



## 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)	Wojewódzki Sąd Administracyjny w Warszawie Regional Administrative Court in Warsaw
Neutral Citation Number	V SA/Wa 1054/06
Other Citation Number	LEX no 324379
Date Decision Delivered	08/03/2007
Country of Applicant/Claimant	DRC
Keywords	Burden of proof, credibility, well-founded fear
Head Note (Summary of Summary)	
Case Summary (150-500)	The claimant, a DRC citizen, was arrested while attempting to cross the Polish-German border. He was subsequently detained, and applied for refugee status. In the appeal submitted to the Council for Refugees he claimed to be persecuted for political reasons. He worked as a bodyguard for an MPR member named Mulumba L., who left him important party documents before leaving the country. Because of that he was arrested and tortured. A doctor he knew helped him to escape from the hospital.
Facts	The claimant's application was rejected due to the low credibility of his statements (he stated that contradictions were the result of mistakes made by interpreters). According to the administrative authorities the claimant's fear of persecution for political reasons was not well-founded.
Decision & Reasoning	According to the Court, the claimant cannot be considered as a refugee due to his political views. The Court referred to the UNHCR Handbook when defining political opinion and emphasized that the claimant's function in the party (MPR) had no political character. As far as credibility is concerned, the Court stated:
	"Due to the peculiarity of RSD procedure, credibility of a person who applies for refugee status is of particular importance in this procedure, taking into account that verification of circumstances referred to by an alien is in practice often impossible. It shall also be emphasized that when establishing facts in the RSD procedure, it is a general legal principle that the burden of proof lies on the person submitting a claim, and the relevant facts of the individual case have to be furnished in the first place by the applicant himself (p. 195 and 196 of the so-called UNHCR Handbook – (Handbook) for Determining Refugee Status under the 1951 Convention and the 1967

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

Protocol relating to the Status of Refugees; Geneva, January 1992). (...)

It shall also be emphasized that it is up to the state of asylum to assess whether the fears (referred to in Article 1A p. 2 of the Convention) of an alien applying for refugee status in this state are "well-founded" or not. Undertaking an examination of the alleged well-founded fears, the authorities of this state take into account not only the statements and subjective feelings of the alien, but also, as previously mentioned, the reality in his country of origin; and taking this reality into account they assess the credibility of his statements as well as the truthfulness of facts given by the alien, which can be indicated as reasons for granting him refugee status".

"Ze względu na specyfikę postępowania w sprawach o nadanie statusu uchodźcy szczególne znaczenie w tym postępowaniu ma kwestia wiarygodności osoby aplikującej o nadanie jej statusu z uwagi na to, że weryfikacja podnoszonych przez cudzoziemca okoliczności w praktyce częstokroć jest w ogóle niemożliwa. Należy przy tym podkreślić, że przy ustalaniu faktów w postępowaniu o nadanie statusu uchodźcy jako generalną zasadę przyjmuje się, iż ciężar dowodu spoczywa na osobie ubiegającej się o nadanie statusu, przy czym najważniejsze fakty danego przypadku muszą być przedstawione przez samego ubiegającego się (pkt 195 i 196 tzw. podręcznika UNHCR - Zasady i tryb ustalania statusu uchodźcy zgodnie z Konwencją z 1951 r. dotyczącą uchodźców i Protokołem Dodatkowym z 1967 r.; Genewa, styczeń 1992). (...)

Należy również podkreślić, że to, czy obawy, o których mowa w art. 1 A pkt 2 Konwencji, żywione przez cudzoziemca ubiegającego się o nadanie mu statusu uchodźcy w danym państwie, są "uzasadnione", czy też nie, podlega ocenie tego państwa, w którym ubiega się on o status uchodźcy. Dokonując oceny zasadności żywionych przez cudzoziemca obaw, władze tego państwa biorą pod uwagę nie tylko twierdzenia i subiektywne odczucia cudzoziemca, lecz także, jak już wspomniano, realia występujące w kraju jego pochodzenia i z uwzględnieniem owych realiów oceniają zarazem wiarygodność jego twierdzeń i prawdziwość podawanych przez cudzoziemca faktów, wskazywanych jako przesłanki do nadania mu statusu uchodźcy".

According to the Court the claimant's statements clearly "evolved" in the direction of Convention grounds, which undermines his credibility.

Further the Court stated that circumstances relevant for granting a tolerated stay permit, including the current situation in the DRC, have not been properly assessed and the case shall be reconsidered in this regard.

Outcome

The administrative decision was annulled concerning the refusal to grant a tolerated stay permit.

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)