

Slovenia - Supreme Court of the Republic of Slovenia, 18 October 2012, I Up 471/2012

Country of Decision:

Slovenia

Country of Applicant:

Afghanistan

Date of Decision:

18-10-2012

Citation:

I Up 471/2012

Court Name:

Supreme Court of the Republic of Slovenia

Keywords:

Burden of proof
Child Specific Considerations
Country of origin information
Credibility assessment
Duty of applicant
Individual assessment
Obligation/Duty to cooperate
Personal circumstances of applicant
Personal interview
Procedural guarantees

Relevant Legislative Provisions:

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [1]
European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [2] > [Art 8](#) [3] > [Art 8.2 \(a\)](#) [3]
European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [2] > [Art 8](#) [3]
European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [2] > [Art 13](#) [4] > Art 13.3 (a)

Headnote:

When assessing the application for international protection the Ministry of Interior (MI) did not take into account the Applicant's youth, lack of education and background. The MI did not conduct the procedure and pose questions in a manner that was suitable to the Applicant's age and personality.

The country of origin information that the Applicant submitted only in his appeal against the decision should be accepted as this is generally available information that MI could have obtained on its own.

Facts:

The case involved an Applicant who was a minor, had been living without his parents since the age of 10, never attended school and was illiterate. The MI annulled his application for international protection, amongst other things, because it considered that the Applicant had not made a genuine effort to substantiate his application, was unwilling to participate in the proceedings and his statements were incoherent and implausible.

The Administrative Court annulled the decision of the Ministry of the Interior to reject the application for international protection and returned the case for reconsideration, upon which the MI appealed against the judgment of the Administrative Court.

In the appeal, the MI argued that the Court decision should not have taken into consideration the country of origin information that the Applicant submitted only in his appeal. Paragraph 3, Article 20 of the General Administrative Procedure Act stipulates that the parties in an administrative procedure may not state facts and provide evidence, if they were given the opportunity to state these facts and provide evidence in the procedure that took place prior to the administrative decision.

Decision & Reasoning:

The Supreme Court found that in its decision making process the Ministry of the Interior did not take into account the Applicant's youth (10-12 years) at the time of the events that led to his departure from the country of origin, nor did it take into account that he was a minor when applying for international protection (17 years). The MI also failed to take into account the Applicant's general lack of education (illiterate, no formal education), his background, and the circumstances in which he allegedly found himself in this specific environment as a 10-12 year old child. The fact that the Applicant answered briefly and was therefore asked sub-questions cannot be attributed solely and exclusively to his unwillingness to participate in the process. This could be due to his general manner of expression, or his ability to give statements, however the Respondent failed to define this in his decision. The inconsistencies revealed in the Applicant's statements as to when the individual events took place and other issues related to the time and dates as well as amounts and prices have not been sufficiently evaluated in terms of the Applicant's capability in relation to time perception and calculation skills.

The MI also failed to conduct the proceedings and pose questions in a manner that would suit the Applicant's personality and age. It is true that in the application for international protection the main burden of proof lies on the Applicant applying for international protection, however the authorities conducting the procedure also have the duty to ascertain the actual circumstances. According to Article 7(3) of the International Protection Act, the authorities must allow the Applicant

to protect and enforce his rights emerging from this Act in the easiest way possible; they also have to ensure that the Applicant's ignorance and lack of knowledge does not violate his rights. Merely fulfilling the formal conditions (merely acquainting the Applicant with his rights in written form, appointing a guardian, issuing a general warning when receiving the application stating that the Applicant needs to give all data with which he attempts to support his application independently, convincingly, accurately and truthfully etc.) may not be sufficient in certain cases (especially when minors or uneducated individuals are involved); in such cases it is necessary to ascertain whether the Applicant truthfully understands the importance of his behaviour, actions and statements during the procedure for obtaining international protection.

The Supreme Court also disagreed with the Ministry of Interior's objection that the court of first instance should not have considered the country of origin information that the Applicant provided only in his appeal. This objection should be rejected already on the basis that it deals with generally available information, which was available also to the MI. On the other hand, this suggests or confirms that the MI did not fully acquire all relevant general and specific country of origin information that it should have acquired in order to verify the Applicant's statements.

Outcome:

The Supreme Court rejected the appeal and confirmed the ruling of the court of first instance.

Attachment(s):

[I Up 471.2012\[smallpdf.com\].pdf](#)[5]

National / Other Legislative Provisions:

[Slovenia - Zakon o mednarodni zaš?iti \(ZMZ\) \(International Protection Act\)](#) [6]

[Slovenia - Zakon o splošnem upravnem postopku \(ZUP\) \(General Administrative Procedure Act\)](#)

[7]

Links:

[1] <https://www.asylumlawdatabase.eu/node/453>

[2] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[3] [http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 8](http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%208)

[4] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2013>

[5]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/I%20Up%20471.2012%5Bsmallpdf.com%5D>

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4417>

[7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8094>