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10.Kpk.28.795/2016/3

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Country of Decision:

Hungary

Country of Applicant:

Pakistan

Date of Decision:

05-12-2016

Court Name:

Szeged Administrative and Labour Court

Keywords:

Effective access to procedures

Effective remedy (right to)

Procedural guarantees

Safe third country

Relevant Legislative Provisions:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 13](#) [2]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [3] > [Article 41](#) [4]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [3] > [Article 47](#) [5]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [6] > [Recital \(46\)](#) [7]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [6] > [Recital \(48\)](#) [8]

European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [6] > [Article 37](#) [9]

Headnote:

Asylum authority's decision regarding the application of the safe third country principle

quashed. The Court pointed out that the application of the STC principle is 'absolutely unacceptable.'

Facts:

A Pakistani asylum seeker entered Hungary through Serbia via the Röszke transit zone. In his asylum interview, he recounted his ill-treatment at the hands of the Serbian authorities. He was in Serbia for 4 months, while he experienced physical violence by the authorities, he was slapped and kicked. When trying to report a crime to the Police, he was not given help.

The Office of Immigration and Nationality (OIN) informed the Applicant he had three days to substantiate that in his case, Serbia is not a safe third country. The Applicant, within the three days deadline listed his experience in Serbia and said that 'although Serbia might be safe, it is not qualified to receive refugees.' The applicant's legal representative submitted further information, rebutting the presumption on the safety of Serbia.

The OIN rejected the applicant and ordered the Applicant's return to Serbia.

Decision & Reasoning:

The Court pointed out that, although under Government Decree 191/2015 (VII.24.) Serbia is a safe third country, this presumption may be rebutted in the individual case of any applicant. Under Section 51 (11) of the Asylum Act, asylum seekers must inform the OIN about their will to rebut this presumption within three days. The Court points out that information regarding the safety of Serbia may be submitted even after the three day period.

The Court noted, in bold letters, the following:

'The Court emphasises that, notwithstanding the information provided to them, applicants for international protection cannot be expected to fully understand the legal definition of a 'safe country' and give an adequate answer immediately. Many times even clients who speak Hungarian as their mother tongue have difficulties understanding the legalistic language of authorities, which holds true even more so in the case of foreign clients who, in practice, are not even provided with legal assistance from the moment of their arrival.'

The Court finds it absolutely unacceptable that the OIN is consequently making asylum seekers state whether they would wish to provide new information regarding the safety of Serbia in the future. The law does not allow such restrictions. However, the OIN usually holds it against asylum seekers if they do submit new information regarding the safety of Serbia after the three day deadline, which is contrary to the principle of fair procedure. If an asylum seeker provides information in a reasonable time, then no previous statement can prevent him from doing so.'

The Court notes that maintaining a list of STCs is in line with Article 37 of the Recast Procedures Directive (RPD). Hungarian law allows for a rebuttal of the presumption established by the STC list, however, at the current phase of the procedure, the asylum seeker can only be expected to 'inform the authority if they wish to rely on their vulnerable status or special needs (?) Understanding the law differently would violate Article 13 ECHR which guarantees the right to effective remedy.'

Recital (46) and (48) of the RPD require Member States to use up to date country information when assessing a claim. Information provided by EASO and UNHCR, the Council of Europe and other Member States should be used.

The Court then notes that based on information provided by UNHCR and the Belgrade Centre for Human Rights, the rights of refugees were systematically violated in Serbia.

The Court ordered the OIN to conduct a new procedure and issue a new decision, in which Serbia cannot be considered a STC.

Outcome:

Appeal granted, decision quashed, new procedure ordered.

National / Other Legislative Provisions:

[Hungary - Act LXXX of 2007 on Asylum](#) [10]

[Hungary - Government Decree 191/2015 \(VII. 24.\)](#) [11]

Links:

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

[2] https://www.asylumlawdatabase.eu/node/195#toc_60

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

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

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

[6] <https://www.asylumlawdatabase.eu/node/3946>

[7] https://www.asylumlawdatabase.eu/node/3946#toc_55

[8] https://www.asylumlawdatabase.eu/node/3946#toc_57

[9] https://www.asylumlawdatabase.eu/node/3946#toc_417

[10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4323>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/hungary-government-decree-1912015-vii-24>