

## **"Power of the judge vis-à-vis new facts that happened after examination of the claim by the administrative authority"**

*Article 83 Aliens act 2000*

*1 The court shall consider the appeal, taking into account:*

- a. facts and circumstances brought to the court's attention after the contested decision was issued*
- b. changes in policy made public after the contested decision was issued.*

*2 The data mentioned in the first paragraph will only be taken into account if they may be relevant to the decision on the residence permit referred to in Articles 28 and 33 (the asylum-permit, jb), or to the decision on granting of a permit under Article 14 (e.g. unaccompanied minors, jb), or the omission of the expulsion under Article 64 (e.g. because of health problems, jb).*

*3 The data mentioned in the first paragraph shall be disregarded if taking them into account will be contrary to due process or disposal of the case will be unacceptably delayed.*

*4 If the appellant relies on facts or circumstances as referred to in paragraph 1 a, but is not able to make them plausible immediately, the court may give him an opportunity to do so within a given period of time, unless the due process precludes or disposal of the case will be unacceptably delayed.*

*5 procedural remarks*

*6 procedural remarks*

*7 procedural remarks*

### Remarks

Article 83 in this wording exists since 1 juli 2010. Before then, data as mentioned in paragraph 1 a or b were only to be taken into account if *they had occurred* after the contested decision was issued. Data the asylum seeker had not mentioned (either on purpose or not) before the contested decision was issued, could not be taken into account. Under strict conditions, the appellant could submit a new request for asylum, to have those data examined. However, he would have to give an acceptable explanation as to why he didn't mention that data before. In many cases, such explanation could not be given, and the data were not examined.

In the wording since 1 juli 2010, it doesn't matter if the appellant could have mentioned the data earlier. The only boundaries are due process and unacceptable delay. From the jurisprudence since 1 juli 2010, it appears that judges do not often make use of these boundaries to deny the appellant a decision on the new data.

John Bouwman,  
Vice-president,  
District court Zwolle-Lelystad,  
The Netherlands.