



Hungarian Helsinki Committee

THE IMPACT OF
THE RIGHT TO
AN EFFECTIVE
REMEDY ON
JUDICIAL REVIEW
POWERS
(HUNGARIAN EXAMPLES)

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JUDICIAL REVIEW IN ASYLUM CASES IN HUNGARY

- ◉ One instance judicial review by Administrative courts
- ◉ As of 15 September 2015: courts no longer have the right to alter the administrative decision (*ius reformatorius*), only to annul it and order a new procedure
- ◉ Binding instructions on how to conduct the repeat procedure,

BUT

- ◉ no guarantee in law that would remedy the situation if the Asylum authority does not comply with such instructions.
- ◉ Practice shows that the Asylum authority does not comply with the instructions, resulting in excessively prolonged asylum procedures (e.g. 5 neg. decisions).

METROPOLITAN ADMINISTRATIVE AND LABOUR COURT, 10 MARCH 2016

FACTS:

- ◉ Somali man persecuted and repeatedly tortured by the Al-Shabab for working in a cinema broadcasting movies.
- ◉ Subsidiary protection due to general security situation, no Geneva grounds for persecution were found.
- ◉ The fact that Al-Shabab did not allow the applicant to work in a cinema cannot be considered persecution as this was a conflict within the same religion (Islam), therefore it is not persecution on religious grounds.

METROPOLITAN ADMINISTRATIVE AND LABOUR COURT, 10 MARCH 2016 (CONT.)

Court grants refugee status despite no reformatory powers:

- ◉ Consistent interpretation technique: Article 6 TEU - Charter has the same legal force as the Treaties, legally binding on Member States when implementing EU law. The granting or refusal of a refugee status means the application of the law of the European Union, including the Charter.
- ◉ Supremacy of international law over domestic laws: in the case of conflict the Court is obliged to adhere to the latter and set aside the former.
- ◉ Right to an effective remedy under ECHR and Charter also encompass the duration of procedures - remedy is effective if it is effectuated in a reasonable time.
- ◉ Asylum seekers are in a specifically vulnerable position within the host society, they must have their rights protected in an effective manner (MSS v. Belgium and Greece).
- ◉ Article 31 of the Asylum Procedures Directive: refugee status determination procedure should be completed within the shortest reasonable time.
- ◉ To abide by this legislation would result in a never-ending appeal procedure thereby rendering the remedy ineffective. Such a limbo may lead to endless insecurity, which is not permitted given the extreme vulnerability of traumatized asylum seekers.
- ◉ Remedy can only be effective if it is able to rectify the situation.

TORUBAROV CASE, ADMINISTRATIVE AND LABOUR COURT OF PECS

- 9 December 2013 - application for asylum in Hungary
 - An entrepreneur in Volgograd and a member of the regional committee of the opposition party “Pravoye Delo”, active in fighting against corruption.
 - Victim of fraud by a local organized criminal group.
 - Alerts the authorities, but criminal procedure doesn't start. Instead he's arrested and interrogated and is facing false charges. He's released on bail.
 - Approaches the military prosecution to initiate criminal investigation, but instead the court issues an arrest warrant against him and an Interpol international arrest warrant. Documents were allegedly dated back and fabricated and military officials, local politicians, the police, the security service, courts and officials are involved in the local organized criminal group activities.
 - He leaves Russia with his wife upon receiving information that an assassin was hired against him and learnt that the mother and spouse of a former colleague were killed.

TORUBAROV CASE, ADMINISTRATIVE AND LABOUR COURT OF PÉCS (CONT.)

- ◉ 15 August 2014 - first negative
- ◉ 6 May 2015 - the Court annuls the decision:
 - The Asylum authority failed to ascertain the material facts of the case.
 - Decision contained serious internal inconsistencies.
 - Serious procedural flaws (no translation and assessment of submitted written evidence; failure to gather all relevant COI).

TORUBAROV CASE, ADMINISTRATIVE AND LABOUR COURT OF PECS (CONT.)

- ◉ 22 June 2016 - second rejection, this time based on national security risk
- ◉ 25 February 2017 - the Court annuls the decision for the second time:
 - The applicant has established a well-founded fear of persecution;
 - The assessment of evidence, including COI is ‘obviously unpalatable and irrational’;
 - The asylum authority based its decision on a classified content which is not accessible by the applicant - violation of the right to effective remedy. This right cannot be theoretical, the applicant has the right to have access and to make comments on all evidence used in the procedure;
 - The assessment by the asylum authority of the opinion on national security risk was irrational, as the asylum authority simply mechanically referred to the opinion without assessing the content of the opinion. No such opinion in first decision;
 - **Clear instructions to recognise him as a refugee.**

TORUBAROV CASE, ADMINISTRATIVE AND LABOUR COURT OF PECS (CONT.)

- ◉ 15 May 2017 - third rejection, no Geneva Convention grounds (almost 4 years already)
- ◉ 5 September 2017 - the Court suspends the procedure and submits preliminary reference:
 - Taking Article 47 of the Charter into consideration, should Article 46(3) of the Recast Procedures Directive be interpreted in a way that the Hungarian courts are eligible to alter the decision of the Asylum authority refusing international protection and grant it to the applicant?
- ◉ Similar preliminary reference already pending: C-113/17 (Supreme Court of Slovakia, 6 March 2017)



THANK YOU!

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