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Country of Decision:

Poland

Country of Applicant:

Ukraine

Date of Decision:

13-08-2015

Citation:

IV SA/Wa 668/15

Court Name:

The Voivodeship Administrative Court in Warsaw

Keywords:

Individual assessment

Internal protection

Relevant Facts

Standard of proof

Relevant Legislative Provisions:

European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [1] > [Article 8](#) [2]

Headnote:

General situation in the country of origin, however difficult, does not justify granting refugee status, if there is no or only some small risk of persecutions (such risk can never be actually eliminated). However the authority is obliged to individually assess the situation of a particular applicant. This is not possible without careful examination of all the letters submitted by the applicant during the proceedings before the first and the second instance. Failure to do this

cannot be validated by the Court by determining the facts on its own, since it would lead to *de facto* depriving the applicant of his right to have the case examined in two administrative instances.

Facts:

The applicant, a national of Ukraine, applied for asylum in Poland in August 2014. He was afraid of the war and wanted to join his wife and children who had fled beforehand and awaited the decision on their asylum application. On 10 October 2014 he submitted a letter to the Office for Foreigners claiming that because of the lack of support from the state and reluctance of western Ukrainian society he had no realistic possibility to live in another part of Ukraine where fights were not taking place. On 28 October 2014 he submitted another letter, this time in his mother tongue. The Head of the Office for Foreigners refused to grant him refugee status and subsidiary protection. The applicant submitted an appeal against this decision. Later on, on 28 November 2014, the applicant submitted a letter to the Refugee Board with further arguments supporting his statements made in the letter from 10 October 2014. The Refugee Board upheld this decision. The applicant lodged a complaint to the Voivodeship Administrative Court in Warsaw.

Decision & Reasoning:

The Court agreed with the Refugee Board that the general situation in the country of origin, however difficult, does not justify granting refugee status, if there is no or only some small risk of persecutions (such risk can never be actually eliminated).

The Court noted that the Refugee Board did not sufficiently comment on the letter of the applicant from 10 October 2014 submitted to the authority of the first instance. The Refugee Board stated only that the letter contained parts of a UNHCR report from July 2014 and did not bring any new relevant facts to the case, whereas it contained also arguments as to why the internal protection alternative was not possible in his individual situation. The appeal authority concentrated on the general situation of Ukrainian applicants by stating: 'the majority of citizens of Ukraine who left the war zone cannot count on being granted refugee status?.'

The appeal authority did not comment on the applicant's letter from 28 November 2014. The authority even claimed that the appeal of the applicant did not contain argumentation, while in this letter the applicant described the actual lack of possibility to move freely and live in the western part of the country. The appeal authority also prematurely stated that the letter from 28 October 2014 did not bring any new facts to the case ? such conclusion was unjustifiable since the letter had not even been translated into Polish.

These failures cannot be validated by the Court by determining the facts on its own, since it would lead to *de facto* depriving the applicant of his right to have the case examined in two administrative instances.

Outcome:

Annulling the decision of the Refugee Board on refusal of protection.

Observations/Comments:

The judgment raises issues falling into the scope of the right to be heard and the right to good administration. The Court makes it clear that the administrative bodies must respect these rights in

each of the instances. Indeed, the lack of enforcement of procedural rights until the appellate stage results in the applicant's primary and secondary EU law rights only applying before the Administrative Court. As a consequence this nullifies the procedural rights attributed to the applicant's asylum claim throughout the duration of the asylum process.

Attachment(s):



[SA_Wa 668_15.pdf](#)[3]

National / Other Legislative Provisions:

[Poland - Article 13 of the Law of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland](#) [4]

[Poland - Article 15 and 18 of the Law of 13 June 2003 on granting protection to foreigners in the territory of the Republic of Poland](#) [5]

Links:

[1] <https://www.asylumlawdatabase.eu/node/4038>

[2] https://www.asylumlawdatabase.eu/node/4038#toc_131

[3] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/SA_Wa%20668_15.pdf

[4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/poland-article-13-law-13-june-2003-granting-protection-foreigners>

[5] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8369>