



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee*

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Country of Decision/Jurisdiction	<b>Czech Republic</b>
Case Name/Title	E. M. 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	4 Azs 99/2007-93
Other Citation Number	No. 1551/2008 Coll. of Reports of the SAC
Date Decision Delivered	24/01/2008
Country of Applicant/Claimant	Democratic Republic of Congo
Keywords	Internal protection; Reasonableness
Head Note (Summary of Summary)	Cassation complaint of the applicant against the judgment of the Regional Court in Brno which approved the dismissal of her application for international protection on grounds that her fear was not well-founded and that an internal protection alternative existed in her case.
Case Summary (150-500)	E. M. is a Congolese national who based her application for international protection on the fear of maltreatment by militias (belonging to the opposition) due to her husband's political activities (her husband died due to his engagement in politics) and her ethnic origin. She belongs to the ethnic group Hema, which is allegedly suffering serious hardship from another ethnic group, the Lendu.
<i>Facts</i>	<p>The MOI rejected the application for international protection on 29 November 2006 on the grounds that the fear of the applicant was not well-founded and had no corroboration in the COI. The MoI found the statement that the applicant's husband was killed due to his engagement in politics to be not credible. With reference to the COI, the MoI concluded that her fear due to her ethnic origin was not well-founded either and that the applicant could have relocated to another safe place within the country.</p> <p>The Regional Court in Brno upheld the decision of the MoI with its judgment of 28 June 2007.</p> <p>Therefore, the applicant lodged a cassation complaint with the Supreme Administrative Court (SAC).</p>
<i>Decision &amp; Reasoning</i>	<p>The SAC held that the defendant appraised the COI in a non-objective manner and therefore her conclusion is not supported by the documents gathered in the file.</p> <p>Furthermore, the SAC pointed out that the assessment of the internal protection alternative must be performed in accordance with Article 8 of the Qualification Directive and stipulated the following criteria:</p> <p><i>"when evaluating the possibility of an internal protection alternative,</i></p>



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primarily, the availability of internal protection must be addressed; the internal protection must not merely be either factually (e.g. an old man who has lived all his life in one village can hardly be asked to move to a totally alien environment hundreds of miles away if, in the country of origin, the security situation is unstable and the country is torn by armed conflicts) or legally theoretical. The way to the site of internal protection should not be barred by the conditions in the country of origin (an individual seeking internal protection must not be exposed to undue risk). Furthermore, the effectiveness of an internal protection alternative must be assessed; namely, whether the applicant for international protection would be able to escape the perpetrators of persecution in such a way as to preclude the risk of renewed persecution; moreover, the position of the applicant after the relocation must meet certain minimum standards in terms of fundamental human rights which must be ensured for the applicant and the applicant's social and economic status must not be exposed to extreme deterioration; however, some discomfort is acceptable. It is, therefore, necessary to consider the safety of the applicant, respect for fundamental human rights in the view of internal protection, her personal circumstances, family ties and economic circumstances. To sum up, when considering the internal protection alternative, it is necessary to evaluate a number of criteria, especially feasibility, appropriateness, meaningfulness and reasonableness of the solution."

"při hodnocení možnosti vnitřní ochrany je třeba se zabývat především dostupností vnitřní ochrany, kdy vnitřní ochrana nesmí být ať už fakticky (lze stěží požadovat po starém člověku, který celý život žil v jedné vesnici, aby se v zemi původu s nestabilní situací zmítané ozbrojenými konflikty přesunul do naprosto cizího prostředí vzdáleném stovky kilometrů), či právně pouze teoretická. Cestu za vnitřní ochranou nesmí vylučovat poměry panující v zemi původu (osoba hledající vnitřní ochranu nesmí být vystavena nepřiměřenému riziku). Dále je potřeba hodnotit účinnost vnitřní ochrany, tedy zda se žadateli o udělení mezinárodní ochrany podaří původcům pronásledování definitivně uniknout takovým způsobem, aby bylo vyloučeno riziko opětovného pronásledování a postavení žadatele i po jeho přesunu musí splňovat určité minimální standardy z pohledu základních lidských práv, která musí být pro stěžovatele zajištěna a rovněž nesmí dojít k extrémnímu zhoršení jeho sociálního a ekonomického postavení, přičemž určité nepohodlí je akceptovatelné. Je tedy třeba zvážit bezpečnost žadatele, respektování základních lidských práv v místě vnitřní ochrany, jeho osobní situaci, rodinné vazby a také ekonomické poměry. Lze shrnout, že při posuzování možnosti vnitřní ochrany je nezbytné zhodnotit celou řadu kritérií, především reálnost, přiměřenost, rozumnost a smysluplnost tohoto řešení."

The SAC further referred to the case of the European Court for Human Rights *Salah Sheekh* 11 January 2007 (application No. 1948/04), the case of the House of Lord *Januzi, Hamid and others v. Secretary of State for the Home Department* of 15 February 2006 and the UNHCR Guidelines on international protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees of 23 July 2003. The SAC extensively quoted from the UNHCR Guidelines, especially points 7 II a) and 28-30.



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	<p>The SAC continued <i>"it is necessary to conduct an analysis of reasonableness and relevance of the internal protection alternative. Moreover, the internal protection for the individual must be practically accessible, durable and must be provided by the authorities exercising full control over the territory. It is inappropriate to find that the internal protection will be provided by a local clan or militia where they are not the recognised authority in that territory by the government of the country of origin."</i></p> <p><i>"[...] je třeba provést analýzu rozumnosti a analýzu relevance vnitřní ochrany a dodává, že vnitřní ochrana musí být pro jednotlivce prakticky dosažitelná, trvalá, efektivní a musí být poskytována ze strany úřadů, které mají danou oblast pevně pod kontrolou. Za vnitřní ochranu nelze považovat ochranu ze strany místního klanu nebo milice, které nejsou uznány ze strany vlády (úřadů) země původu."</i></p> <p>In the instant case neither the MoI nor the Regional Court took into account the fact that the applicant was a lonely woman (the position of women in the Democratic Republic of Congo is, moreover, very problematic because women are culturally and legally discriminated against, raped and forced into marriages). This fact, in conjunction with the overall situation in the country of origin (fighting between armed militias, the government's inability to ensure respect for human rights and order throughout the country, the inability of the civilian population to move freely due to illegal checkpoints, etc.) and with the fact that the applicant was wife to a prominent political leader representing interests of their ethnic groups, virtually eliminates the possibility of internal protection.</p>
<p><i>Outcome</i></p>	<p>The SAC quashed the judgment of the Regional Court in Brno and referred the matter back for further proceedings.</p>