.1. The Context of the Application of the Internal Flight Alternative

The application of IFA was examined taking into account the following elements:

- References and analysis of IFA within asylum decisions and its relation to other elements of the decision;
- Character of the argumentation (i.e., using IFA as a decisive or a supplementary argument, including situations when IFA is used as a conditional circumstance in an "even if" argument); and
- The consistent nature of the practice.

The IFA concept is applied only where the risk of persecution or serious harm is established. If the risk of persecution or serious harm is found to be associated with a location, and IFA can be identified, the need for international protection is called into question. The IFA analysis should logically be made in conjunction with the analysis of persecution or serious harm.[52]

However, the Study found that decisions in which IFA is analysed only upon establishing persecution that further define this persecution as location-bound and identify a viable IFA destination are infrequent. Where this approach is taken, it is due to the predetermined structure of an asylum decision (template) that prescribes this line of analysis. In countries where no such template exists, the analysis tends to be less structured and may be scattered within several sections of the asylum decisions. Moreover, the location of the IFA reasoning in the decisions varies even within the same national system. Often, IFA is only touched upon in the section summarizing the facts of the case as provided by the applicant, or in the section analysing COI. Otherwise, IFA is analysed with regard to refugee status and subsidiary protection, sometimes in conjunction with other elements of the analysis (such as the agent of persecution or availability of state protection), or even separately from them, seemingly as an independent legal concept.

Paradoxical issues at times arise even in cases where the sequence of analysis is prescribed with regard to IFA, and the concept is analysed upon establishing persecution. Then the authority makes a statement on the IFA, such as *"as the threat of serious harm has been established, the authority examines the possibility of the IFA in relation to [the capital city of the country of origin]"* and the following line of argumentation is a deductive assessment in which all COI or facts are collected to support the hypothesis of the decision maker, as if IFA would be the ultima ratio to reject the application.[53]

The Study observed cases where IFA analysis was applied, through application of a standard paragraph, even to cases were the applicant claimed to have left the country of origin for economic reasons and who did not claim any risk of persecution on Convention grounds or real risk of suffering serious harm.[54] The research also indicated that in cases when applicants declared during the interview that they could return to their countries of origin, e.g. that their motivation for departure was purely of an economic nature, their statements were used to motivate a conclusion that an option of IFA existed, without an in-depth, comprehensive analysis. This practice is superfluous since the concept of IFA is clearly not relevant in these types of cases.

On a positive note, the lack of need to analyse IFA as such due to circumstances of the case (such as the presence of a state agent of persecution or the state being unable or unwilling to provide protection) was at times clearly stated in the decisions, providing a clear indication for both the applicant and the second-instance authority, in case of an appeal.

A particular misconception was noted with regard to an invocation of a *sui generis* "external flight alternative." This happened where the prospective expulsion of the applicant (following the intended refusal to grant any form of protection) was linked to the usual destination countries where failed asylum seekers went when they were removed from

[52] The **UNHCR IFA Guidelines** emphasize in that context of the need for a holistic analysis in paragraph 3. *Some have located the concept of internal flight or relocation alternative in the "well-founded fear of being persecuted" clause of the definition, and others in the "unwilling … or unable … to avail himself of the protection of that country" clause. These approaches are not necessarily contradictory, since the definition comprises one holistic test of interrelated elements. How these elements relate, and the importance to be accorded to one or another element, necessarily falls to be determined on the facts of each individual case.*

[53] **UNHCR IFA Guidelines** indicate that (paragraph 4) *"International law does not require threatened individuals to exhaust all options within their own country first before seeking asylum; that is, it does not consider asylum to be the last resort."*

[54] Examples include: *"After an analysis of the COI and the applicant's statements in this regard, it is concluded that there is an Internal Flight Alternative for persons with this profile, therefore internal relocation is reasonable and relevant for the applicant, since he also did not encounter any problem which could justify a well-founded fear of persecution."*

another country. The argumentation was based on a statement that *"forced removals of citizens of the Russian Federation are usually carried out not to Russia directly, but to Belarus or Ukraine, i.e., to countries where Russian citizens, if for whatever reason unwilling to return to Russia, can without greater obstacles legalize their stay, which is used by many Chechens."* This line of argumentation remains outside the analysis of IFA and prompts concerns with regard to the observation of the *non-refoulement* principle and effective access to asylum procedures.

Regarding the character of argumentation used, it is a general observation from this Study that the IFA concept is most often used as one of several supporting arguments for not granting international protection, rather than a main or decisive argument. Only a few examples to the contrary were identified, where the assessment of IFA was built upon a comprehensive analysis supported by the applicant's testimony, COI of all relevant facts and concluded with a clear statement on the applicability of IFA.

IFA analysis tends to be used as an additional secondary argument to support the conclusion that the applicant is not in need of either form of international protection (inclusive of cases where the absence of IFA was used as a supplementary argument for provision of subsidiary protection). IFA may be mentioned only briefly as an additional option available to the applicant, without commensurate justification of the argument, thus creating confusion as to the actual legal nature of the argument and legal consequences to draw from it.

In most cases, IFA was invoked as an additional argument in asylum decisions, rather than an argument to deny protection that would otherwise be granted. In the majority of analysed decisions, it is applied as an "even if" argument, following the main argument to deny protection. The "even if" argument is used in the following train of thought: a well-founded fear of persecution or serious harm is denied or credibility of the applicant is disputed, and *even if* those circumstances were to be accepted, IFA would still apply and the claim would be rejected.

Although not always apparent from the exact wording of the decision, on occasion, the "even if" argument is evident from the language of the decision.[56] Courts often refer the "if" part of the argument to the applicant's seemingly subjective assessment and personal allegations, without reaching a conclusion on the alleged facts through detailed examination.[57] The analysis of IFA only as a secondary "even if" argument may also lead to speculative argumentation.[58]

As regards the uniformity of practice, as explained above, the analysis performed in the framework of the Study was aimed at qualitative rather than quantitative analysis; therefore, the uniformity of practice was primarily examined to identify possible discrepancies in the treatment of comparable applicants rather than to establish statistical trends. The presence of uniform patterns does not, of course, by itself justify the practice, since this Study at times, identifies uniformity in practices contrary to international standards.

One of the major findings was that the approaches taken in the analysis did not exhibit much uniformity or consistency. Whenever it was established during an interview that an applicant had relocated in the past, it seemed likely that this information would be used as an argument for the feasibility of IFA, but even this correlation was not decisive enough to establish a consistent practice.

A certain degree of uniformity was established within countries of origin, such as with regard to Afghan applicants for whom IFA was predominantly claimed to be available in Kabul,[59] and similarly Iraqi, Somali and Nigerian applicants.

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55 Examples include: *"It would be difficult to conclude that both at the moment of departure from the country [of origin], as well as at present there were or are any objective reasons that could prevent* [the applicant] *from returning to Chechnya, or resettling to another part of the Russian Federation, where his life and person would not be threatened by any danger."*

56 Examples include: *"Having regard to the statements of the applicant which are contradictory to such extent that the authority cannot examine the merits of the case whether applicant upon his return to country of origin would be exposed to serious threat as the consequence of indiscriminate violence used in the course of an international or internal armed conflict or not. Moreover, this cannot be examined in this case because - **even if*** [emphasis added] he would be subjected to such serious harm in his province of origin - the relevance of the internal flight would prevail, therefore he could be returned to a safer province, but this cannot be examined as his credibility was doubted. Accordingly, the recognition as beneficiary of subsidiary protection is not feasible".

57 Examples include: *"However, if* [the applicant] *believes that residing in that region might pose a threat to her due to the unstable situation there, she has the opportunity to resettle to another part of the Russian Federation"; "Even if – in Applicant's opinion – there is some kind of threat for his person on the territory of Chechnya, he should in the first place make an attempt to secure safety for himself in his own country;""If the situation in Chechnya is unbearable for the Applicant, then he may resettle to another part of the Russian Federation".*

58 Examples include: *"...it can be stated the general security situation in* [a specific location], *the applicant's place of residence, is concerning, however it does not reach the level of such international or internal armed conflict which would impose serious threat to the life or physical integrity of civilian persons as the consequence of indiscriminate violence. In case of deteriorating security situation in* [specific location] - *in light of the above COI used - applicant would have the possibility to move to the* [indicated] *region as he speaks the language and is familiar with the traditions therefore the applicant cannot be granted subsidiary protection."*

59 On occasion, this led to a rigid and all-sweeping approach, examples include: *"single Afghan man who does not belong to any of the vulnerable groups can be reasonably expected to resettle in Kabul" or "Every Nigerian wishing to relocate to a safer place* [within Nigeria] *may, without obstacles, do so."*

7.2 Assessment of the Practice on the Internal Flight Alternative in Light of International Standards[60]

First and foremost, analysis of the IFA concept in the scrutinized decisions raised doubts concerning the cohesion and scope of the concept as applied. This analysis is, in the majority of cases, conducted in a superficial manner, without a clearly structured, uniform, in-depth approach, and is often limited to a single sentence without further elaboration.[61] It can be stated that the analysis of IFA is most often biased, overgeneralized, and approached in a matter-of-fact manner rather than as a legal test which requires the observance of specific standards.

The quality of analysis improved in decisions granting a form of protection. Here, the assessment was likely to be more comprehensive and based on proper consideration of the particulars of the individual case and the applicant's profile. In negative decisions, IFA analysis was seemingly based on standard paragraphs.

A certain "over-reliance" on the COI was noted in cases where the decision concluded IFA was available by merely referring to general COI.[62] This issue was noted both with regard to decisions where IFA was concluded to be a viable option, and in decisions indicating that IFA was not an effective option for certain countries (such as Afghanistan and Somalia). In both scenarios, a differentiation of the situation between male/female or adult/minor asylum seekers was often absent as well.[63] Also, present practice indicates a tendency to use COI selectively to justify a negative decision, sometimes without an individually-based analysis.

The issues of selective and inconsistent use of COI also concern the application of UNHCR country-specific guidance. This practice was especially visible in the practice of one of the countries regarding applicants from Afghanistan and Iraq. In that scenario, every positive decision concerning Iraqi applicants quoted the *UNHCR 2009 Eligibility Guidelines for Iraqi Asylum Seekers* to illustrate the situation in the country and the absence of a reasonable relocation possibility for persons having the applicants' profiles (referring – *inter alia* – to restrictions in access to territory and residence, as well as the limited possibilities of economic survival in the potential relocation areas). At the same time, decisions to reject Iraqi applicants generally quoted the *UNHCR 2009 Eligibility Guidelines for Iraqi Asylum Seekers,* stating that: *"following an analysis of the country of origin information and in view of the UNHCR recommendations, it was considered that these refer to non-refoulement. The fact that a person cannot be forced to return to the country of origin, or is unwilling to return due to a special situation in the country of origin, does not automatically imply an obligation of granting a form of protection according to the [national asylum law]."*

In another scenario, UNHCR Guidelines included in UNHCR *2009 Interim Guidance on Chechnya* was invoked on a regular basis in the decisions. However, the majority of cases referred to the statement concerning a lack of generalized violence and only exceptionally referred to IFA, even though this document contains IFA guidance (of a country-specific character[64]), and the respective decisions did, indeed, analyse IFA.

Such practices are worrisome, as the indicated materials need to be seen holistically; otherwise their purpose and the position voiced by UNHCR are both distorted.

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60 The present section takes a narrative format as various elements of the analysis tend to be interconnected and their separate assessment would be artificial and of no added value. As the evaluation is performed in a qualitative and not quantitative manner, the frequency of occurrence of specific approaches is indicated in a more general way as "predominant", "often", "rare" etc., without provision of specific statistical information and analysis.

61 Examples include: *"Relocation to another part of the Russian Federation with regard to some parts of the country is not easy, but possible, as indicated in the COI material attached to the case file by the first instance authority."*

62 On occasion, the arguments were overly simple, examples include the following reasoning concerning Nigeria: *"From [country of origin report of [the respective asylum authority] from* [a certain date] *it is obvious that due to the vast territory of the country and the freedom of movement of all citizens, relocation to a different region is a real alternative to persons fearing they may face persecution by non-state agents."*

63 A positive example to the contrary was a case of an Iraqi applicant where the COI quoted by the eligibility officer throughout the written decisions was specifically related to the applicant's profile (and the claimed gender-related persecution). In addition to the general COI referring to the situation in Iraq, the case officer also selected information regarding the situation of women in the country, and particularly single women, concluding that, in view of the applicant's profile and of the fact that state protection is considered available when authorities or non-state agents controlling a substantial part of the country take reasonable measures to prevent persecution or ill treatment, the person in question would not have an Internal Flight Alternative because *"the authorities in the country of origin are unable to offer protection to a person in her situation".*

64 **UNHCR 2009 Interim Guidance on Chechnya** pp. 2-3. *"The question as to whether or not an internal flight or relocation alternative is available should be assessed on a case-by-case basis in light of the requisite relevance and reasonableness analysis and taking into account the individual circumstances of the case* [reference to the UNHCR IFA Guidelines]. *The research and analysis so far however supports the position that an internal flight or relocation alternative should not be considered to be available, either within the Chechen Republic or in other regions of the Russian Federation, for Chechen asylum seekers fleeing persecution in the meaning of Article 1A of the 1951 Convention."*

At times, COI provided by asylum authorities of other Member States was referenced in the decisions. Certain decisions also appear to accept the COI and policy of the asylum authorities in other EU Member States, even if the information is actually contradictory to information in their own reports.[65] While the exchange of COI among Member States may, in itself, be considered commendable, this information needs to be analysed in a comprehensive fashion, with due consideration to all other relevant sources of information. Also, comments on the practice of other Member States or even pronouncements made on the situation by the second-instance authority in the given country of origin[66] do not have the evidentiary value in individual proceedings and cannot replace a case-specific and comprehensive analysis.

Other issues noted with regard to the use and application of COI included insufficient citation of materials used, or only referencing secondary sources without indicating primary ones. Often the second-instance authority would not update COI gathered at the time of the proceedings at the first instance.

As explained above, in Central European countries, case law and precedents are not legally binding outside of a specific case, which influences the practice of referencing court decisions in the analysed administrative asylum decisions. The practice with regard to citing court decisions in support of the argumentation provided by the administrative authority varies among the countries, seemingly remaining a matter of tradition and approach taken by each asylum authority. At any rate, IFA is not a major part of the justification and argumentation. Citation of European-level jurisprudence (e.g. the *Elgafaji* judgment)[67] is also limited. *Elgafaji* was quoted in several decisions where the analysis made in the judgment was linked to the respective provision of Article 8 (1) of the QD and the respective national legal provision, but it was only quoted as being analogous to the national provisions rather than as binding precedence.

A serious shortcoming noted in many decisions is the lack of identification of a particular geographic area where the applicant would be safe from persecution or serious harm. Such identification is a precondition for a thorough examination of IFA. Only after identifying a concrete area/location, further analysis may be conducted and the assessment of its relevance in the case and its reasonableness is possible. Cases in which a concrete area of IFA was established were rare and occasionally the only description used was an unspecified reference to *"other part/region of the country of origin"* or general indication of certain locations.[68]

As concluded above, lack of the identification of a concrete IFA location seriously inhibits the possibility of conducting the relevance and reasonableness tests. It also compromises the quality of individual assessments that should be tailored to the applicant's personal profile.

Such an individual analysis of the IFA would require due consideration of the applicant's personal characteristics, such as ethnicity, gender, age, religion, political persuasion, family relations or kinship ties, education and ability to support oneself economically, etc. Those factors have a key role in establishing whether a proposed location may be an effective or realistic option for the applicant.

There were cases identified in the Study which explicitly mentioned that the IFA analysis should take into account, for example, social networks, including the existence of family links, and that such individualized analysis was in fact conducted in the case, taking into account personal circumstances. However, at the same time, a number of cases were identified where factors such as applicants' age or economic sustainability in the area of relocation was not taken into account, despite some of the applicants raising that particular issue when IFA was put forward to them at the determination interview, or the issues concerned were otherwise evident from the facts of the case. At times, the need to conduct an individual assessment was voiced in the decision, yet no assessment was provided.[69]

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65 The argumentation used reads: *"Although from the up-to-date COI report* [by the asylum authority concerned] *it is clear that the situation in the* [specific region] *is stable and that the authorities are generally able to guarantee security and protection of the citizens in the region, from the information in country of origin report* [by the asylum authority concerned, dated more than a year before the above report], *it can be seen that 'blood revenge' is a custom* [...], *in which the execution of the murderer or another male representative of his family by a male member of the family of the murdered is the main means of revenge, through which justice is exercised not by the state judicial system, but by private persons. According to these circumstances, the tribal links problem should be considered persecution by non-state actors. The Finnish authorities, however, consider that men of* [certain] *ethnicity in good health condition, who possess identification documents, and claim that they have been persecuted by non-State actors, have internal relocation alternative in the* [specific region of the country]".

66 Examples include: *"According to the decision of the* [second-instance RSD authority] *of* [a certain] *no. of* [a certain date at least a year before the analysed decision] *'Chechen communities function normally (notwithstanding objective and subjective difficulties) in other parts of the* [Russian] *Federation, and if incidents of persecution occur on the territory of Chechnya or other republics of the Northern Caucasus, they do occur on grounds other than nationality'."*

67 Case *Elgafaji v. Staatssecretaris van Justitie,* C-465/07, European Union: European Court of Justice, 17.2.2009, available at: http://www.unhcr.org/refworld/docid/499aaee52.html.

68 Examples include an indication (in the context of the Russian Federation) of *"almost all large metropolitan areas of the Central Federal District."*

69 The need to conduct an individual assessment was clearly stated by saying that *"[The asylum authority] is of the opinion that persons of Chechen nationality have a practical opportunity of living in other parts of the Russian Federation, whereas individual prospects of relocation may be dependent on factors such as wealth, family situation and ties, or own resourcefulness,"* yet no individual assessment of the situation of the applicant followed.

Where individual analysis was attempted, it often lacked depth, as in many decisions the authority based the alleged IFA on one single characteristic of the applicant.[70] The personal characteristics of the applicant are most often strongly interdependent and so a holistic approach to the analysis is required. Sometimes the individual arguments in the analysis of the IFA were limited solely to the ethnicity of the applicant, or the fact that he/she had travelled within the country before[71] or had lived in the proposed place in the past. The latter results in serious shortcomings and decisions that lack a clear forward-looking assessment, allowing for the misguided conclusion that the proposed area would be a meaningful alternative in the future, and thus a durable solution.[72]

Often individual analysis is replaced with references to the situation of the whole group[73] or references to an "average" person,[74] without subsequent analysis as to whether the circumstances relevant for the group or the "average" person indeed apply in the personal circumstances of the applicant. However, assessment of the relevance and reasonableness of IFA for a given ethnic group within the country of origin may be a part of the IFA assessment, and individual characteristics of the applicant (other than his/her ethnicity) have to be taken into consideration as they may affect the applicability of IFA. Notwithstanding, joint applications submitted by spouses or families require an analysis of those factors with regard to each family member covered by the application whose legal position is determined by the decision issued in the case. That may concern in particular the assessment of the best interests of the child. The latter was neglected most of the time, even in the case of joint applications covering larger families (including those with six or seven minor children).

As to whether the personal circumstances of the applicant are taken into account when assessing whether IFA is a viable option, pre-determined statements tend to be used without an in-depth analysis.[75] At times, the arguments made are of an almost speculative nature.[76] For example, the fact that the applicant has not relocated internally in the past was considered to be detrimental to the applicant.[77]

Less frequently, personal circumstances lead to the conclusion that IFA is not a viable option. However, even here the analysis is scarce.[78] The situation of family members is generally not taken into account. If it is discussed, it is along arguments applied to the applicant him/herself.[79]

There is a discernible tendency to use the applicant's statements to support a possibility of IFA without verifying those statements.[80] Typically, if an applicant has a history of relocating within the country of origin in the past, this experience is used to support the argument that this is possible in the future, again without more in-depth analysis or substantiation or any sort of analytical approach. This may attain the level of an irrebuttable presumption that the applicant's history of temporary stays outside of the area of permanent residence in the country of origin demonstrates that he/she could resettle to another part of the country of origin.[81]

70 Examples include: *"Given that the Applicant is not a Christian but a Muslim, he may complete the so-called internal flight in the meaning of [a given article of the national asylum law] by settling, without obstacles, in another part of Pakistan."*

71 In one of the analysed cases the authority did not accept COI referring to dangerousness of travel across the country, since the applicant has in the past travelled around the country, and has thus experience with such circumstances. That means that it could be expected of him/her to be able to recognize the dangers on his way and avoid them.

72 One of the authorities made a clear pronouncement in one of their decisions indicating that the IFA analysis is not perceived as a potential and prospective concept: upon asserting that if the situation in Chechnya proves to be unbearable for the applicant, he may resettle to another part of Russia, the authority alleged that *"statements* [of the applicant] *as to the lack of possibility of settling in another part of the territory of the Russian Federation are purely theoretical, as the Applicant had never attempted to settle in another part of the country."*

73 Such as the Chechen and Ingush inhabitants of the Russian Federation.

74 Examples include: *"From the evidence gathered in the case it does not follow that Applicant's individual situation would make resettling to another part of the Russian Federation especially difficult (in a degree higher than an average inhabitant of Chechnya),"*

75 Examples include *"the applicant could have had sold her property and relocate within the country of origin, also when taking into consideration that she is a disabled person;" "the applicant could have moved to Moscow;" "the applicant could live in big cities (Istanbul, Ankara, Izmir) in Turkey, where there are plenty of job opportunities; applicant is adult, has no health issues, and other responsibilities (liabilities, dependents);" "the applicant can find a job in Ukraine."*

76 *"The applicant was able to move to the [receiving country] which is a very different country and therefore she would have had been able to relocate within Ethiopia as well, she had to pay for the travel to the [receiving country] more than a relocation within Ethiopia would have had cost her."*

77 Examples include: *"It should be stressed that* [the applicant] *had not made an attempt of an 'internal flight', that is, moving to another city, where his life and person would not be threatened by the* [religious] *fundamentalists."*

78 Examples include: *"It cannot be expected of a separated girl to integrate in Congo."*

79 Examples include: *"When [the applicant] and his family moved to live with his uncle in another neighbourhood of* [a specific city] *in two years none of them had any problems, on the contrary, in his words they felt fine."*

80 Examples include: *"The applicant stated that in other parts of Nigeria the threat is non-existent."*

81 Examples include: *"Applicant had lived outside of Chechnya previously and he could, without any difficulties, do that again."*

Occasionally, certain elements of the applicant's story were presented in a different light,[82] also by not taking into account the nature of the previous relocation[83] or by ignoring the applicant's additional explanations.[84]

IFA is sometimes invoked in the context of "personal choices" made by the applicant, who should thus bear the consequences of his/her actions or, seemingly, change his/her behavior.[85]

Procedural aspects of the application of IFA primarily concern two somewhat interconnected issues:

- Burden of proof applicable with regard to IFA; and
- Effective participation of the applicant in verifying IFA.

The burden of proof notion is a not a common concept in the legal systems of the countries studied when it comes to administrative procedure. Applicable legal provisions in asylum proceedings do not prescribe a specific burden of proof (in terms of specifying which of the actors in the proceedings is obliged to prove which circumstances claimed and to what extent), while the asylum authority are obliged to gather all relevant and available evidence and the applicants are obliged to cooperate with the asylum authority in this regard.[86] Certain pronouncements have been made in that regard by the courts, providing more detailed guidance on the standards required.[87]

In the majority of cases, the actual distribution of the burden of proof with regard to IFA could not be ascertained in detail due to the supplementary nature of the concept's analysis. Most of the analysed decisions made specific reference to the applicable burden of proof. However, some cases indicated that the burden of proof to demonstrate the lack of IFA was placed on the applicant,[88] contrary to the principle that the burden of proof rests with the party coming forward with the allegation and drawing legal conclusions therefrom. Theoretically, the applicant would be expected to prove his/her grounds for international protection with regard to the whole territory of the country of origin. Even if not effectively executed in practice, this is irreconcilable with international standards.

However, in view of the asylum authority's active role in gathering evidence and the fact that any facts relevant to the case should be investigated and taken into consideration, the applicant should be provided with an opportunity to take a position with regard to the proposed location of IFA. However, this was not found to be the practice in majority of the cases. The situation could be linked to the fact that IFA is only used as a supplementary consideration, and not a decisive one.

Due to varying national practices in structuring decisions and gathering information during asylum interviews, it is not always possible to establish from the asylum decision itself whether the possibility of IFA was covered in the asylum interview, in particular whether a specific location was verified with the applicant.

The reference to IFA at the application stage of the asylum procedure seems to be linked to the nature of the application process and whether it constitutes a structured interview or a free-flow statement of the applicant. Even if there is an entry interview, IFA is mostly put forward to the applicant in a very general manner, by means of general questions such as: "Could you live in any other place or part of the country of origin?" or "Have you tried to live in any other part of your country where you would feel safe?"

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82 Citation from the interview record: *"Asylum seeker mentioned in previous RSDPs as well irrespective of his reasons for fleeing persecution, that he worked at the poppy plantations of* [a certain location] *for months for several years."* Reference can be found in the Interview records that the asylum seeker spent 2+1 months in 2 seasons at the poppy plantations.

83 E.g.,, by invoking the applicant's history of stays outside of Chechnya as an argument for reasonableness of the IFA, while the applicant clearly indicated at the determination interview that all these stays were of temporary character and tied to *ad hoc* employment opportunities, while permanent relocation was in his view impossible as it would have required financial means that were not available to him. In another case it was stated that *"It should be noted that the Applicant had taken the advantage of the* [internal relocation] *alternative in the past: from 2003 to 2004 he resided in the Republic of Ingushetia, where he led a fairly peaceful life,"* while the applicant stated at his determination interview that in 2003-2004 he resided in Ingushetia as an IDP from Chechnya.

84 It was also revealed in one case that the decision maker asked the applicant about his past experiences in a given part of Iraq, then applicant explained that he does not belong to that ethnic group which represent the majority in that given region, but the decision maker has only examined that proposed area without mentioning the observation made by the applicant.

85 Examples include a conclusion made by the asylum authority that *"when this relationship is not accepted in a community in which applicant has voluntarily lived, (s)he should carry consequences of such relationship or change place of residence."*

86 According to section 49a of the Czech Asylum Act: *„An applicant for international protection shall be obligated to provide the Ministry with the necessary assistance and to submit true and complete information during the course of the proceedings required to establish the information needed to issue a decision."* The Slovene International Protection Act is similar in Articles 7, 21, 22 and 43.

87 Czech Supreme Administrative Court (Case No. 3 Azs 4/2010): *"the burden of proof […] relies solely on the applicant for international protection through this obligation to allege facts pertinent to his case. His statements have a fundamental importance for these types of proceedings because the applicant for international protection is often unable to provide evidence […]. The applicant's statements then serve as a framework to create a clear assessment of his case. For this reason, an interview with the applicant plays a key role at the beginning of the proceedings. During the interview and in other stages of the proceedings, the obligation to clarify all the relevant facts is allocated between the applicant and the administrative authority Then, the administrative authority is obliged to impartially evaluate all obtained findings and to render an appropriate decission."*

88 Reflected by a standard passage where the authority claimed that *"recognizing the applicant as a refugee would be possible only if the applicant substantiated that regardless of the place of residence on the territory of the Russian Federation she would be at risk of persecution for reasons listed in the Geneva Convention"*

In most cases, there was an indication that facts relevant to the IFA were mentioned during the asylum interview. However, no decisions were found where the actual location would be put forward to the applicant and assessed. Even where a relocation possibility was found to exist, the respective area/location was not identified and discussed with the applicant, who thus did not benefit from an opportunity to discuss that location or comment on its relevance or reasonableness in his/her particular case.

It was noted that during asylum interviews (even when a supplementary asylum interview was performed) questions such as *"What would happen to you if you returned to your country/region?," "Why can the Police not offer you protection?"* or *"Would you have access to protection in another part of your country?"* are asked randomly and most of the time without any clarification that aims to examine the relevance of relocation within the applicant's country of origin or any elaborated analysis. Several decisions pointed out that the applicant voiced his/her reservations to the possibility of internal relocation during the asylum interview, but those remarks were not further assessed or examined in the decision.[89]

It seems that even if IFA is put forward to the applicant by the interviewer at the asylum interview it is rather a matter of formality where one or a few questions are asked and a comprehensive inquiry is not performed. Again, as was the case with asylum decisions, the existence of asylum interview templates (with standard questions to be expanded by the interviewer based on the individual circumstances of the case) usually contributed to a more comprehensive nature of the interview, also with regard to IFA.

[89] On one occasion, the applicant confronted the possibility of IFA by indicating that he would likely have to endure economic hardship upon relocation. This argument was subsequently invoked in the decision as supporting the conclusion that the applicant *"is in fact an economic migrant and not in need of international protection",* whereas no additional analysis of IFA was provided.

8. Judicial Practice on the Internal Flight Alternative

This Study does not primarily focus on judicial practice of IFA. The Study does look at the nature of the analysis of IFA, if any, done by the national courts, and whether the courts aims to verify the accuracy of the analysis provided at first instance or to re-analyse the facts of the case to apply the concept. The objective is mainly to assess the actual impact of the judicial practice in remedying the possible gaps and shortcomings of the analysis done at an earlier stage by the administrative court.

At the outset, it should be emphasized that a national court's competence in asylum cases may lie solely in verifying the first-instance asylum decision, and either uphold the decision or quash it and remand the case for re-examination at the administrative level, with the court having no competence to grant protection in its own right.[90] Other countries apply a system where the asylum courts also have the competence to grant international protection in their own right.[91] Each approach influences the nature and scope of the analysis provided by the courts.[92] Also, comments made above regarding the role of case law in the respective legal systems needs to be reiterated. The lack of binding precedence in court judgments effectively limits the need and practicality of the court to provide its own extensive guidance and comprehensive analysis, unless it touches upon the most fundamental issues in determining the case and the legal framework is not exhaustive enough. As indicated above, neither is the case with regard to IFA; therefore, examples of more elaborated reasoning at the court level identified in the Study are few.

There were, however, several judgments of the highest judicial instances identified where the courts comprehensively laid down the criteria for application of IFA, quoting the criteria of its feasibility (factual and legal), appropriateness, reasonableness and meaningfulness, as well as the availability of IFA, the overall situation prevailing in the country of origin, the personal circumstances of the applicant, the effectiveness of internal protection and finally the status (standing) of the applicant after his/her relocation. An interesting example was identified in a judgment by the Czech Supreme Administrative Court,[93] where the Court suggested a comprehensive four-element IFA test,[94] a testament to the in-depth and comprehensive approach adopted by this court.

Otherwise, the assessment of IFA standards was sometimes actually more common at the administrative level, whereas at the court level, it was often a direct conclusion, rather than a comprehensive analysis. Observations were generally similar to those made with regard to the administrative practice – the analysis of IFA is usually done in conjunction with other elements (such as persecution or credibility, protection or safe country of origin) and rather as a supportive, additional argument than a stand-alone or decisive one. Therefore, even where the IFA analysis was judged insufficient by the court due to its brevity and vagueness or being limited to a statement that the applicant should have used the option of IFA, the courts' statements to that effect also tended to be brief, without providing any more elaborate guidance. Courts at times explicitly stated that the principle of IFA is only applicable in cases where the asylum seeker would otherwise fulfill the criteria to be granted in some form of international protection. This approach by the courts also contributes to a rather infrequent analysis of the concept.

However, where it was more frequently provided, the judicial analysis of IFA raised questions and at times prompted serious concerns with regard to the identification of a particular location as the IFA destination suitable for the applicant, the assessment of the durability of IFA, its accessibility and the effectiveness of the protection awarded in that location. The requirements of reasonableness, taking into account the personal circumstances of the applicant and his/her family members, were not satisfactorily taken into account.

Regarding the substantive elements of the IFA analysis, the concrete area of IFA is usually not specifically identified or analyzed with regard to its relevance or the agent of persecution. Rather, it concentrated on (the lack of) possible exposure to harm in the area of relocation. If performed, this analysis tended to emphasize the prevailing circumstances and average mobility of a given group[95] more than the personal circumstances of the applicant.

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90 Such a system is in place in Bulgaria, Czech Republic, Poland and Slovakia.

91 Such a system is in place in Hungary and Romania.

92 In Slovenia, the Administrative Court has not established a practice of conducting in-merit procedures. However, with the Slovene International Protection Act (Article 75(1)), the Court is obliged to conduct oral hearings in cases when it establishes that actual situation has not been fully or correctly ascertained or that the first-instance authority has come to an incorrect conclusion about the actual situation on the basis of established facts, which means that it is obliged to examine the merits of the case.

93 The judgment was passed in case no. 5 Azs 40/2009 of 29 July 2009.

94 The test was comprised of four criteria: (1) whether the applicant can reach another part of the country; (2) whether a relocation to another part of the country is an effective solution against persecution or serious harm in the area of origin; (3) whether the applicant does not face the threat of being returned to the area of origin; and (4) whether the protection in other part of the country meets the minimum standards of protection of human rights.

95 Examples include: *"It follows from the UK Home Office Operational Guidance Note* […] *that internal relocation to another, safe part of Nigeria, in order to avoid mistreatment on the part of non-state actors is almost always an option and should not be particularly burdensome for a given individual, regardless of whether s/he has any family ties or other ties to the new place [of residence]. Given these circumstances, granting of international protection to the applicant is not necessary* […];*" "Even if additionally taken into account that Dagestan (i.e., Applicant's place of residence) is one of the most impoverished regions of the Russian Federation, the Applicant may without greater obstacles resettle to another part of his country of origin. As it follows from the report* […], *it cannot be concluded that persons originating from the Northern Caucasus are, by that virtue only, systematically persecuted in the whole of Russia;" "Furthermore, it should be stressed that even if the Applicant upon his return to Turkey felt threatened in his place of residence for whatever reasons, he may take the advantage of the internal flight alternative on the territory of his country of origin, given that Turkey is a state of a very large territory and a large population;" "Additionally, the Court supports the conclusion of the* [administrative authority] *that the applicant has the opportunity of the so-called Internal Flight Alternative as prescribed by* [a respective article of the national asylum act], *according to which* […]. *Such opportunity is indicated by the fact that the applicant travelled around the territory of the Russian Federation in search of employment and for longer periods of time resided in* [a certain location]."

Occasional confusion of some basic concepts (such as the concept of IFA as opposed to the concept of a safe country of origin) was also noted. Also, an analysis of identifying the agent of persecution as a state or non-state actor or the possibility of the occurrence of a new form of persecution or serious harm was sometimes omitted. In the context of a federal state, a case was identified where the court indicated that IFA is applicable for an applicant fearing prosecution under Sharia law simply by his relocation to another federal state of Nigeria where Sharia law does not apply. At times, the court provided limited analysis regarding the exposure to persecution or serious harm upon relocation, but rather generally alleged that if the applicant had any subjective fear of threat ("should the applicant believe he/she is threatened," "should the situation be unbearable for the applicant"), then he/she could relocate.

Regarding COI, it was noted that the IFA analysis, if such was provided, tended to be based on past events, was not forward-looking and the COI used was itself often outdated. Interestingly, one of the Supreme Court judgments discussed the nature of COI analysis (in a case where IFA formed one of the elements), in the context of the character and alleged "bias" of certain sources, including UNHCR.

More generally, it was observed that UNHCR country-specific guidance remains the most popular UNHCR source on IFA which is quoted and referenced by the courts. Quotations from UNHCR Eligibility Guidelines of Asylum Seekers from Afghanistan (concerning the role and nature of protection provided by the traditional extended family and community structures, inclusive of tribes and the nature of blood feud cases) were noted. The Guidelines were also cited as directives for the administrative instance, where the decisions were quashed and remanded for re-examination, to examine the reasonableness of IFA, the position of national minorities (which may pose other risks in addition to the general serious risk of indiscriminate violence established in the case), and lack of family ties in the suggested IFA location, which may render it unreasonable for single individuals. In some national contexts, it was noted that the courts were much more prone to apply UNHCR Guidelines than the respective administrative authorities.

One court decision emphasized the need for accurate procedural standards while analyzing IFA in a case where the applicant referred to his family members residing in a certain location at the time of his departure from his country of origin (without clarifying that they later moved to another area, so no family links would be available to the applicant in that location). The applicant was unaware of the context of the questioning and the conclusions drawn from this statement by the asylum authority. Otherwise, the courts were not noted to discuss that aspect of the IFA application.

9. Recommendations on the Practice of Internal Flight Alternative

The following recommendations on the practice of IFA seek to provide specific advice on the proposed courses of action, based on both international standards and the findings of the Study. In view of the latter, the recommendations focus on practical aspects that proved to be key, as revealed in the analysis performed in the framework of this Study.

1. **Appropriate and full transposition of the EU asylum acquis, should countries use the IFA concept.** The recent Recast QD creates an opportunity for the Member States to further develop and amend their legislation on IFA by fully embracing the international standards. As IFA is not in itself an inherent concept in asylum law, its practice, should a state adopt it, needs to be fully compliant with the respective safeguards to ensure full observation of the *non-refoulement* principle. Findings of this Study at the national level may be used as reference material in monitoring the transposition process of the Recast QD into the national law of the state concerned.

2. **Assurance of all statutory norms and guarantees being fully applied in practice.** Full compliance with the national legislation needs to be ensured whenever the actual practice deviates from international standards endorsed by the national framework in place. The same principles apply with regard to procedural guarantees available under the national law.

3. **Application of IFA in an in-merit procedure only.** IFA should only be applied in the general procedure, through a comprehensive and substantive analysis of its application in each instance, inclusive of a specific asylum interview if needed, with the applicant being duly involved in the process and provided with an effective opportunity to comment on the relevance and reasonableness of the proposed relocation alternative in line with all procedural standards.

4. **IFA only used if and when applicable, in a fully transparent manner.** As IFA is only applicable in rare and exceptional cases, it should not be examined in cases where it is not relevant due to the circumstances of the case. Assessment of IFA should be conclusive, that is, not carried out on a subsidiary or conditional basis, and clear enough for the applicant to be able to identify how it related to grounds for international protection in his or her case.

5. **Forward-looking focus of the IFA analysis.** The IFA analysis should be forward-looking, taking into consideration the applicant's prospects in case of return to the country of origin. Past experience of the applicant is often indicative, but should not be relied upon exclusively as the sole basis for the analysis. The forward-looking IFA analysis should account for stable and not only temporary prospects of the applicant.

6. **Accessibility of IFA taken into consideration irrespective of the agent responsible for the issuance and execution of expulsion.** The IFA analysis needs to take into consideration the practical, safe and legal accessibility of the proposed relocation alternative, even if the authority determining the asylum application (and hence analyzing IFA) is not responsible for organization of the eventual return of the applicant to the country of origin.

7. **Country of Origin Information fully up to standards and IFA-specific.** The COI used to analyze the IFA needs to be in line with applicable quality standards. The practice of other states may be a supportive argument in the analysis of the COI; however, it may not replace individual analysis in the context of the individual case. Additional research on IFA-specific COI may be needed to enable comprehensive analysis, supplementing the information gathered with regard to other elements of the determination procedure.

8. **Standards of evidence proceedings appropriately applied to ensure individual and participatory analysis of IFA.** The burden of proof and standards of proof applied in the analysis of IFA should not be more rigid than the one used generally in the determination procedure for the asylum application, with standard of proof being the balance of probabilities, assisted with the benefit of the doubt in situations where straightforward determination is not possible. The asylum authorities bear the burden of proof to demonstrate the existence of an IFA: The applicant should not be expected to substantiate that an IFA is not available to him or her as part of the assessment of grounds for international protection. The applicant should always have the opportunity to respond to the allegation of the IFA put forward by the authority. With regard to asylum interviews, the IFA should be assessed individually as per the relevant assessment criteria and not as a formal point of inquiry.

9. **Effective use of asylum interviews to determine IFA.** Where circumstances indicative of relevance of IFA arise at the application stage of the procedure or are concluded from the nature of the case, appropriate preparation for the asylum interview is needed, with specific locations being verified with the applicant during the asylum interview and the applicant being duly notified of the context in which the relocation is analyzed. Such practice should allow the case officers conducting the interviews to formulate questions that are more informed and to identify and discuss relocation alternatives based on the specific profiles and personal circumstances of the applicant. Alternatively, a supplementary interview can be conducted, based on the same principles, if circumstances indicative of IFA only arise in the course of the proceedings.

10. **Promotion of appropriate standards of IFA analysis linked with capacity-building activities among asylum officers.** The appropriate context of IFA application and its structured and in-depth examination when relevant should be specified and shared with the case officers conducting asylum procedures through internal guidance, supported by capacity-building and follow-up assessment of the practices.

11. **Enhanced access to UNHCR guidance and feedback on its practical application.** Access to UNHCR guidance needs to be improved through, as much as possible, the translation of the Guidelines into the national languages, the provision of additional guidance on the use of the UNHCR materials in the national context, and follow up analysis of their practical application.

12. **Comprehensive response through pre-existing mechanisms promoting asylum quality.** Institutional assessment of the practice of IFA should be introduced with its findings linked to the pre-existing capacity-building activities organized within the asylum authority. The national quality assessment mechanisms, whenever present and operating, provide an excellent venue for the assessment of IFA practices if a thematic audit focusing on the aspects of IFA is introduced. Consequently, effective and sustainable responses to the identified shortcomings may be provided through the already existing implementation mechanisms of recommendations made in the national quality assessment processes.

13. **Uniformity of practice in similar IFA cases ensured.** Particular attention needs to be paid to the uniformity of practice on IFA in line with international standards, with an emphasis on the identification and dissemination of already existing national good practices and promoting them throughout the practice of the national asylum authority in the entirety of the comparable cases.

14. **Exploration of external specialist expertise on interdisciplinary elements of IFA analysis.** Involvement of external/additional expertise may be needed in cases requiring assessment of the relevance of psychological trauma resulting from past persecution in the context of IFA and in cases requiring determination of the best interest of a child, in order to sensitize the legislative and non-legislative tools and respective practices in that regard.

15. **UNHCR full involvement in practice monitoring and targeted advocacy.** UNHCR's permanent and real-time access to asylum practice (most notably the decisions issued at both levels) needs to be secured to ensure that immediate action can be taken to notify the asylum authorities if relevant shortcomings are identified. Additionally, advocacy efforts will be better informed by closely linking them to the daily practice of the asylum authorities.

10. Closing Remarks

When applied, IFA needs to be a durable protection alternative for an individual applicant. Therefore, it is self-evident that its examination should be subject to comprehensive analysis as set out in the EU framework and UNHCR standards. Every consideration of IFA should properly account for the conditions in the applicant's country and his/her personal circumstances to establish that the identified specific location is, for him/her personally, both a relevant and a reasonable solution. Provisions of the EU asylum acquis in relation to IFA are intended to ensure harmonization at the levels of law and practice in various national legal systems. At the same time, UNHCR standards are intended to provide interpretative legal guidance for decision makers and the judiciary. To this end, it is of key importance that the existing national legal frameworks and institutions, and the asylum practice in general, are constantly improved to reflect international standards and ensure access to international protection for those in need. The analysis presented in the Report may positively influence regional asylum decision-making practice by promoting the importance of fair, efficient, impartial and high-quality decision making in favor of the persons of concern to UNHCR.