

*EJTN Administrative Law Portfolio*  
**EJTN TRAINING ON EU ASYLUM LAW**  
**MOOT COURT EXERCISE**  
**17-18 September 2020**  
*On-Line Classroom*

A Moot Court Exercise simulates a court hearing (usually an appeal against a final decision), in which participants analyse a problem and argue both sides of a hypothetical legal issue for practice.

For this EJTN training on EU Asylum Law, participants are requested to run a role-play exercise of an Appeal Court referring to the judgement of a First Instance Administrative Court concerning the refusal of an Asylum Procedure Application.

Participants will be divided in three groups as follows:

- **Judges:** they will discuss about the type of questions they would address to the parties in order to take a decision. They will be requested to explain which are the main elements and facts that would be considered central for their judgement;
- **Applicants (team of layers counselling the appellant):** they will highlight the strongest points of the appellant's submission to overturn the first instance decision and win the case. They will argue that the narrative of the appellant is credible;
- **Defendants:** they will provide arguments on behalf of the State defending the first instance decision in court. They will argue the absurdity of the appellant's story along the arguments given in the first instance decision.

Participants will work **divided per groups for 1 hour**. A **plenary session** simulating the hearing will follow for **1 further hour**.

Each group will analyse the case study together with one EJTN expert.

Each group is requested to nominate a **rapporteur** who will speak in the plenary session.

Rapporteurs will intervene in the plenary session in the following order:

1. Applicants;
2. Defendants;
3. Judges. \*

\*Judges can address questions to applicants and defendants during their oral argument.

## CASE DESCRIPTION

Judgement: First instance administrative court of Braunschweig, Germany

### 1. Facts of the case

Appellants

- Mrs. Ahmadi born 1989 in Herat, Afghanistan (27 years old when applying for Asylum)
  - Mr. Ahmadi, born 1980 in Herat, Afghanistan (36 years old when applying for Asylum)
  - Mustafa Ahmadi born 2012 in Herat, Afghanistan (4 years old when applying for Asylum)
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- ❖ Nationality: Afghan,
  - ❖ Ethnicity: Tajik,
  - ❖ Religion: Sunni Muslim,
  - ❖ Language: Dari.

The appellants entered Germany 6 months before applying for asylum. 4 months after the submission of the application, they had their personal interview with the National Asylum Office (The Authority).

The Authority interviewed Mrs. Ahmadi with the help of an interpreter for Dari. She said:

“I have been married to a violent and criminal man in Herat since my eleventh birthday. He was affiliated with a local warlord and very powerful himself. In my marriage, I suffered a lot. Whenever something was not according to his will, my husband beat me up. We had three children together: my son Mustafa, his elder brother still living in Afghanistan and a daughter. Five years ago, my husband shot our daughter to death who was two months old at that time, because he did not want to have girls in his family. He himself had five brothers and his father had killed two daughters, as well. My husband told me, that if I gave birth to another girl, he would kill me on the spot. Two month later, I realised to be pregnant again. In despair I tried to cut my wrists but was disturbed by my unexpectedly homecoming husband. My husband saw the cut and beat me up

until my mother in law stopped him. I decided to run away. In the afternoon, I took my veil, some money and left the house. I took a taxi, stayed in a park at first and since it began to darken, I tried to stop cars at a nearby street. However, no one stopped. Eventually Mr. Ahmadi came up to me and realised my despair. I told him my problem and asked him to bring me to a safe place. He brought me to his house where his wife, his children and two of his sisters lived. I stayed with them and Mr. Ahmadi urged me to report to the police. I was reluctant to do so, because some of the police officers were in business with my criminal husband and corrupt. Finally, I accepted and reported to the police. I asked for help, but the answer was that they could not do anything for me and that I should return to my husband instead. I returned to Mr. Ahmadi's house only to be informed, that my husband had beaten up my father, threatening my parents with death unless I returned to him within a few days. Therefore, Mr. Ahmadi took my parents to his house, as well. Since I had been seen together with Mr. Ahmadi, my husband became aware that Mr. Ahmadi was involved. So Mr. Ahmadi - knowing how brutal my husband was - decided to move to Shindand together with me, where another of his sister's lives. She and her husband own several houses there. Mr. Ahmadi and I lived with them. Forty days later, I gave birth to my son Mustafa. I married Mr. Ahmadi in a religious ceremony, although I have never got divorced from my first husband. Approximately three years later, we decided to leave the country because our neighbours had seen unknown men asking for me.”

Also, the Authority interviewed Mr. Ahmadi in the presence of an interpreter for Dari. He said:

“Five years ago, when I was on my way home, Mrs. Ahmadi approached me. She told me her story and I saw her wounds. I took her with me and gave her shelter. The next day I went to her parents only to find her father beaten up and her parents threatened with death by her first husband. Therefore, I took them to my house, as well. Together with Mrs. Ahmadi, I reported to the police. The police officers said that the first husband of Mrs. Ahmadi was a dangerous criminal and that there was no chance to act against him. The police informed the first husband about the whereabouts of Mrs. Ahmadi and he approached me. He threatened me with death because I had stolen his wife. So, I moved to one of my sisters to Shindand together with Mrs. Ahmadi. After Mrs. Ahmadi gave birth to Mustafa, I married her, and we stayed in Shindand for three further years. Then I heard from our neighbours that the first husband of Mrs. Ahmadi searched for us and we left the country 6 months ago. We travelled via Tehran, Istanbul, Kos, Athens, North-Macedonia, Serbia, Croatia, Hungary and Austria to Munich, where we arrived after a journey of 22 days. Up to Greece, a smuggler had facilitated the travel. The costs were 12.000 €.”

## **2. Decision of the National Asylum Office challenged at the administrative court**

One month after the interviews, the National Asylum Office served the applicants with its first-instance decision that refused their asylum applications. According to the decision, the applicant's story is not credible. The whole narrative seems to be made up. Why should a man threaten his wife with death in case of being pregnant with a girl? That would imply some kind of responsibility of the woman not carrying a boy that obviously does not exist. In addition, killing the pregnant wife would risk killing a boy. Moreover, Mrs. Ahmadi herself had reported that her first husband had killed a daughter before, but not his pregnant wife. Why hasn't Mrs. Ahmadi reported the killing of her baby daughter to the police? In addition, it seems implausible that a married man takes an up to then unknown woman into his family and thus exposing his wife and children to danger. Even more doubtful is that Mr. Ahmadi then left Herat leaving his first wife and his children behind. In addition, the narratives of Mr. and Mrs. Ahmadi show contradictions on various points. For instance, whereas Mrs. Ahmadi said that she alone reported to the police, Mr. Ahmadi stated that they did so together. Finally and importantly, Mustafa most probably is Mr. Ahmadi's son and there is no persecution history behind their migration altogether.

However, even if the story was found to be credible, the applicants can find a safe haven in other parts of Afghanistan, for example in Kabul. The applicants cannot rely on the poor living conditions in Kabul (poor sanitation, living in tents, huge unemployment and so forth), because these conditions do not present a serious harm within the meaning of Article 15 (c) of the Qualification Directive. According to COI, ongoing civil war activities and terrorist attacks in Afghanistan do not amount to a real risk. Humanitarian and socio-economic conditions only can be taken into account in cases, in which human life is in danger. That is not the case.

## **3. Court procedure**

At the oral hearing before the court, Mr. Ahmadi pointed out that he had left his family behind in Herat only because they all wanted to keep their social lives there. The children attended a private school and he and his wife wanted them to pursue. His wife had accepted his decision to move to his sister's to Shindand together with Mrs. Ahmadi in order to find safety there.

According to a DNA test ordered by the court, Mustafa is not the son of Mr. Ahmadi. The Court informed the parties beforehand about relevant country of origin information a decision might be based on.