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Country of Decision:

Hungary

Country of Applicant:

Nigeria

Date of Decision:

02-09-2016

Court Name:

Administrative and Labour Court of Debrecen

Keywords:

Internal protection

Sexual orientation

Relevant Legislative Provisions:

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [1] > [Article 18](#) [2]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [1] > [Article 41](#) [3]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [1] > [Article 47](#) [4]

Headnote:

The Court quashed the decision of the Office of Immigration and Nationality (OIN) because it did not assess the Applicant's fear of persecution in a due manner and held that there is a real internal flight alternative in an erroneous way, without due regard to the jurisprudence of the Court of Justice of the EU (CJEU)

Facts:

The Applicant fled Nigeria for fear of persecution because of his bisexual sexual orientation. He applied for asylum in Hungary in 2015. The OIN issued its first decision in the case of the

Applicant on 6 January 2016, rejecting his application and ordering his return to Nigeria, stating that many parts of his story were not plausible.

The Debrecen Court quashed this decision on 16 February 2016, stating that the overall credibility of the Applicant regarding his personal story cannot be brought to question. The Court ordered a new procedure to be conducted with due regards to case C-199/12 ? C/201/12 of the CJEU.

The OIN in its second decision issued on 20 May 2016 rejected the Applicant's claim for asylum and ordered his return to Nigeria. The OIN stated that although it can be proven that in those areas of Nigeria where Muslims are in majority, LGBTQI people are in real risk of persecution, the same does not hold true for those parts of the country where Christians are in majority. The OIN noted that there is a significant difference between the Muslim and Christian approach to bisexuality, since Muslim law rejects it, whereas Christian law tolerates it.

Based on the above, the OIN declared that the Applicant could safely relocate to the Christian parts of Nigeria. The Applicant challenged the decision.

Decision & Reasoning:

The Court noted that it had official knowledge from previous cases about the treatment of LGBTI people in Nigeria. It cited reports from the Finnish Immigration Service and the Pew Research Centre. The latter confirmed that a decisive majority of Nigerians considered non-heterosexual acts as non-African and thought that homosexuality and bisexuality was a choice. Since Nigeria's anti-LGBTI laws were passed, threatening those involved or supportive of same-sex relations up until 14 years in prison, the persecution of LGBTI people by Nigerian society has surged.

The Court then, based on the information obtained, goes on to note the following:

?According to the country of origin information obtained, the new legislation gives ample reason for the homosexual community of Nigeria to be scared, and since the law was passed, anti-homosexual tendencies surged. Many evicted their homosexual tenants and it can be stated that both members of the LGBTI minority and their supporters faced harassment, blackmail and threats. The country of origin information obtained gives account of widespread arrests, isolated attacks and increasing tendencies of blackmail alike.

It can be deduced from the information obtained that the greatest threat to homosexuals in Nigeria are not the authorities but the members of Nigerian society. Homosexuals are targets to violent mobs, there have been cases when entire villages turned on homosexuals and chased them away. Instances such as this could be observed even in cities such as Lagos, even though these areas are far more tolerant and liberal than other parts of the country.?

The Court noted that the CJEU gave guidance on how to assess claims based on one's sexual orientation in the X.Y.Z. case, where it held that the existence of laws punishing same sex relations in themselves are not adequate ground for international protection, their implementation also has to be observed. The Court held that although the state may not always impose the sanctions prescribed by law, the greatest threat to LGBTI people is Nigerian society itself, therefore the internal flight alternative is not a viable option.

The Court granted refugee status to the Applicant, noting that although since the beginning of the procedure the Asylum Act was amended, stripping the courts from their reformatory power, since the current case started before the amendment entered into force, the Court still had the power to grant the status itself.

Outcome:

Appeal granted, refugee status granted.

National / Other Legislative Provisions:

[Hungary - Article XIV \(3\) of the Fundamental Law of Hungary \(Constitution\)](#) [5]

[Hungary - Law LXXX of 2007 on Asylum s 6\(1\)](#) [6]

[Hungary - Law LXXX of 2007 on Asylum s 60\(1\)](#) [7]

[Hungary - Law LXXX of 2007 on Asylum s 61\(a\)](#) [8]

[Hungary - Law LXXX of 2007 on Asylum s 40](#) [9]

[Hungary - Law LXXX of 2007 on Asylum s 41\(a\)](#) [10]

[Hungary - Law LXXX of 2007 on Asylum s 68\(5\)](#) [11]

Links:

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

[2] https://www.asylumlawdatabase.eu/node/453#toc_85

[3] https://www.asylumlawdatabase.eu/node/453#toc_171

[4] https://www.asylumlawdatabase.eu/node/453#toc_198

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/hungary-article-xiv-3-fundamental-law-hungary-constitution>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/hungary-law-lxxx-2007-asylum-s-61>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/hungary-law-lxxx-2007-asylum-s-601>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/hungary-law-lxxx-2007-asylum-s-61a>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/hungary-law-lxxx-2007-asylum-s-40>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/hungary-law-lxxx-2007-asylum-s-41a>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/hungary-law-lxxx-2007-asylum-s-685>