



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Country of Decision/Jurisdiction	<b>Czech Republic</b>
Case Name/Title	A. T. v. Ministry of Interior
Court Name <i>(Both in English and in the original language)</i>	Supreme Administrative Court (Nejvyšší správní soud)
Neutral Citation Number	1 Azs 10/2010 - 139
Other Citation Number	
Date Decision Delivered	13/05/2010
Country of Applicant/Claimant	Turkey
Keywords	Persecution
Head Note (Summary of Summary)	Cassation complaint of the applicant for international protection against judgment of the Regional Court in Brno, which approved the dismissal of his application on grounds that compulsory military service is not a relevant ground for granting of asylum.
Case Summary (150-500)	A. T. is a Kurdish national residing in Turkey who refused to serve in the compulsory military service. As a member of the Kurdish minority he would be exposed to the trauma of acting repressively against members of his own nationality. Avoiding military service, therefore, cannot be seen as avoiding the exercise of civic responsibilities in a democratic state, but as a manifestation of his conscience. He left Turkey as he was wanted by the police because of avoiding military service. He feared torture and degrading treatment by the police and the army.
<i>Facts</i>	<p>The MoI dismissed the application for international protection with its decision of 23 June 2008, concluding that if the applicant is a citizen of a country with compulsory military service, neither the enlistment nor the possible consequences associated with disobedience represent a relevant reason for the granting of international protection.</p> <p>The Regional Court in Brno upheld the decision of the MoI with its judgment of 11 December 2009.</p> <p>Therefore, the applicant lodged a cassation complaint with the Supreme Administrative Court (SAC).</p>
<i>Decision &amp; Reasoning</i>	<i>"As to the level of protection of human rights and freedoms and to the overall political and social situation in the Republic of Turkey, the SAC observes that the situation is quite unstable and significantly differs from the situation in developed democratic countries. Therefore, when assessing applications for international protection, the administrative authority shall proceed very cautiously and with very good knowledge of the current situation in Turkey regarding the protection of human rights, especially as</i>



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	<p><i>regards nationals of Kurdish ethnicity."</i></p> <p><i>"Konkrétně k úrovni ochrany lidských práv a svobod a k celkové politicko-společenské situaci v Turecké republice Nejvyšší správní soud uvádí, tato je poměrně proměnlivá a značným způsobem se liší od stavu ve vyspělých demokratických zemích. Proto je třeba při posuzování žádostí o mezinárodní ochranu postupovat velmi obezřetně s velmi dobrou znalostí aktuálních poměrů Turecka, pokud jde o úroveň ochrany lidských práv, zejména u občanů kurdské národnosti."</i></p> <p><i>The SAC pointed out that "the opinion of the defendant [the MoI], approved by the Regional Court, that the mere performance of military service is not tantamount to persecution within the meaning of the Asylum Act and, therefore, the fear of the onset of military service can not be considered as "well-founded from persecution", is certainly in general terms correct. In the present case, however, there were other significant circumstances associated with the onset of military service. If the applicant claimed that he feared to be forced to fight against the persons of his own nationality during the military service, then his fear of the onset of military service must be perceived in completely different contexts. The fear of the applicant was not directed towards the military service in general, but specifically towards the duty to combat against the Kurds and the possible consequences of his attitude to such duties. Such a circumstance may, in particular, in relation to the nationality of the applicant and the situation in the country of origin, indicate that the persecution within the meaning of the Asylum Act can be present."</i></p> <p><i>Nejvyšší správní soud podotýká, že "názor žalovaného aprobovaný krajským soudem, že samotný výkon vojenské služby není pronásledováním ve smyslu zákona o azylu a tedy, že obava z nástupu vojenské služby, nemůže být považována za „odůvodněný strach z pronásledování“, je zajisté v obecné rovině správný. V posuzovaném případě však existovaly další podstatné okolnosti spojené s nástupem vojenské služby. Uvedl-li stěžovatel, že se obává, že bude nucen v rámci vojenské služby bojovat proti osobám stejné národnosti, pak je nutné tuto obavu z nástupu vojenské služby vnímat ve zcela odlišných souvislostech. Obava stěžovatele tudíž nesměřovala obecně vůči výkonu vojenské služby, ale konkrétně vůči povinnosti boje proti Kurdům a z možných následků jeho postoje k takové povinnosti. Takováto okolnost může zejména ve vztahu k národnosti žadatele a k situaci v zemi původu signalizovat, že se o pronásledování ve smyslu zákona o azylu jednat může."</i></p> <p><i>As to this conclusion the SAC referred to its previous case law - judgment No. 5 Azs 4/2004-49 of 29 March 2004. This opinion was moreover adopted in a rather similar manner in judgment No. 1 Azs 105/2008-81 of 4 February 2009.</i></p> <p><i>In the instant case, the MoI did not gather enough relevant and up-to-date COI; therefore, the SAC was unable to draw a conclusion as to whether the fear of the applicant was well-founded.</i></p>
<p><i>Outcome</i></p>	<p><i>The SAC quashed the judgment of the Regional Court in Brno and referred the matter back for further proceedings.</i></p>



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