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Hungary - Metropolitan Court, 29 August 2013, H.A.I. v Office of Immigration and Nationality (OIN), 3.K.30.602/2013/15

Country of Decision:

Hungary

Country of Applicant:

Lebanon

Date of Decision:

29-08-2013

Citation:

3.K.30.602/2013/15

Court Name:

Metropolitan Court of Budapest (currently: Budapest Administrative and Labour Court)

Keywords:

Effective remedy (right to)

Exclusion from protection

Persecution Grounds/Reasons

Political Opinion

Refugee Status

Relevant Legislative Provisions:

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

International Law > [1951 Refugee Convention](#) [1] > [Art 1D](#) [3]

International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [4]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5]

Council of Europe Instruments

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 6](#) [6]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [8] > [Art 2 \(c\)](#) [8]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7] > [Art 2](#) [8]

Headnote:

In the case of a Palestinian stateless asylum-seeker from Lebanon, the Court found the objection of the OIN (that was otherwise unverified by documents and based on which the decision to reject was made) to be unfounded, and recognised the Applicant as refugee. The Court emphasized that any procedure where the contents of the objection concerning a matter of national security are not subject to review, is arbitrary and seriously contradicts the principles of the rule of law as it makes the right to an effective remedy meaningless.

Facts:

The Palestinian stateless Applicant living in the refugee camp of Lebanon was working for the Fatah, and his life was in direct danger due to constant conflicts with other extremist groups (Usbet Al Asnar, Jund Al Sham). Several of his companions were killed during the incidents. The OIN rejected his application and held that non-refoulement was also not relevant. The Office of National Security raised objections in relation to the Applicant's status and the Counter-Terrorism Centre (TEK) intervened in the lawsuit.

Decision & Reasoning:

According to the reasoning of the OIN's order rejecting status, the Applicant was not subject to any different threat than any other young man living in refugee camps: thus the OIN did not accept the Applicant's claim of personal threat. Moreover, as a member of Fatah, he was considered to be in a better than average position. In the appeal against this order, the Applicant claimed that the Office of National Security did not allow the contents of their objection to be reviewed. The Court held that the conditions set forth in the El Kott case shall prevail in relation to the application if it was the case that the Applicant was forced to leave the sphere and scope of authority of the URWA territory because his life and safety were subject to serious risk. If the UNRWA protection ceased in relation to the Applicant, then ipso facto the Applicant shall automatically be entitled to the benefits of the Qualification Directive.

The Court noted that the country of origin information confirmed that the UNRWA was unable to protect the Applicant. The functions, jurisdiction and abilities of the UNRWA do not cover the physical protection of persons threatened by armed conflicts and acts of terrorism.

The Court held that the degree of insecurity was so high in the refugee camps in Lebanon that fundamental human rights could not prevail, thus effective protection either at national or international level was not available.

The Court noted that the Applicant was under threat of persecution as a result of his political opinion (being a member of the Fatah) and his membership of a particular social group (being a member of a Palestinian paramilitary organisation). The fact that the Applicant renounced starting a family in order to fight for the Palestinian cause could unambiguously be evaluated as the manifestation of his political opinion.

The Court found it injurious that neither the Respondent authority nor the Office for National Security allowed the contents of their objection to be reviewed by all parties. Their objection was not evidenced by documents during the trial, thus the Court could not accept their decision and recognised the Applicant's refugee status. The Court held that official conduct that refuses to allow - at least the Court - either to gain a full understanding of the background and the detailed facts in evidence in an administrative case, or to evaluate them accordingly, is gravely contrary to

both domestic and international standards and principles of law.? Article 1F of the Geneva Convention exhaustively lists the possible causes of exclusion but does not include the objection of a specialised Office as a ground for exclusion.

As the content of the objection was not subject to review and, furthermore, appropriate legal procedures were not conducted for the expulsion of the Applicant, Article 32 of the Geneva Convention cannot apply. Recognising or rejecting refugee status affects protected fundamental human rights according to the European Convention of Human Rights as well, thus the directions concerning exclusion set forth by the Geneva Convention must be interpreted as restrictively as possible.

The European Court of Human Rights concluded in the case of *Al Nashif v Bulgaria* that an effective judicial remedy must be provided against the challenged decision, even in cases where the decision was based on secret information which served as evidence for grounds of national security in accordance with the requirements of the rule of law. The ?concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence, if need be with appropriate procedural limitations on the use of classified information.? The authority did not comment on the substance of the difference between the two contrary decisions of the two specialised authorities, the objection and the observations that constituted serious contradictions. Furthermore, the authority acted in an arbitrary manner in trying to expand the relevant provisions of the Geneva Convention on exclusion.

Outcome:

The Court recognised the Applicant's refugee status.

Attachment(s):

[Original judgment - 3.K.30.602-2013-15.pdf](#)[9]

National / Other Legislative Provisions:

[Hungary - Act CXL of 2004 on the General Rules of Public Administrative Procedures and Services \(Administrative Procedure Act\)](#) [10]

[Hungary - Act III of 1952 on Civil Procedure - Art 339/B](#) [11]

[Hungary - Act LXXX of 2007 on Asylum - Art 8](#) [12]

[Vienna Convention on the Law of Treaties 1967 - Article 26](#) [13]

[Vienna Convention on the Law of Treaties 1967 - Article 27](#) [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/1951-refugee-convention#1d>

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

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

[6] https://www.asylumlawdatabase.eu/node/195#toc_34

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

[8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>

[9] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgment%20-%203.K.30.602-2013-15.pdf>

[10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7510>

[11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7350>

[12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7351>

[13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8004>

[14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/8005>