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Association des Conseils d'Etat et des Juridictions administratives  
suprêmes de l'Union européenne a.l.s.b.l.



Association of the Councils of State and Supreme Administrative  
Jurisdictions of the European Union i.n.p.a.

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Conseil du Contentieux des Etrangers de Belgique– Raad van  
Vreemdelingenbetwistingen van België

**Association of the Councils of State and the Supreme  
Administrative Jurisdictions of the European Union  
With scientific support of the Council of Alien Litigations  
of Belgium**

**Asylum and immigration law: the  
national judge between national and  
european standards**

**FINLAND**

**Brussels**

**- 17 December 2010 –**

**Seminar organised with the support of the European Commission**

## QUESTIONNAIRE

### PRELIMINARY REMARK

Actions filed by foreign nationals should be understood as those actions concerning asylum-related issues (as per Article 78 of the Treaty on the Functioning of the European Union), and immigration-related issues (as per Article 79 of the Treaty on the Functioning of the European Union).

### 1. EVIDENCE LAW IN COMPETENT NATIONAL COURTS WITH REGARD TO ACTIONS FILED BY FOREIGN NATIONALS

#### A) RULES OF EVIDENCE

1. Are the rules of evidence in actions filed by foreign nationals laid down specifically in internal law?

1.1. Do national law or case law rule out certain types of evidence? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

**There are no specific rules of evidence concerning asylum and immigration in national law or case-law.**

1.2. Do national law or case law allow certain presumptions (e.g. in asylum cases, in the event of past persecution or safe countries of origin)? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

**An application for asylum can be rejected as manifestly ill-founded if, for example, the facts relied on are clearly not credible, the applicant provides false information or otherwise impedes the establishment of the facts, or the applicant comes from a safe country (in practice interpreted as another Member State) (section 101 of the Aliens Act).**

#### B) BURDEN OF PROOF

2. What is the role of the parties in the administration of evidence in actions filed by foreign nationals? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

**The Aliens Act provides that the Administrative Procedure Act is applied to the application procedure, whereas the appeal procedure is regulated by the Administrative Judicial Procedure Act. The application of the two last-mentioned acts is not confined to asylum and immigration proceedings.**

According to the principle of investigation (or the inquisitorial system) the Immigration Service and the administrative court must ensure that the case is investigated and clarified. The applicant is under a duty to contribute and present grounds for his/her application as well as information and evidence in support of the claims being made. Should further information be needed, the Immigration Service must issue the applicant with a specified request, having due regard to the means available to the applicant to obtain such information. The Immigration Service may also decide to obtain information of its own motion.

3. Can trial judges play a role in the administration of evidence in actions filed by foreign nationals? If so, on what terms (e.g. do trial judges have the authority to examine evidence in detail or do they give a more marginal assessment)? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

The appellate court must make sure that the case is clarified and, if need be, request the Immigration Service or the applicant to submit specific information and/or evidence. The court must obtain information ex officio to the extent the objectivity and the fairness of the proceedings and the nature of the case so require. The court examines evidence in detail.

The above said concerns both asylum and immigration procedures.

#### C) WEIGHT OF EVIDENCE

4. How and on what terms do trial judges weight the various types of evidence submitted to them in asylum and immigration cases? Is any such weighting determined by national law or by case law? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

In asylum cases the benefit of the doubt -principle is applied (section 98 of the Aliens Act). Apart from this, the weighing or assessment of evidence is not governed by national law or case-law, but by the free evaluation of evidence -principle.

5. What powers of review does the supreme administrative court have in assessing the evidential weighting of documents? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

If the Supreme Administrative Court grants leave to appeal, the case is open for review both as to the facts and as to the law, i.e. the court has full review also as to the assessment of evidence.

The above said concerns both asylum and immigration procedures.

## 2. COMPETENCE OF THE NATIONAL COURT TO ACT OF ITS OWN MOTION IN A EUROPEAN CONTEXT

1. Where the parties raise preliminary questions, can procedural restrictions be applied? For example, at what point in proceedings may the parties submit preliminary questions? Do those questions have to be submitted in a specific written procedural document or can they be submitted at any time, including at the hearing?

**Preliminary questions may be raised at any time of the proceedings and need not be submitted in a specific form.**

2. Has the national court already ruled on the issue of direct applicability in your country of Articles 18 and 47 of the Charter of Fundamental Rights of the European Union? If so, is the national court which has jurisdiction to rule on disputes concerning actions filed by foreign nationals able or obliged to raise, of its own motion, arguments from these provisions?

**To date no such decision has been taken.**

## 3. THE NATIONAL COURT AND EUROPEAN INSTRUMENTS

1. Do you regularly refer to European case law when handing down judgements? Have you ever referred to the case law of other Member States when handing down judgements?

**National courts make reference to the European Convention on Human Rights and the ECHR's case-law as well as to the case-law of the Luxembourg Court. In asylum and immigration cases, reference to the case-law of other Member States is made occasionally.**

2. Can the national court autonomously interpret Article 1(A) to (F) of the Geneva Convention of 28 July 1951, specifically when abstracting information from Council Directive 2004/83/EC (the so-called Qualification Directive)? Has a conflict ever arisen between the two standards (e.g. in terms of their criteria of attachment or exclusionary clauses)? What solution(s) did the national court adopt, if any?

**The Supreme Administrative Court has applied the Convention and the Directive simultaneously. No conflict arose.**

3. Some European Directives contain provisions which do not have to be transposed, including Articles 5(3), 8(1) and (3), and 17(3) of Council Directive 2004/83/EC (the so-called Qualification Directive), Articles 26 and 27 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (the so-called Procedure Directive) and Articles 4(2) and (3), and 7(1)

and (2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Where these provisions have not been transposed, does the national court attach a level of importance to them anyway (soft law, minimal standards, etc.)

**Directives are taken into account as minimum standards. The above directives have been implemented into national law.**

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