



LEGAL OVERVIEW

LITHUANIAN CASE LAW IN 2022

#1

MAY 2022

Lithuanian Red Cross is a nongovernmental organization which has been providing social, humanitarian, and legal assistance to refugees, asylum seekers, stateless persons, and other migrants irrespective of their legal status for over 25 years.

Legal overviews have been prepared within the framework of the Lithuanian Red Cross initiative, which aims to monitor the practice of Lithuanian courts in the area of migration and asylum and to share information on some significant decisions. The overviews include relevant extracts from this year's case law and additional explanations that are not legally binding.

The commentaries provided in the overviews are intended to explain the wider context and potential impact of the judgements covered on the development of case law. In providing these commentaries, the lawyers of the Lithuanian Red Cross rely on their subject matter competency and long-term experience in the field of migration and asylum, as well as on case law of international courts, legal and scientific literature. We are grateful to our partners and colleagues for additional insights.

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DECISIONS IN THIS OVERVIEW

I. Decision of the Supreme Administrative Court of Lithuania (hereinafter referred to as the SACL) of 30 March 2022 in administrative case eA-1819-502/2022

KEYWORDS: interview standards, opportunity to properly substantiate the application.

II. Decision of the SACL of 11 May 2022 in administrative case eA-2261-556/2022

KEYWORDS: interview standards, country of origin information.

III. Decision of the SACL of 12 May 2022 in administrative case eA-2418-415/2022

KEYWORDS: interview standards, vulnerability.

I. DECISION OF THE SACL OF 30 MARCH 2022 IN ADMINISTRATIVE CASE EA-1819-502/2022

CASE SUMMARY: The applicant brought an action before the Court against the decision of the Migration Department refusing to grant him asylum. The applicant's asylum application was based on the threat of a "crime of honour" due to his secret marriage, which was not approved by his spouse's family. After examining the asylum application, the Migration Department rejected it on the grounds, inter alia, that the applicant's account was fundamentally flawed – non-specific, lacking detail, general and contradictory.

In this case, the SACL ruled on the following aspects relevant to the asylum law:

- on the importance of proper interviewing as part of the evidence-gathering procedure and its impact on the possibility to disclose the grounds on which the asylum application is based.

In paragraph 37 of its decision of 30 March 2022, the SACL stated:

„The Panel of Judges emphasises that the interviewing of the asylum seeker, given that it is often difficult to gather other evidence in asylum cases, is a crucial procedure when considering an applicant's application for asylum. In the present case, the Department's interviewing of the asylum seeker raises reasonable doubts and refutes some of the key arguments put forward by the defendant during the proceedings. First of all, the transcript of the interview shows that the applicant was interviewed while he was sick, which may have substantially affected his ability to give a full account of the reasons for applying for asylum. When interviewing the applicant, the Department's employee encouraged him to be interviewed on a fixed date, regardless of the asylum seeker's condition, even though the transcript of the interview

*showed that there were doubts about the interviewee's health. The Court of First Instance had indicated that the applicant did not request a lawyer during the interview, but the transcript of the interview shows that the asylum seeker clearly asked for a lawyer and only after being persuaded by the Department's employee did he agree to continue with the interview. Nor does the material in the file lead to the conclusion that the applicant was given a fair hearing. Apparently, the interview was interrupted by a camp worker who urged the asylum seeker to finish the interview as soon as possible because, according to him, "[another] person is waiting for a very long time". The Department's employee assured that the interview would be completed soon. When the applicant asked to go to the toilet, the Department's employee refused to allow him to do so, citing urgency. The Department's employee then set a strict time limit of five minutes for the completion of the interview. It must be considered that the factors in question may have impaired the asylum seeker's ability to adequately disclose the grounds on which he bases his asylum claim. In addition, the Department's employee expressed a negative attitude towards the applicant on several occasions during the interview (this conclusion is supported by the Department's employee's remark that "this man talks so much and he argues so much" and the ironic remark that a person waiting for his turn to be questioned "has to thank this man that is sitting here now"), on several occasions the applicant was also not able to communicate with the interpreter. In conclusion, the Panel of Judges notes that **the Department did not properly conduct the interview of the asylum seeker, thus effectively depriving him of the opportunity to properly substantiate his asylum application.**"*

First of all, it should be noted that the wording chosen by the court ("other evidence") implies that the asylum seeker's account (interview) constitutes "evidence" in its own right. In a legal context, written evidence is generally considered to be clearer and more reliable than other means of proof, as it is more resistant to the effects of time than witness testimony, which is inevitably influenced both by the time factor and by the witness's attitude towards the circumstances about which he or she is testifying. Nevertheless, witnesses' or victims' testimonies/narratives are considered as independent means of proof and have evidentiary value, especially in situations where other evidence is unavailable or non-existent.

In the present case, the SACL stated, *inter alia*, that the content and quality of evidence of this kind may be influenced, *inter alia*, by the circumstances and the manner in which it was collected. Accordingly, it's not only the interviewee that is responsible for the content of the interview, but also the interviewer, i.e. an employee of the Migration Department.

The interview of the asylum seeker is probably the most important part of the asylum procedure, as it is the only way for the asylum seeker to indicate the reasons for his/her asylum claim and for the staff of the institution in charge of implementing the asylum procedure to gather all the information needed to properly assess the asylum application. Asylum decisions are often based on the asylum seeker's account and the perceived "credibility" of that account. Accordingly, the interviewing of the asylum seeker must be carried out in accordance with the best practice guidelines, which are set out not only in the academic literature [1], but also in the guidelines drawn up by the European Union Asylum Agency (EUAA), which is responsible for the standardisation of asylum requirements in the EU [2].

The EUAA Guidelines on personal interview indicate that the essential elements at the start of the interview are, among other things, the creation of a climate of trust and confirmation that the interviewee understands the interpreter (which ensures that communication will take place properly). The purpose of interviewing an asylum seeker is to gather information. Thus, the interview must be conducted in conditions that encourage the asylum seeker to give as detailed and accurate an account as possible. During the interview, the free narrative of the asylum seeker should be encouraged, allowing him/her to reveal any details that he/she considers relevant. When asking questions, the interviewer must first ask open-ended questions (such as "tell", "explain", "describe", etc.), then, in order to clarify the information received, clarification questions should be asked (Who? When? Where? For what reasons? How? etc.), while closed questions (requiring a "yes" or "no" answer) should be used with extreme caution, depending on whether they are productive. According to the EUAA guidelines, the interview should be based on open questions.

It should be noted that references to this type of best practice standards and to the classification of the questions asked during the interview can be found not only in the literature, but also in judgments of national courts of the EU Member States, e.g., as early as in 2013, a Dutch court stated in its judgment that, if the authorities wanted a more detailed answer, fewer closed questions had to be used in the interview [3]. If it is necessary to ask for specific details or to clarify the information provided by the asylum seeker, precisely worded closed questions requiring short and specific answers may also be used. If the answer given by the asylum seeker does not answer the question put to him, it is the interviewer's task to respond appropriately and,

if necessary, to repeat the question or rephrase it. Given that the interview is conducted and managed by the interviewer, if the asylum seeker is expected to give a "detailed" account, the questions to be asked should be formulated and presented in a way that encourages the interviewee to expand on his/her answer and to provide the necessary details. If no attempt was even made to ask for the missing details, this is a shortcoming of the interviewer's questioning and not of the asylum seeker's account. Any shortcomings of the narrative should be identified and discussed during the interview, so that the asylum seeker is given the opportunity to provide explanations for those shortcomings, such as contradictions or inconsistencies. This duty implies that it is the interviewer's task to identify what information is missing and to ask the asylum seeker to provide explanations. If during the interview it was not even attempted to seek explanation of the alleged "contradictions" and thus to establish what had actually

happened, this is a shortcoming of the interviewing and not of the asylum seeker's account.

An interview that is not conducted in accordance with such standards of good practice may lead to a situation where the main objective of the interview – to enable the asylum seeker to tell his or her story and to provide both all the information which he or she considers relevant and all the information which the interviewer expects from him or her, is not achieved. The lack of an appropriate atmosphere of trust and safety during the interview, as well as questioning techniques that restrain the content of the narrative and other constraints, such as time or language, may adversely affect both the asylum seeker's ability to motivate his or her application and the interviewer's ability to gather all the information he or she needs and, consequently, the quality of the investigation he or she conducts.

II. DECISION OF THE SACL OF 11 MAY 2022 IN ADMINISTRATIVE CASE EA-2261-556/2022

CASE SUMMARY: The applicant brought an action before the Court against the decision of the Migration Department refusing to grant him asylum. The applicant based his asylum application on his fear of being killed by Islamic State militants in his country of origin. Having examined the application for asylum, the Migration Department rejected it on the grounds that the applicant's narrative was non-specific and lacking detail, it did not provide any evidence to support his application, while the country of origin information gathered did not in itself substantiate the need for international protection.

In this case, the SACL ruled on the following aspects relevant to the asylum law:

- on the importance of clarifying questions during the interview of the asylum seeker when assessing the level of detail in the narrative;
- on the obligation to rely on up-to-date and relevant country of origin information.

In paragraph 44 of its decision of 11 May 2022, the SACL stated:

*„Having assessed the content of the Decision, the Panel of Judges found that the investigation conducted by the Department when deciding whether to grant the applicant asylum was superficial. The transcript of the interview of 15 October 2021 shows that the Department's employee did not ask the applicant any clarifying questions concerning the circumstances which led to his departure from the country of origin. During the interview, the applicant stated that he had never committed any illegal acts in his country of origin, but the people who killed his father told him that it would be his turn next. However, **the Department***

*employee did not ask the applicant to clarify the circumstances of the threat received (how the applicant was threatened, how many times, how this threat is related to the murder of his father, etc.). **Therefore, the defendant and the Court of First Instance were unjustified in finding that the applicant's account was non-specific and not detailed.***

As in its decision of 30 March 2022 in administrative case eA-1819-502/2022, the LVAT drew attention to the fact that the content and quality of the asylum seeker's narrative may be influenced, inter alia, by the way in which the interview is conducted. Accordingly, it's not only the interviewee that is responsible for the content of the interview, but also the interviewer, i.e. an employee of the Migration Department. In this case, the LVAT directly related the absence of clarifying questions during the interview to the unreasonableness of the narrative's assessment as "non-specific and lacking detail". As mentioned above, if the asylum seeker is expected to give a "detailed" account, the questions asked must be formulated and presented in a way that encourages him or her to broaden the answer and provide the necessary details. If no attempt was even made to ask for the missing details, this is a shortcoming of the interviewing and not of the asylum seeker's account.

In paragraphs 46-47 of its judgment of 11 May 2022, the SACL also addressed another important issue in asylum law:

*„46. The Panel of Judges agrees with the applicant's arguments that the **most recent and relevant information on the applicant's country of origin, the Republic of Mali, was not assessed.** [...]*

47. It is apparent from the content of the Decision that **the Defendant relied on the information on the applicant's country of origin collected in 2017-2018, but did not indicate or assess whether this information had not changed at the time of adoption of the Decision.** The appeal notes that since 2018, the security situation in Mali has evolved fundamentally and the conflict in the country has steadily deepened, with a corresponding increase in human rights violations and indiscriminate violence. These arguments of the appeal are based, *inter alia*, on Amnesty International report on Mali for 2020 [...] as well as on the UNHCR's report of January 2022, which highlights the deteriorating security situation in Mali [...]. In its response to the appeal the defendant submits that the general information provided by the applicant on the situation in the country of origin as a whole does not rebut the conclusions reached by the Department and the Court of First Instance on the issue of indiscriminate violence at the applicant's place of residence, but, in the view of the referring Panel of Judges, **such an assessment can only be made after further investigation, after establishing the applicant's last place of residence in the country of origin and after gathering and assessing up-to-date and relevant information from the country of origin in the context of the applicant's individual circumstances."**

In its case-law, the SACL has pointed out, not for the first time, that when assessing the need for international protection, accurate and up-to-date information on the asylum seeker's country of origin obtained from various reliable sources must be taken into account. When deciding on the need for international protection, the Migration Department carries out a prospective risk assessment, which aims to assess the threats that exist at the time of the decision or may arise in the future. In the present case, when assessing the risk of harm to the asylum seeker in the event of return to the country of origin, the Migration Department relied on information dating back 3 years. Given that the crisis in Mali continues until now and the security situation is inevitably changing, as well as the fact that a number of significant events have taken place in the country since 2018, including several military coups, it is clear that in the absence of accurate and up-to-date country of origin information, any conclusions drawn regarding the relevant threats cannot be considered valid. In this case, the more recent and relevant information does not have to "rebut" the conclusions drawn, but the mere fact that it is available makes it possible to rationally contest the validity of such conclusions, since the 2017-2018 information simply does not constitute a basis for a confident assessment of the current threats.

III. DECISION OF THE SACL OF 12 MAY 2022 IN ADMINISTRATIVE CASE EA-2418-415/2022

CASE SUMMARY: The applicant lodged an appeal against the decision of the Migration Department refusing to grant her asylum. The applicant is a Yazidi and based her asylum application on the grounds that she was abducted and sexually abused by members of the ISIS terrorist group, she is afraid to live in Iraq because Yazidis are constantly under attack. The Migration Department, after examining the application for asylum, rejected it, stating that the investigation had not established either the likely persecutor or likely motives and aims to persecute the asylum seeker, i.e. it had not identified any factual circumstances which would justify the assumption that she would be at a real risk of individual persecution if returned to her country of origin.

In this case, the SACL ruled on the following aspects relevant to the asylum law:

- on the importance of clarifying questions during the interview of the asylum seeker in order to establish all relevant circumstances;
- on special procedural guarantees for vulnerable asylum seekers.

In paragraph 32 of its decision of 12 May 2022, the SACL stated:

*„As can be seen from the Interview Report and the Respondent's Decision, the applicant's account was considered to be sufficiently detailed. However, the circumstances referred to by the applicant (paragraph 27 of the Decision), in the context of the general situation in the country, imply an obligation for migration officials to take all possible measures to establish the true factual situation, rather than the minimum possible. In the context of the present case, this means that **specialized interviews of the applicant should have been carried out with the active participation of specialists (psychologists,***

*analysts, etc.) with experience in interviewing migrants. It is also important to note that **during the applicant's interview, when the various types of violence used against her and the events related to it were discussed, no specificity and no clear definitions of the situation were sought**, therefore the Panel of Judges concludes that the investigation of the circumstances was not given sufficient attention, and that there is therefore no legal basis for concluding that the applicant's allegations of violence and abuse against her are refuted.“*

As in its previous decisions, the SACL noted that the purpose of the interview is twofold: not only to give the asylum seeker the opportunity to tell his/her story, but also to help the determining authority gather all the information necessary for the investigation. It is the latter aspect that is the focus of this Decision. The role of the adjudicating authority is to gather all relevant and available evidence and to assess potential risks in the context of the evidence as a whole. If the questioning is not specific, i.e. if the interviewer does not ask appropriate clarifying questions in order to establish the details of the events and episodes relevant to the investigation, the information gathered will be incomplete and will not allow for a "clear picture of the situation" or the establishment of the "true factual situation". Consequently, risk assessment, which is already carried out under conditions of high level of uncertainty, is further undermined by the incompleteness of the evidence gathered and may lead to erroneous conclusions on potential risks.

It should be noted that the conclusions of the SACL on the content of the applicant's interview

do not coincide with the Migration Department's assessment that the applicant's account was sufficiently detailed. The Court lacked specific details in this narrative, but attributed responsibility for the lack of such details to the Migration Department and not to the asylum seeker. This once again confirms the position developed by the SACL in other decisions that it is not only the interviewee, but also the interviewer who is responsible for the content of the asylum seeker's interview. If no attempt was even made to ask for certain relevant details, this is a shortcoming of the interviewing and not of the asylum seeker's account.

Another very important aspect noted by the SACL was the participation of specialists in the interview of the asylum seeker, taking into account her vulnerability (history of violence). This observation of the court implicitly refers to the special procedural guarantees for vulnerable asylum seekers provided for in the Description of the procedure for granting and withdrawing asylum in the Republic of Lithuania [4] (hereinafter referred to as the Description of the procedure). Neither the declared state of emergency in the country nor the chosen procedure for examining the asylum application may exempt the Migration Department from the obligation to assess the information provided by the asylum seeker and, taking into account

his/her vulnerability, to establish special procedural guarantees referred to in Annex 3 to the Description of the procedure, such as:

- Ensure that the interview of the asylum seeker is carried out by a civil servant specially trained to work with vulnerable persons;
- Select the appropriate methodology for conducting the interview, taking into account the specific needs of the asylum seeker;
- Ensure the participation of a psychologist in the interview of the asylum seeker;
- Use the assistance of specialists (medical doctors, psychologists, social workers) to prepare the asylum seeker for the interview.

In the present case, having assessed the asylum-seeker's account of past violence, the SACL found that she should have been interviewed by specialists, i.e. persons with specific knowledge in their respective fields. The vulnerability of the asylum seeker is an important aspect that affects the whole investigation process. In order to ensure the quality of the investigation and the validity of the decisions taken, the work with vulnerable asylum seekers (when interviewing or assessing the need for international protection) must be carried out by staff who have received specialized training and continue to receive training, as well as specialists in other relevant fields.

ENDNOTES

[1] For an overview, see, for example: Skrifvars, J., Antfolk, J., van Veldhuizen, T., Sui, V., & Korkman, J. (2021). Eliciting Information in Official Finnish Asylum Interviews, <https://doi.org/10.31234/osf.io/zx574>; van Veldhuizen, T. S., Maas, R. P. A. E., Horselenberg, R., & van Koppen, P. J. (2018). Establishing origin: Analysing the questions asked in asylum interviews, <https://doi.org/10.1080/13218719.2017.1376607>

[2] EASO Practical Guidelines. Personal interview (2014), <https://euaa.europa.eu/sites/default/files/public/EASO-Practical-Guide-Personal-Interview-LT.pdf>; EASO Quality Assurance Tool. Examining applications for international protection. Module 1. Personal interview (2019), <https://op.europa.eu/en/publication-detail/7publication/b4118321-989b-11e9-b2f2-01aa75ed71a1/language-lt>

[3] Decision of 8 August 2013 in cases AWB-13_18748uvv and AWB-13_18747u, Limburg District Court, The Netherlands, ECLI:NL:RBLIM:2013:12106

[4] Description of the procedure for granting and withdrawing asylum in the Republic of Lithuania, approved by Order of the Minister of the Interior of the Republic of Lithuania No 1V-131 of 24 February 2016 "On the Approval of the Description of the Procedure for Granting and Withdrawing Asylum in the Republic of Lithuania"



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