



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee co-financed by the European Commission

Case Summary

Country of Decision/Jurisdiction	Poland
Case Name/Title	
Court Name (Both in English and in the original language)	NaczelnySądAdministracyjny Supreme Administrative Court
Neutral Citation Number	II OSK 1081/05
Other Citation Number	
Date Decision Delivered	14/12/2005
Country of Applicant/Claimant	Vietnam
Keywords	Credibility, evidentiary assessment
Head Note (Summary of Summary)	Case of asylum seeker from Vietnam who feared persecution for political reasons. Credibility of evidence (witnesses) has been discussed in the judgement.
Case Summary (150-500)	No detailed description of the facts of the case is available. The claimant, an asylum seeker from Vietnam, claimed that he was an active follower of the democratic opposition in his country of origin and that he was also continuing his political involvement in Poland.
Facts	The claimant was refused both refugee status and a tolerated stay permit by administrative authorities in both instances. The authorities claimed that his political involvement in Vietnam was too distant in time (in the 70s and 80s) and pointed out that he only applied for asylum four months after his arrival in Poland, when he was arrested by the Border Police. The second instance authority ignored also the claimant's request to interview two witnesses who could confirm his political involvement, both in Vietnam and in Poland, and stated that they cannot be considered credible. The Regional Administrative Court in Warsaw upheld these decisions. The claimant submitted an appeal to the Supreme Administrative Court.
Decision & Reasoning	According to the Court, not all the circumstances have been properly examined by the administrative authorities. In particular, the Court criticised the second instance authority (the Council for Refugees) for considering witnesses incredible before they had actually been interviewed:
	"In his appeal lodged to the Council for Refugees the claimant asked to consider as evidence the hearing of witnesses: T.N.T. – the President of Association for Democracy and Pluralism and Robert K. – an Association member, in connection with the Association's activities and the claimant's involvement in the Association. The claimant stated that he has continued his political activity after leaving Vietnam and he is an active member of the

PROJECT PARTNERS: EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE) • ASOCIACIÓN COMISIÓN CATÓLICA ESPAÑOLA DE MIGRACIÓN (ACCEM) • CRUZ ROJA ESPAÑOLA • CONSIGLIO ITALIANO PER I RIFUGIATI (CIR)





KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee co-financed by the European Commission

Association, and, therefore, his return to his country of origin will expose him to persecution. The Council, having agreed with the stipulations and assessment made by the first instance authority concerning the claimant's lack of credibility and (concerning) existence of reasons for granting him refugee status or a tolerated stay permit, concluded that "the letters from the Association for Democracy cannot be considered as credible" and that it maintains its opinion regarding "low credibility of this Association", which it has expressed before in its decision RdU 436-1/S/2004. For this reason the Council considered it unnecessary to interview the Association President as a witness.

Such an assesment of evidence, which is, *nota bene*, limited to only one of the invoked witnesses, is arbitrary. Refusal to accept the evidence justified by the Council in such a way violates provisions referred to in the justification of the cassation appeal: Article 75 of the Administrative Procedure Code (APC), according to which everything that can contribute to explaining the case, and is not contrary to the law, shall be approved as evidence, and article 78 para. 1 APC, which states that party's demand to examine evidence shall be accepted if it concerns circumstances significant for the case. (...) Evidence assessment lies with the authority conducting the proceedings, which, in justification of its decision, shall express its opinion as to the evidence it took into account and reasons for considering other pieces of evidence as incredible and having no weight as evidence. The assessment of an evidence's credibility cannot take place before the evidence has been (actually) examined".

"W odwołaniu skierowanym do Rady do Spraw Uchodźców skarżący wniósł o dopuszczenie dowodu z przesłuchania w charakterze świadków: T. N. T. - prezesa Stowarzyszenia na rzecz Demokracji i Pluralizmu oraz Roberta K. - członka Stowarzyszenia, na okoliczności związane z działalnością Stowarzyszenia i udziału w nim skarżącego. Skarżący twierdził, że po opuszczeniu Wietnamu kontynuuje działalność polityczną i jest aktywnym działaczem Stowarzyszenia, dlatego powrót do kraju pochodzenia narazi go na prześladowania. Rada, podzielając ustalenia i oceny organu I instancji odnoszące się do braku wiarygodności skarżącego i istnienia przesłanek do nadania mu statusu uchodźcy albo udzielenia zgody na pobyt tolerowany, uznała, że "pisma Stowarzyszenia na rzecz Demokracji nie można uznać za wiarygodne" i że podtrzymuje opinię "o małej wiarygodności tego Stowarzyszenia", którą wcześniej wyraziła w decyzji RdU 436-1/S/2004. Z tego też względu uznała za zbędne powoływanie Prezesa Stowarzyszenia na świadka.

Taka ocena dowodu, nawiasem mówiąc ograniczonego tylko do jednego ze zgłoszonych świadków, jest dowolna. Tak uzasadniona przez Radę odmowa dopuszczenia dowodu narusza powołane w uzasadnieniu skargi kasacyjnej przepisy: art. 75 KPA, zgodnie z którym jako dowód należy dopuścić wszystko, co może przyczynić się do wyjaśnienia sprawy, a nie jest sprzeczne z prawem oraz art. 78 § 1 KPA, który stanowi, że żądanie strony dotyczące przeprowadzenia dowodu należy uwzględnić, jeżeli przedmiotem dowodu jest okoliczność mająca znaczenie dla sprawy. (...) Ocena materiału dowodowego należy do organu przeprowadzającego postępowanie, który w uzasadnieniu decyzji powinien wypowiedzieć się, co do dowodów, na których się oparł,

PROJECT PARTNERS: EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE) • ASOCIACIÓN COMISIÓN CATÓLICA ESPAÑOLA DE MIGRACIÓN (ACCEM) • CRUZ ROJA ESPAÑOLA • CONSIGLIO ITALIANO PER I RIFUGIATI (CIR)





KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee co-financed by the European Commission

oraz przyczyn, z powodu których innym dowodom odmówił wiarygodności i mocy dowodowej. Ocena wiarygodności dowodu nie może jednak nastapić przed jego przeprowadzeniem". The witnesses' statements could be of relevance, as it cannot be excluded that the claimant - due to his political involvement in Poland - shall be considered as a refugee sur place: "(...) For the reasons mentioned above, the significance of the claimant's activities in Poland cannot be excluded in limine. Therefore, it was the second instance authority's task to analyse the requested evidence in detail. In any case, the general statement, expressed even before the requested evidence was examined, that the Council upholds its opinion regarding "the Association's low credibility" as presented in a previous decision (referred to as "RdU 436-1/S/2004"), thus leading to the conclusion that interviewing the witness is not advisable, does not meet the standards of administrative procedure (...). (...) In the case considered, the second instance authority violated also the principle of free assessment of evidence (art. 80 APC) by not having interviewed the requested witnesses and by anticipating their lack of credibility, since any findings as to the facts based on incomplete evidentiary material must be considered arbitrary. " "Z powyższych względów nie można a limine wyłączyć znaczenia działalności skarżącego podejmowanych w Polsce i rzeczą organu II instancji była zatem szczegółowa analiza zgłoszonych dowodów. W każdym razie nie odpowiada wymogom standardów procedury administracyjnej ogólne stwierdzenie, wyrażone jeszcze przed przeprowadzeniem wnioskowanego dowodu, że Rada podtrzymuje opinię "o małej wiarygodności Stowarzyszenia", którą wyraziła w innej decyzji (oznaczonej jako "RdU 436-1/S/2004") i dlatego też nie jest celowe przesłuchiwanie świadka (...). (...) W rozstrzyganej sprawie, organ II instancji nie przesłuchując zgłoszonych świadków i antycypując brak wiarygodności świadków, naruszył również zasadę swobodnej oceny dowodów (art. 80 KPA), gdyż jako dowolne należy traktować ustalenia

znajdujące potwierdzenie

Outcome

The Court annulled the Regional Court's judgement, and this Court shall reconsider the case.

w niekompletnym materiale

Also, the Regional Administrative Court in Warsaw referred in one of its judgements (V SA 1398/06, issued on 1 March 2007) to the credibility of witnesses' statements, which can only be assessed after they have actually been interviewed:

faktyczne

dowodowym."

"(…) refusal to consider the witnesses' statements and the applicant's explanations as credible could be possible only after they have been interviewed in a detailed manner and only after their statements have been thoroughly analysed and confronted with the applicant's statements. Although credibility of this source of evidence is often questioned, which justifies treating it with great caution, it cannot be, however, *a priori*, regarded as incredible and serving only to prolong the refugee procedure (…)."

"(…) odmowa uznania za wiarygodne zeznań świadków i wyjaśnień Strony mogła nastąpić dopiero po ich szczegółowym przesłuchaniu, wnikliwej analizie złożonych zeznań i skonfrontowaniu tychże z twierdzeniami Strony. Jakkolwiek wiarygodność wskazanego źródła dowodowego jest często kwestionowana, co uzasadnia traktowanie go z

PROJECT PARTNERS: EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE) • ASOCIACIÓN COMISIÓN CATÓLICA ESPAÑOLA DE MIGRACIÓN (ACCEM) • CRUZ ROJA ESPAÑOLA • CONSIGLIO ITALIANO PER I RIFUGIATI (CIR)





KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee co-financed by the European Commission

dużą ostrożnością, to jednak nie można uznać tego źródła dowodowego a priori za niewiarygodne i mające na celu jedynie przedłużanie procedury uchodźczej (...)."