

## **Slovenia - Supreme Court of the Republic of Slovenia, 10 April 2014, Judgment I Up 117/2014**

**Country of Decision:**

Slovenia

**Country of Applicant:**

Afghanistan

**Date of Decision:**

10-04-2014

**Citation:**

I Up 117/2014

**Court Name:**

Supreme Court of the Republic of Slovenia

**Keywords:**

Assessment of facts and circumstances

Circumstances ceased to exist

Country of origin information

Indiscriminate violence

Relevant Documentation

Relevant Facts

Serious harm

Subsidiary Protection

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**Relevant Legislative Provisions:**European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [1]European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [2] > [Article 4](#) [3]European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [4] > [Article 8](#) [5]European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [2] > [Article 15](#) [6]European Union Law > [EN - Recast Qualification Directive, Directive 2011/95/EU of 13 December 2011](#) [2] > [Article 19](#) [7]

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**Headnote:**

By not considering country information submitted by the applicant, the Slovenian Migration Office did not establish all relevant facts and circumstances of the case before it. The Office had not clearly and precisely explained which reasons it considered as decisive in determining that the degree of indiscriminate violence in the applicant's country of origin did not reach such a level that the applicant would be subjected to a serious and individual threat to his life or person in the event of return to his country of origin.

**Facts:**

The applicant applied for prolongation of his subsidiary protection status. His application was rejected. The Migration Office assessed that the general security situation in Afghanistan (based on reports from the UK Home Office, UNHCR, CSIS, UN Security Council, UNAMA, Anso, US Department of Defense, the US State Department, Areo, Federal Office for Asylum Austria) is improving. Moreover, taking into account the applicant's personal circumstances (notably that he was no longer a minor), the applicant would not be threatened with serious harm, as defined in Article 15 of the Qualification Directive, upon returning to Afghanistan.

The Administrative court annulled the decision and stated that the Migration Office breached the General Administrative Procedure Act in conjunction with the International Protection Act as well as the applicant's right under Article 41 (right to good administration) of the EU Charter of Fundamental Rights. The Migration Office did not consider the numerous country of origin information (COI) reports submitted by the applicant, which were more up to date than those obtained by the Office (Amnesty International, Human Right Watch, BBC, ACCORD, FAO). The reports furnished details on the situation in Afghanistan, which point to the deterioration of security there, the increased number of victims amongst the civilian population, the frequency of attacks on selected targets in Kabul, the increased number of internally displaced persons and the poor living conditions in the centres where the rejected asylum seekers can be returned. Therefore, the facts were not properly established. The applicant was given only a theoretical chance to effectively defend his interests and rights.

The Migration Office appealed the judgment.

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**Decision & Reasoning:**

According to the Court the right to good administration (Article 41 of the Charter) is on one hand the right of an applicant in the administrative proceedings to be heard, before any individual measure which would affect him is adopted, and on the other hand it is an obligation of the administration to give reasons for its decisions, so as to take due account of the comments from the applicants, while carefully and impartially examine all the relevant elements of the case, which should be reflected in a sufficiently specific and precise statement of reasons in an administrative act.

The Supreme Court stated that the COI reports provided by the applicant relate to the violence and are legally relevant for determining whether the level of indiscriminate violence is such that the mere presence of the applicant in his country of origin constitutes a serious and individual threat to his life or person.

The Supreme Court agreed with the Court of First Instance (the Administrative Court) that the Migration Office disregarded the submitted current information and did not identify all relevant facts

and circumstance when coming to its decision. No clear and precise explanation providing reasons why the Office had come to the conclusion that the degree of indiscriminate violence in the applicant's country of origin did not reach such a level that the applicant would be subjected to serious and individual threat to his life or person in the event of return to his country of origin had been furnished.

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**Outcome:**

The Supreme Court rejected the appeal and confirmed the judgment of the Administrative Court.

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**Observations/Comments:**

The Court is essentially saying that Article 41 obliges authorities to have up to date and detailed information on cases. Indeed, if they don't it is not only in violation of the persons' right to be heard but even to defend himself. So there is a direct link between the accuracy of COI reports and article 41. COI reports in cases, where, for objective reasons, concrete evidence of the persecution cannot be found, are in fact a crucial instrument for an objective and correct decisions on international protection.

**Attachment(s):**

 [Supreme Court of the Republic of Slovenia, 10 April 2014, Judgment I Up 117\\_2014.docx](#)[8]

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**National / Other Legislative Provisions:**

[Slovenia - International protection Act \(ZMZ\) Article 7](#) [9]  
[Slovenia - International protection Act \(ZMZ\) Article 21\(1\)](#) [10]  
[Slovenia - International protection Act \(ZMZ\) Article 22\(1\)](#) [11]  
[Slovenia - International protection Act \(ZMZ\) ARTICLE 23](#) [12]  
[Slovenia - International protection Act \(ZMZ\) Article 28](#) [13]  
[Slovenia - International protection Act \(ZMZ\) Article 106\(1\)](#) [14]  
[Slovenia - International protection Act \(ZMZ\) Article 106\(3\)](#) [15]  
[Slovenia - Administrative Procedure Act Article 8](#) [16]  
[Slovenia - Administrative Procedure Act Article 9\(1\)](#) [17]

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**Links:**

[1] <https://www.asylumlawdatabase.eu/node/453>  
[2] <https://www.asylumlawdatabase.eu/node/4038>  
[3] [https://www.asylumlawdatabase.eu/node/4038#toc\\_95](https://www.asylumlawdatabase.eu/node/4038#toc_95)  
[4] <https://www.asylumlawdatabase.eu/node/3946>  
[5] [https://www.asylumlawdatabase.eu/node/3946#toc\\_137](https://www.asylumlawdatabase.eu/node/3946#toc_137)  
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[7] [https://www.asylumlawdatabase.eu/node/4038#toc\\_230](https://www.asylumlawdatabase.eu/node/4038#toc_230)  
[8] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Supreme%20Court%20of%20the%20Republic%20of%20Slovenia%20-%20I%20Up%20117\\_2014.docx](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Supreme%20Court%20of%20the%20Republic%20of%20Slovenia%20-%20I%20Up%20117_2014.docx)  
[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-7>  
[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-211>  
[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-221>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-23>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-28>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-1061>

[15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-international-protection-act-zmz-article-1063>

[16] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-administrative-procedure-act-article-8>

[17] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/slovenia-administrative-procedure-act-article-91>