

The role of DNA in demonstration

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The identification problem in administrative law

The 2007 Act LXXX. Asylum law regulates the content of the asylum granted by the state of Hungary as a refugee, subsidiary protection, conditions and procedure for the granting or withdrawing its recognition for provisional shelter. During the visit at the Immigration and Naturalization Office in Hungary I had a chance to interview the officials. During the interview, I learned that the large number of immigrants who is seeking asylum in Hungary do not have any personal documentation, which makes personal identification rather difficult for the authorities. As a result, two scenarios can occur.

One is that the person had no identification in the past, second, is when the person deliberately destroyed the documents after crossing the border. In the event when the immigrant can present the documents, he can be identified, but it is not intended as a fear from deportation Under the extent of previous legislation it was possible to take them into

custody, but the current legislation does not allow, as the Union has the right to launch infringement proceedings against Hungary in this case.

Accordingly, the current provision resulted in a great increase of number of refugees seeking asylum. Since a few month, there is a so called “Asylum detention” is in place whereas in the past, those who have applied for asylum could not be arrested. This has resulted in a tremendous increase in the number of asylum seekers arriving to Hungary. As Hungary is being considered as a transit country, several times it happened that the application has been submitted, and the applicant left to another EU country before the decision has been made on the case. The shelter centres are operating with full capacity, which in many cases has triggered tensions between migrants from different cultures.

The detention has a form of deterrent, because as the result of the process states that the applicant is not entitled for a refugee status, than deportation is lawful. In the case where the applicant is in possession of the needed personal documentation, the authorities will examine whether the document is genuine or not. In many cases the immigrants are representing false documentation. In this meaning all data contained in the document is false, artificially made, even the document itself is factitious. Each document has certain safety elements, when assessing the authenticity, the security features can be found by the inspector. It also happens that the identification is not fake, but counterfeit, when the identity card or passport is valid, but the photo or name is replaced.

In many cases, stolen documents are concerned, which are not modified at all as their physical units are similar. There are cases when it is very difficult to find out the identification as the photo shows similar physical characteristics, therefore discrimination on the basis of the photograph is almost impossible.

In the majority of the cases, the immigrants get these documents as they find an to find an abandoned paper, or they illegally obtain, produce them. Either the individual is in possession of their documents or not, hearing in mandatory in all cases, even asylum seeking is not the case. While the previous legislation allowed the arrest and custody of the immigrants the new policy makes it no longer possible, open accommodation is given which is secured by guards, but with the option to move in and out as the receiving shelters mostly operating at full capacity. During the hearings it can be discovered in many cases that the individuals do not

wish to reveal their nationality but on the other hand that is the main goal is to identify the person and get the necessary information for identification.

If a migrant can provide information such as which country is coming from, credibility needs to be assessed at first and foremost. Credibility can be assessed by cross questioning the applicant such as: what are the geographical conditions in the origin country, name of a main river, mountain, etc. The main aim during my interviews that shed light on the origin and if the seeker can be deported to the origin country based on the right of “refoulement”. The questions are not only aiming geographical subjects in nature. It could be also historical, geographical, cultural and many more. The OIN has a Documentation Centre which is responsible for examining facts which are stated during the hearings made by asylum seekers.

For example, if the interviewee claims that in the town where he came from had a major attack by terrorists, the agency Documentation Centre is required to find out that that city is really in danger, or whether indeed persecuted and discriminated the citizens based on by their colour of skin or belief. Also an important part of the procedure is to take finger prints and photo, but in most cases collaboration is being refused. The data from such procedure is being recorded-in the case of collaboration- but some countries do not yet have a personal filing system, therefore the control of the applicant's personal data is difficult.

For example, the inspection of Afghan citizens are difficult, where unfortunately no formal registration system in place. Further to the potential data are recorded and decision takes place based on the collected information. Its being decided whether to accept the request or decline.

The following types are three possible types of decisions

- A) Refugee is a person who fulfils the conditions laid down in the Geneva Convention Act. Where, the reason is set for refugee status is set at Article 3.

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- e) attempt on the life and physical integrity, especially in the form of manifesting any murder, mutilation, cruel treatment and torture;
- f) taking of hostages;
- g) violation of human dignity, in particular humiliating.

B) If the individual is not meeting the above criteria, but must be protected, then it results in getting protected status. Most frequently occurring in the case of subsidiary protection status, where the applicant's removal is not possible due to severe conditions in the country of origin.

C) Federated status is granted to the seeker in the event that their removal would cause disadvantages, the right of non-refoulement cannot be applied.

During the asylum seeking procedure in all cases of course you have to consider that the application is based on fair ground. After conviction on the basis, the case moves to the second phase where more detailed and further examination takes place prior to final decision. However, the status awarded periodically reviewed by the authorities.

The examiner needs to be certain time-to-time there is an ongoing conflict in the country of origin where individual should be returned. According to the legal provisions in force, the removal could be possible not only to the country of origin, but another third safe country as well. If it is found that during the examination that the conflict no longer exists in the country of origin, withdrawal from the process takes place and the applicant may have to return home. The immigration proceedings are initiated against those immigrants who have come to Hungary not asking for shelter.

If the migrants do not have any documentation, but provides information of the country of origin, than a help from a local consulate can be asked for identification. The consulate interviews the individual for determination of the citizenship. This may take through raising questions of different subjects such as cultural, historical, geographical, but detecting local dialect, pronunciation can be useful as well. By carrying out the assessment, the officer is able to determine based only on knowledge of the country the country of origin is indeed true or not.

In many cases happens, that the migrants claim to be a citizen of the country which has no representation in Hungary. By doing this, the main aim of the individual is to have more time in the process as a general rule is that if there is no representation in the country, the government officials need to contact Ministry of Foreign Affairs of the nearest branch office. The proceedings are quite different in the case of underage or young individuals.

It should be noted, that it is difficult to prove that a person is to a child if there are no personal identification in possession and does not know its personal data, especially in an obstruction is encountered, for those who are near the age of maturity. If there is doubt regarding the person's age, medical examination takes place.

The examination will take place within the framework of the teeth, bones analysis and examination of the wrist bone from which true age can be detected. In connection with this method of identification the problem arises because not all countries have the same physical and mental development level of the child migrants, or even malnutrition is presence. Given that people are developing differently in large part of Asia as it may be due either to the different eating habits, child labouring and malnutrition as well. In other words, there are great differences between an American born 14 -year-old and a 14 -year-old Asian child. In many occasions, true age cannot be safely detected, as the individual reached the age of 18, as the error value is exactly 18 years to move around.

Thus, the investigator determined to get to the course of the investigation, that about 16 to 19 years. Minors receive more favourable process, therefore many applicants happens to say they are under-aged. Specifically the applicant can be sent back to the country of origin in the case proper regulations are treated, otherwise not.

The free movement of rights is set by 2007. I. 44. § where following aspects should be considered before a decision is taken:

- a) the nature and gravity of the offense,
 - b) the person's age, health status,
 - c) the person's family circumstances, the period of the existence of a family relationship,
 - d) the number and age of the person's children, method and frequency of communication with them,
 - e) if there is any other state where continuation of the family living together does not conflict with legal hurdles, the enumeration of the difficulties with which the family members would face if forced to settle in the territory of the State
- the economic situation f) the person concerned,
- duration g) residence of the person concerned in Hungary
- h) social and cultural integration of the person concerned, the country of origin or existing connections are tight.

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