

## **Hungary - Szeged Administrative and Labour Court, 6.K.27.060/2018/8, 01 March 2018**

**Country of Decision:**

Hungary

**Country of Applicant:**

Iraq

**Date of Decision:**

01-03-2018

**Citation:**

Szeged Administrative and Labour Court, 01 March 2018, 6.K.27.060/2018/8

**Court Name:**

Szeged Administrative and Labour Court (Szeged Közigazgatási és Munkaügyi Bíróság)

**Keywords:**

Accommodation centre

Assessment of facts and circumstances

Country of origin information

Real risk

Religion

Subsequent application

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**Relevant Legislative Provisions:**International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]

International Law

International Law > [1951 Refugee Convention](#) [1]European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [3] > [Article 31](#) [4]

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**Headnote:**

The authorities did not follow the correct procedure regarding the examination of the applicants' religion-based claim and did not carry out a proper assessment of country information. The authorities were instructed to re-assess the applications and to move the claimants to accommodation facilities outside the transit zone.

**Facts:**

On 10 July 2017, Khawaja Husni Muyad (first claimant) and Khorseed Mustafa Aisha (second claimant) submitted their application for refugee status in Tompa, in the transit zone at the Hungarian border.

During the personal interview, the first claimant admitted that he had previously travelled to Switzerland illegally and had submitted numerous applications for international protection there. He received temporary residence status in 2016 but he was told to leave Switzerland once that expired. Upon his return to Iraq, he married the second claimant on 27 July 2016. Both claimants argued that they have left Iraq due to fear of persecution. They have both decided to convert to Christianity. As both families are deeply religious and follow the rules of Islam, they did not convert until they were married and left the country. According to the claimants, converts are facing risks by family and society as conversion is not allowed under the Quran. The second claimant's sibling threatened to kill her upon return to Iraq. Both claimants stated that they were not persecuted before leaving the country and had no issues with state authorities and other non-state groups.

The Hungarian authorities rejected their claims due to lack of credibility and concluding that their evaluation of country of origin information did not preclude a safe return for the applicants. The claimants appealed the decision contending that it is impossible to assess a person's religion objectively with the questions asked at their interviews. The Court ordered the authorities to re-assess the application considering that persecution could be triggered at the moment an individual leaves their country of origin. Moreover, the Court agreed that religion-based asylum applications need to be assessed on a case-by-case basis rather than using standardised questions. Persecution can be present even if the claimant has no verbal knowledge of the religion. The Court also instructed the authorities to review updated country information focusing on the circumstances that the claimants could face upon returning to Iraq after converting to Christianity.

During the second assessment, on 27 December 2017, of the applications the claimants maintained their arguments but the authorities yet again decided that their fear of persecution is unfounded. The authorities argued that the fact that the first claimant was able to return to Iraq a numerous times, while he was residing in Switzerland, contradicts his argument regarding the safety of the country and that they wouldn't run any further risk upon return. The applicants appealed against this decision claiming that the authorities failed to observe due process and to follow the previous Court's instructions. They also requested access to accommodation as they had been living in the transit zone for months in a situation that amounts to *de facto* detention.

The domestic authorities stated that they have done everything required by the court and assessed the facts separately and also in conjunction with each other. They also argued that due to the migrant crisis in Hungary, asylum seekers are not allowed to leave the transit zone until their applications have been processed.

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**Decision & Reasoning:**

The Court recognised that the authorities did follow some of the Court's initial instructions when it came to the assessment of the claimants' commitment to Christianity and new country information. However, the publications cited in the arguments presented by the authorities were not up to date and did not fully consider the consequences that Christian converts would face upon returning to Iraq.

Firstly, the Court dismissed the authorities' decision to reject the applications for a second time

and ordered them to go through the application process again. The Court reiterated that the authorities are required to obtain up to date country information and cannot question the claimants' religion without conducting a proper assessment and examination. Secondly, the Court also found that the authorities need to find alternative accommodation for the claimants as they have been staying in the transit zone longer than allowed by the law.

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**Outcome:**

Appeal granted.

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**Observations/Comments:**

This summary was written by Yvette Talas.

**Attachment(s):**

 [no\\_transit.pdf](#)[5]

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**National / Other Legislative Provisions:**

[Hungary: Constitution 2011](#) [6]

[Part XIV section 3](#) [7]

[Hungary: Law No. LXXX/2007 on refugee rights: Article 6\(1\) Article 7\(1\) Article 40 Article 65 Article 41\(1\) Article 61\(1\) Article 12\(1\) Article 58\(1\) Article 45 Article 59 Article 64 Article 6 Article 12 Article 53\(5\) Article 68\(5\) and \(6\)](#) [8]

[Hungary: Law No. I/2017 on Administrative Procedures: Article 85 Article 89 Article 92](#) [9]

[Hungary: Law No. CXL/2004 on general rules of procedures done by Administrative Authorities: Article 109\(4\) Article 121\(1\) Article 85\(3\)](#) [10]

[Hungary: Decree 41/2016 ? increase the time limit of the refugee crisis](#) [11]

[Hungary: Law No. XCIII/1990 on costs incurred in court ? Article 45/A\(1\)](#) [12]

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**Links:**

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

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

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

[4] [https://www.asylumlawdatabase.eu/node/3946#toc\\_348](https://www.asylumlawdatabase.eu/node/3946#toc_348)

[5] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/no\\_transit.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/no_transit.pdf)

[6] <https://www.asylumlawdatabase.eu/hu/taxonomy/term/11289>

[7] <https://www.asylumlawdatabase.eu/hu/taxonomy/term/11290>

[8] <https://www.asylumlawdatabase.eu/hu/taxonomy/term/11291>

[9] <https://www.asylumlawdatabase.eu/hu/taxonomy/term/11292>

[10] <https://www.asylumlawdatabase.eu/hu/taxonomy/term/11293>

[11] <https://www.asylumlawdatabase.eu/hu/taxonomy/term/11294>

[12] <https://www.asylumlawdatabase.eu/hu/taxonomy/term/11295>