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# 4.4.9. Quality assessment of first instance decisions

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icon for quality improvement at first instance decisions

Providing adequate reasoning in first instance decisions is a guarantee of legal certainty and a safeguard for the rights of asylum applicants throughout the first instance procedure. In 2022, determining authorities followed up on lessons learned from past quality assessment initiatives and started new quality review processes.

A NANSEN report was published in Belgium, which assessed CGRS decisions on the need for protection of people fleeing Afghanistan and the risks in the event of a return. The first part of the note focused on the investigation of Afghan cases and argued that the CGRS did not fully respect the right to be heard. In part II of the note, NANSEN discusses the risk profiles identified by UNHCR and the EUAA and argues that a broad benefit of the doubt should be granted to these risk groups.472

In Bulgaria, the State Agency for Refugees adapted the EUAA quality assessment tool of November 2022 to review first instance decisions and personal interviews. In Malta, the International Protection Agency – together with the EUAA – sampled cases for quality assurance.

The ECtHR examined the effectiveness of asylum applications in Malta in the case of *S.H.* v *Malta*, which was decided in December 2022. The ECtHR found a violation of Articles 3 and 13 of the European Convention due to the lack of access to legal counsel, delays in the procedure and a failure to examine the merits of the case. The court noted that the International Protection Tribunal confirmed the first instance decision within 24 hours, which made it impossible for the applicant to prepare a defence and submissions while in detention. The court thus considered that the judicial review in the applicant's case was superficial and devoid of any useful effect, as the tribunal tended to automatically confirm the agency's decision within 3 days. Furthermore, the communication of the decision took place several months after the pronouncement, although a removal order had been issued a few days after the decision.

For a second application lodged by the applicant, the court noted again the inadequate assessment of the application due to the 'incongruent conclusions' reached by the International Protection Agency, which were confirmed by the tribunal without any reasoning. The court

observed that a third application was treated in a similar way and confirmed again by the tribunal. The ECtHR thus confirmed that the applicant was deprived of a rigorous individual assessment of his asylum claim, without a risk assessment of his personal situation being conducted as a journalist to be returned to Bangladesh although he had possibly suffered at least one aggression related to his work. The Maltese government made a referral to the Grand Chamber and stated that it strongly disagreed with the conclusions of the court. The referral request was rejected, and the judgement became final in May 2023.473

In the Netherlands, a report published in May 2022 by the Inspectorate of Justice and Security highlighted the time pressure on IND employees working on asylum cases, which may lead to limited information being collected to support a first instance decision of quality.474

In Poland, the Association for Legal Intervention raised several concerns affecting the quality of first instance decisions and advocated for a more rigorous scrutiny, for example, on the use of the evidence presented or expert reports.475

In Slovakia, the Ministry of the Interior established a new control mechanism for the asylum procedure, with two staff having the task of carrying out quality assurance at 6-month intervals or on an *ad hoc* basis.

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- 473European Court of Human Rights. (2023, May 23). Grand Chamber Panel's decisions [ECHR 151 (2023)]. https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22003-7654791-10548981%22]}
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