



**Seminar organized by ACA-Europe in association with the
Council for alien law litigation of Belgium**

**ASYLUM AND IMMIGRATION LAW: THE NATIONAL JUDGE
BETWEEN NATIONAL AND EUROPEAN STANDARDS**

BRUSSELS, 17 DECEMBER 2010

QUESTIONNAIRE

PRELIMINARY REMARK

Actions filed by foreign nationals should be understood as those actions concerning asylum-related issues (as per Article 78 of the Treaty on the Functioning of the European Union), and immigration-related issues (as per Article 79 of the Treaty on the Functioning of the European Union).

1. EVIDENCE LAW IN COMPETENT NATIONAL COURTS WITH REGARD TO ACTIONS FILED BY FOREIGN NATIONALS

A) RULES OF EVIDENCE

1. Are the rules of evidence in actions filed by foreign nationals laid down specifically in internal law?

1.1. Do national law or case law rule out certain types of evidence? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

1.2. Do national law or case law allow certain presumptions (e.g. in asylum cases, in the event of past persecution or safe countries of origin)? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

B) BURDEN OF PROOF

2. What is the role of the parties in the administration of evidence in actions filed by foreign nationals? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

3. Can trial judges play a role in the administration of evidence in actions filed by foreign nationals? If so, on what terms (e.g. do trial judges have the authority to examine evidence in detail or do they give a more

marginal assessment)? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

C) WEIGHT OF EVIDENCE

4. How and on what terms do trial judges weight the various types of evidence submitted to them in asylum and immigration cases? Is any such weighting determined by national law or by case law? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

5. What powers of review does the supreme administrative court have in assessing the evidential weighting of documents? Where applicable, make a distinction between those actions relating to asylum and those relating to immigration.

2. COMPETENCE OF THE NATIONAL COURT TO ACT OF ITS OWN MOTION IN A EUROPEAN CONTEXT

1. Where the parties raise preliminary questions, can procedural restrictions be applied? For example, at what point in proceedings may the parties submit preliminary questions? Do those questions have to be submitted in a specific written procedural document or can they be submitted at any time, including at the hearing?

2. Has the national court already ruled on the issue of direct applicability in your country of Articles 18 and 47 of the Charter of Fundamental Rights of the European Union? If so, is the national court which has jurisdiction to rule on disputes concerning actions filed by foreign nationals able or obliged to raise, of its own motion, arguments from these provisions?

3. THE NATIONAL COURT AND EUROPEAN INSTRUMENTS

1. Do you regularly refer to European case law when handing down judgements? Have you ever referred to the case law of other Member States when handing down judgements?

2. Can the national court autonomously interpret Article 1(A) to (F) of the Geneva Convention of 28 July 1951, specifically when abstracting information from Council Directive 2004/83/EC (the so-called Qualification Directive)? Has a conflict ever arisen between the two standards (e.g. in terms of their criteria of attachment or exclusionary clauses)? What solution(s) did the national court adopt, if any?

3. Some European Directives contain provisions which do not have to be transposed, including Articles 5(3), 8(1) and (3), and 17(3) of Council Directive 2004/83/EC (the so-called Qualification Directive), Articles 26 and 27

of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (the so-called Procedure Directive) and Articles 4(2) and (3), and 7(1) and (2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Where these provisions have not been transposed, does the national court attach a level of importance to them anyway (soft law, minimal standards, etc.)?
