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Hungary - Metropolitan Court, 28 December 2010, A.M. v. Office of Immigration and Nationality, 15.K.34.141/2009/12

Country of Decision:

Hungary

Country of Applicant:

Afghanistan

Date of Decision:

28-12-2010

Citation:

15.K.34.141/2009/12

Court Name:

Metropolitan Court / F?városi Bíróság

Keywords:

Assessment of facts and circumstances

Individual assessment

Country of origin information

Credibility assessment

Real risk

Subsidiary Protection

Indiscriminate violence

Serious harm

Relevant Legislative Provisions:

International Law > [1951 Refugee Convention](#) [1] > [Art 1A](#) [2]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 3](#) [4]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [5] > [Art 15](#) [6] > [Art 15 \(a\)](#) [7]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [5] > [Art 15](#) [6] > [Art 15 \(b\)](#) [7]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [5] > [Art 15](#) [6] > [Art 15 \(c\)](#) [7]

[UNHCR Handbook](#) [8] > Para 38

[UNHCR Handbook](#) [8] > Para 41

Headnote:

Country of origin information can verify a situation in which the risk of persecution can exceptionally be considered to be proved without substantiating the personal circumstances of the applicant. The danger of the harm is real, and complies with the requirements of subsidiary protection.

Facts:

The applicant, an Afghan national, alleged he was accused of converting to Christianity upon his return to Afghanistan from the UK. His father was killed and as a result his mother died of shock. He also received death threats. He therefore fled to Switzerland, where he converted to Christianity. The applicant applied for asylum in Hungary.

His asylum application was rejected by the Office of Immigration and Nationality (OIN) in the first instance administrative procedure. The applicant was granted tolerated status (see observation below) based on the principle of non-refoulement, since Afghanistan could not be regarded as a safe country for him. The OIN rejected his application for refugee status, because his account was contradictory, unrealistic and incoherent. He could not define exactly where the persecution derived from. He was deemed not credible regarding the atrocity he claimed occurred in Afghanistan and also regarding his conversion to Christianity. In addition, the reasons why he had to flee his country of origin could not be accepted as grounds for persecution as set out in the 1951 Refugee Convention.

The applicant appealed this decision to the Metropolitan Court.

Decision & Reasoning:

The Metropolitan Court stated that the facts in the present case, according to the available country of origin information, differed from the facts outlined in the OIN's judgement. These facts can be considered as evidence of a valid ground to claim subsidiary protection. The Metropolitan Court stressed that:

?The OIN did not collect all of the relevant country information properly, and / or evaluated that information incorrectly (even the information that the OIN referred to itself).?

The Metropolitan Court emphasised that country of origin information can verify an exceptional situation in which the existence of persecution can be considered to be proven. There is no need to prove the personal circumstances of the applicant, not even the likelihood that they would personally face persecution. In such cases, there is a real risk of suffering serious harm, and the requirements to establish subsidiary protection have been met.

The country of origin information confirmed that in Ghazni province, Afghanistan, indiscriminate violence reached the threshold to be considered an armed conflict (sources of information: Ministry of Internal Affairs of the United Kingdom, UNHCR and Amnesty International etc). Attacks in Ghazni were mostly committed by explosive devices and suicide bombers. These methods of fighting qualify as acts of indiscriminate violence *per se*. The credibility of the applicant was not a precondition to be granted subsidiary protection.

Outcome:

The decision of the OIN was overturned and the applicant was granted subsidiary protection status by the Metropolitan Court.

Observations/Comments:

Tolerated Status: non-EU harmonised form of protection against refoulement based on Art 3 of the ECHR, please see section 51 of the Act II of 2007 on the entry and stay of third-country nationals, available in Hungarian at:

http://jogszabalykereso.mhk.hu/cgi_bin/njt_doc.cgi?docid=107401.518283 [9]

Attachment(s):

 [A.M.pdf](#)[10]

National / Other Legislative Provisions:

[Hungary - Act LXXX of 2007 on Asylum - Art 12](#) [11]

[Hungary - Act LXXX of 2007 on Asylum - Art 61\(a\)](#) [12]

[Hungary - Act LXXX of 2007 on Asylum - Art 61\(b\)](#) [13]

[Hungary - Act LXXX of 2007 on Asylum - Art 61\(c\)](#) [14]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[4] https://www.asylumlawdatabase.eu/node/195#toc_12

[5] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[6] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 15 QD>

[7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2015%20QD>

[8] <http://www.asylumlawdatabase.eu/en/content/unhcr-handbook-procedures-and-criteria-determining-refugee-status>

[9] http://jogszabalykereso.mhk.hu/cgi_bin/njt_doc.cgi?docid=107401.518283

[10] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/A.M.pdf>

[11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/775>

[12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/776>

[13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/777>

[14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/778>