

## Conclusions of the summary report on the courts' refugee law-related jurisprudence

The jurisprudence-analysing working group examined the courts' refugee law-related jurisprudence, hence it studied cases in which the administrative authorities had applied the provisions of Act no. LXXX of 2007 on Asylum (hereinafter referred to as the Asylum Act). Asylum cases are heard by the Administrative and Labour Courts of Debrecen, Budapest and Szeged.

On the 60-day time limit imposed on the courts to conclude asylum cases, the Curia held that it can be met only if the case could be solved on the first court hearing. In all other cases, in particular if the plaintiff moved to an unknown location, problems related to the provision of interpretation services or the supply of documents were encountered or the taking of evidence were otherwise deemed necessary, the above time limit and consequently the principle of procedural fairness cannot be complied with, regardless of the level of the court's caseload. In addition, the 8-day time limit for non-judicial proceedings can be respected only if the provisions of section 3, subsection (6) of the Code of Civil Procedure were not taken into account by the courts. These problems should be addressed by the modification of the relevant pieces of legislation.

The outcome of asylum cases essentially depends on the assessment of two elements, namely credibility and country-of-origin information. The working group detected systematically divergent case-law, which was due to the differing assessments of country-of-origin information. With regard to the foregoing, the Curia proposes the establishment of an independent country-of-origin information team of two people within the institutional structure of the National Office for the Judiciary to complement, if necessary, the country-of-origin information reported by the Office of Immigration and Nationality in cases where the relevant circumstances have changed during the course of proceedings, the country-of-origin information provided by the plaintiff/claimant contain irreconcilable contradictions or the credibility and timeliness of the country-of-origin information offered by the respondent/defendant are otherwise called into question.

As part of the examination of asylum detention, the Curia found that it aims to enable the competent authority to obtain the information necessary for the processing of the asylum claim. The ordering and maintaining of asylum detention cannot be justified by the broad assumption that the asylum-seeker does not wish to co-operate or by a general reference to the risk of absconding. The nationality of the asylum-seeker – which determines the presumed chance of a successful application for international protection and may be one of the assessment criteria taken into consideration – can also not constitute lawful grounds in itself for the imposition of asylum detention. It is a fundamental guarantee that the asylum detention ordered on the basis of section 31/A, points a) and c) of the Asylum Act shall be terminated upon the delivery of the authority's final decision.

The jurisprudence-analysing working group is of the opinion that the court that deals with the ordering and maintaining of asylum detention should require that the immigration authority provide a document with full evidentiary force which contains the asylum-seeker's signature and unequivocal expression of will i) as a proof that the asylum-seeker understood the

information given by the authority via an interpreter and ii) as to the asylum-seeker's declaration, written in manuscript by him, to waive his right to a personal hearing. It is established that judges seek to give a detailed reasoning in respect of their decision on asylum detention, but they are unable to deliver a balanced and individualised decision due to the fact that the immigration authorities do not provide them with all the necessary supporting documents. In establishing the lawfulness of an asylum detention, the court has to ascertain whether the immigration authorities have conducted the proceedings related to the circumstance invoked as a ground for detention with due care and by having effectively carried out concrete and on-merits measures, and whether they have given detailed and individualised reasons substantiating that these measures will probably produce results in the period following the review.

The jurisprudence-analysing working group was not in the position to initiate a uniformity decision procedure or the publication of court rulings of principle, since the divergence in the courts' case-law has arisen not from the different legal assessments, but from the differing evaluation of the cases' factual background (country-of-origin information and individual circumstances). The publication of Curia decisions of principle was also not an option, given that the Curia has no competence to deal with asylum cases.