Power of the judge vis-a-vis new facts that happened after examination of the claim by the administrative authority

Asylum Procedures Working Party

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Polish Response

My first point is that the court's judgement is based on the facts that existed at the time the second instance administrative decision was issued (decision taken by the Refugee Board). In case the factual situation changes, the court cannot react and the only possibility for the party is to institute a new proceeding and file a new application with the first instance agency (Aliens Office).

My second point is that the collection of the evidence and direct evaluation of the evidence is in the hands of the administration. As to the facts, the role of the administrative court of the first instance is to examine *ex officio* if the facts have been properly established by the administrative authority in line with the provisions of the procedural norms. The only evidence that can be admitted by the court is the document. The Supreme Administrative Court (SAC) has jurisdiction only over the points included in the cassation and reviews the judgement of the first instance court. However, these points may refer both to the law and the fact finding process undertaken by the administration. In other words, the SAC is in the position to examine whether the fact finding process carried out by the agency and controlled by the Regional Administrative Court (RAC) is in line with the Code of Administrative Procedure (CAP) as long as these arguments were raised by the party. The judge of any court is not bound by the assessment of the evidence made by the administrative authority.

My third point is that although for all asylum and immigration cases we hold public hearing, it is just an opportunity for the parties or their lawyers to speak directly to the court and not to adduce any evidence with the exception to the documents. A judge relies on the case file submitted by the agency to the court. The case file contains records of the evidence and all paper evidence.

My fourth point is that judges read the case file and certainly it is not free from building up their own evaluation of evidence. Irrationality of the evaluation made by the agency should be

indicated and procedural irregularities found. The arguments presented in the administrative decision are read and verified. They should be coherent and persuasive.

My fifth point is that the difficulty for a Polish judge in the assessment the evidence is that it cannot be carried out directly. Formally, a judge is not allowed to replace the evaluation of the piece of evidence made by the agency with his evaluation. To give you an example: a judge may not say that the applicant is credible or not, or the witness is credible or not, or that a government must rely on a specific country of origin information (COI). However, a judge may find in his judgement that the evaluation of the evidence is not reasonable. The judge may also find procedural irregularities as to the fact finding process, including weighing up the evidence and quash an administrative decision. To sum up, the role of the judge is limited to the control of whether the agency conducted the procedure in line with the requirements provided in the Code of the Administrative Procedure. On top of that, having only indirect contact with the evidence makes our own evaluation of the applicant's credibility more difficult, since we only read the testimony given by the applicant and not hear it. It seems to me that to a lesser degree it is a problem for the documents such as country of origin information, since we both, administration and judiciary, rely on our skills in understanding the reading material.

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