

EMN AD HOC QUERY DRAFT SUMMARY

FABRICATED CASES IN INTERNATIONAL PROTECTION PROCEDURES

Requested by LT NCP on 3rd March 2015

Responses from:

Austria, Belgium, Bulgaria, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Sweden, United Kingdom plus Norway.

Standard of proof

A part of the countries which have provided their responses to the query, indicated that the applicant's fear would be considered well - founded if he/ she can establish to *a reasonable degree of likelihood* that she/ he may be persecuted in his/ her country of origin (HU, LV, LT, LU, MT, UK). For IE the threshold is *more likely than not* applying the "balance of probabilities" test. AT and DE apply the principle of free evaluation of the evidence. BE, BG, FR, NL, PL individually assess cases. They rely on the applicant's statements, provided documents and country of origin information. EE, FI apply the same standard of proof as in other asylum cases. For NO the standard of proof is the same as in any other case: the "balance of probabilities". SE explained that having evaluated of statements and documents provided by the applicant assesses whether the claim is proved sufficiently.

Burden of proof and application of the principle of cooperation

BG, IE, LV, LT, LU, EE, FI, FR, DE, HU apply shared burden of proof. The applicant has an obligation to cooperate. It is upon applicant to substantiate the claim and provide all documents or explain why he/ she is unable to do so. IE underlined that the applicant must make genuine effort to substantiate his/ her story. The caseworker's duty is to give an applicant the opportunity to present all the material facts and relevant pieces of evidence, to clarify established discrepancies. The caseworker also has to verify the evidence and research for the COI. Some countries indicated that not in all cases the applicant is able provide the evidence of fabricated cases, then the reversal of burden of proof is organised: the asylum authority takes the initiative of compiling evidence (DE).

BE, MT, NL, SE, UK, NO noted that the burden of proof falls under the applicants' responsibility. The caseworker's responsibility is to verify the facts with the situation in the country of origin. NL pointed out that in the cases of the exclusion the burden of proof shifts from the applicant towards the caseworker. PL explained that only proves provided by the applicant are taken under consideration. It is forbidden to provide information on the applicant to his/ her country of origin.

AT pointed out that in the asylum procedure, the standard of proof is the asylum seeker's substantiation of the facts. In contrast to the requirement of "proof", for the substantiation a probability or reasonable possibility suffices.

Assessment of the documents provided by the country of origin (extradition cases)

AT explained that they has so-called Country of Origin Information Unit, which produces COI reports on general issues and on individual queries and investigations in respective country. BE, BG, MT, PL, EE do not contact the authorities of the applicant's country of origin. The documents provided by the applicant undergo the investigation of authenticity as others. EE relies on the material if the

applicant provides it. IE noted that if documentation in relation to court cases is provided, it may imply they are fleeing prosecution rather than persecution and this would be examined at interview and analysed in the subsequent report. Case specific country of origin information in relation to such cases, if available would also be examined. LV indicated that it is possible to rely on the material provided by the applicant's country of origin in cases when it does not contradict with the relevant COI and the documents provided by the applicant or when the applicant's statements are not credible. LT usually does not rely on the material from country of origin, unless when it is established that asylum seeker is not credible. For FI, FR, DE, HU, SE, UK, NO material from the country of origin can be used as the evidence in the case; however, it has to be evaluated as well. UK noted that assessment of the material provided by the applicant's country of origin depends on the reliability of the judicial process and the standards of evidence in that country. NL can investigate legal documents like the verdict in some countries of origin.

In LU the extradition cases are of the competence of the Ministry of Justice, which only verifies if the formal requisites are in order, but it cannot decide on the validity of the documents or on the culpability of the individual. The competent authority for handling international protection cases is the Minister in charge of immigration.

Granting Complimentary Protection to those who may suffer flagrant denial or justice in their countries of origin

AT, BG, HU do not grant complimentary protection. AT non-refoulement examination conducts in every case. In BE, FI, FR applicants who are falsely accused could be granted refugee status or subsidiary protection. IE, LU, MT, NL, PL, SE, UK, NO may grant one of the form of complimentary protection; however, each case is decided upon its own individual merits. In LV in most cases, applicants were granted refugee status as fabricated criminal cases usually are linked with other grounds for international protection (political opinion or social group). LT grants subsidiary protection to those who may suffer flagrant denial of justice in their countries of origin and that may amount to cruel, inhuman and degrading treatment. EE legal acts do not provide for complimentary form of protection. DE notes that both forms of international protection may be granted after individual assessment of the claim. If it does not lead to international protection then complementary national protection – the prohibition of deportation – is to be considered.

Credibility of the applicant who delays to submit an application immediately, e.g. applies for international protection only after arrest for the purpose of extradition

AT, LT, LU, MT, NL, PL, NO noted that delay to submit an application immediately does not make an impact to the credibility of the applicant. A case-by-case assessment always takes place. In BE law foresees period of 8 working days after arrival in Belgium to submit an application. If it is not fulfilled, it may be taken into consideration as one of the elements in assessing credibility. For BG, HU, LV it may be a ground to examine the application in an accelerated procedure, but if the conditions for granting status are met, the application will be examined in the general procedure. EE, FI, FR, DE, IE, SE, UK would consider the fact of late application but it is not automatically presumed that the claim is unfounded.

National case law and guidelines

The majority of the countries do not have specific case law or guidelines on fabricated cases (BG, LV, LT, LU, MT, NL, HU, FI, FR, DE, SE, and NO). PL follows UNHCR Handbook and Guidelines on procedures and criteria for determining refugee status. EE has a senior expert, who may look into case and assist the case officer with special case. IE provided references to their case law:

<https://drive.google.com/file/d/0B1LWIoDWYg-kS2g1NGFNZINpS1U/view?usp=sharing>

<https://drive.google.com/file/d/0B1LWIoDWYg-kamFyX3VxaGxzSDA/view?usp=sharing>

<https://drive.google.com/file/d/0B1LWIoDWYg-kZnVVZnZBdm1LalU/view?usp=sharing>

UK has no specific guidelines regarding fabricated cases, but provided with the reference of guidance on assessing the credibility of the claim:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf