

**Decision**  
**In the Name of the Republic**

The Regional Court in České Budějovice has issued the following decision in the matter of: XXX versus the Respondent: Ministry of Interior of the Czech Republic.

The decision of the Minister of Interior of 3 July 2002 and decision of the Department of Asylum and Migration Policy are being cancelled and the matter is returned for further proceeding.

**Grounds of judgement:**

In the complaint delivered to the High court in Prague on 26 August 2003, the Complainant asked for the review of the Interior Minister decision of 3 July 2002 rejecting his appeal against the decision of the Ministry of Interior of 15 November 2001 (Department of Asylum and Migration Policy) rejecting his proposal for the initiation of the asylum procedure as manifestly unfounded as per Article 16(1)(d) of the Law No. 325/1999. The Respondent agreed with the decision of the first instance administrative authority and confirmed that lawful reasons for the rejection of the application as manifestly unfounded were met, since the Ministry of Interior has already assessed the merit of the claim and reasons claimed by the Complainant as new are identical with the reasons assessed and evaluated by the first instance administrative authority. The Respondent also agreed also with the negative decision on the existence of obstacles to departure as well as with the reasons for not granting asylum under Article 13 and 14 stated by the Ministry.

In the Complainant's opinion, the Respondent did not correctly establish the facts of the case. The administration authority therefore, in his opinion, violated the provisions of Article 3(4), Article 32(1) and Article 46 of the Law No. 71/1967 Coll., on Administrative Procedure (the Administrative Code). The evidence was not incomplete and in result of this, Articles 32(1) and 34(1) of the Administrative Code were violated. The first instance administrative authority, as well as the Respondent, should have based their decision on the newly established fact that the Complainant was supposed to serve in the Chechen conflict since his former influential supervisors wanted to get rid of a person who witnessed their illegal activities. To apply Article 16(1)(d) was therefore incorrect. The Respondent reasoned its decision on the appeal on information from 1999 to 2000, even though the decision was being made in the end of 2001 and beginning of 2002. If returned to his country of origin, the Complainant's freedom and life would be at risk. The Complainant therefore suggested to cancel the original decision of the Ministry of Interior as well as the decision of the Minister of Interior on the appeal.

In its written statement, the Respondent referred to the reasons of the contested decision and emphasized that the Complainant explicitly stated during his interview, that he wants to apply for asylum for the same reasons as in the previous case.

During the proceeding, both parties maintained their mutually incompatible opinions and proposals. The Complainant claims that those, who disagreed with their relocation to Chechnya, were generally at risk in Russia. Upon the Complainant's departure to the Czech Republic, his former colleagues asked his parents if and when he will come back to Russia. His mother informed him over the phone that his father committed suicide.

On 21 May 2003, the Regional Court decided to reject the appeal. According to the Court, the Respondent respected the legislative procedure during the assessment of the Complainant's repeated asylum claim and sufficiently assessed facts underlined by the Complainant in his proposal for initiation of the asylum procedure as real reasons (not stated previously because he thought they would not be needed). The Court has fully identified itself with the Respondent's opinion that these facts are not new and that they only specify in more detail facts stated during the previous asylum procedure. With regard to the generally formulated objection claiming insufficient establishment of the case facts the Court came to the conclusion added that the Complainant did not put forward new evidence to support his claim and the Court accepted the Respondent's arguments that problems related to the Complainant's participation in criminal activities of the former Police leadership cannot constitute grounds for granting asylum.

The Regional Court agreed with the conclusion of the first instance administrative authority (confirmed by the appeal decision) that in the Complainant's there are no obstacles to departure within the meaning of Article 91 of the Asylum Law (though the wording was not as precise in the contested decision. It reacted only to the objection that the administrative authority based its decision about the existence of obstacles to departure on outdated information from 1999 and 2000).

In the subsequent cassation complaint the Complainant objected that the reviewing court did not sufficiently establish the facts of the case, which constitute grounds for granting him asylum for political reasons (on the basis of his decision not to take part in the oppression of Chechen fight for independence and on his fear of persecution by his supervisors from special unit who want to get rid of him as a witness of their illegal activities). The Complainant emphasized that since 4 April 2000, when he departed with his family, in Russia he is considered, in line with the relevant legislation, as a deserter (non-compliance with the relocation order and non-compliance with the order to terminate annual leave). During the Complainant's stay in the Czech Republic, the prosecution authorities have initiated a search for him. His father has committed suicide in result of psychological torture and persecution. The Complainant has learned from his friends that the OMON authorities have his name on the list of persons that are to be killed.

According to the Complainant, the Court did not take into account the existence of obstacles to departure as per Article 91 of the Asylum Law. The Complainant cannot return to his country since it is evident that he would be immediately arrested, imprisoned and sentenced and that he would be shoot for desertion. The Complainant also mentioned the positive perception of his family in the Czech Republic (letters of support sent by the Head Master of a primary school visited by his daughters and letters of support of Nové Hradý and Klášter sv. Petra a Pavla citizens).

The Supreme Administrative Court in its decision of 16 October 2003 cancelled the decision of the Regional Court in České Budějovice and returned the matter for further proceeding. It established that the existence of obstacles to departure have not been duly assessed even though statements of the Complainant about his persecution gave sufficient reasons to do this (only the time relevancy of the information on the Russian Federation was assessed). The Supreme Administrative Court did not affirm the decision of the Regional Court confirming that reasons for the rejection of the asylum claim as manifestly unfounded existed.

The opinion of the Supreme Administrative Court is binding for Regional Courts as per Article 100(3) of the Administrative Justice Code. The Supreme Administrative Court established on the need to reassess the existence of obstacles to departure independently and separately from the assessment of reasons for granting asylum and the assessment of obstacles to departure made during the previous administrative procedure. The Complainant's claims about the serious nature of risk he would have to face in his country of origin should be taken into account (the alleged suicide of his father resulting from persecution, information on the Complainant being listed for elimination by OMON leadership structures or claims of possible death penalty/imprisonment he would have to face for desertion).

Relevant facts that could constitute obstacles to departure were not assessed by the first instance or second instance authorities, since the suicide of the Complainant's father was mentioned only during the procedure at the appeal court (21 May 2003) and the information on the Complainant being listed by OMON for elimination only in his cassation complaint. The Court therefore had no other possibility than to cancel both contested decisions as per Article 78(1) of the Administrative Justice Code and to return the matter to the Respondent for further proceeding.

In the proceeding, the Respondent shall assess the credibility of the Complainant's statements and give the Complainant a chance to objectify his claims. Then it will assess, the situation corresponds to Article 91 of the Asylum Law setting out the conditions of existence preventing the aliens to depart from the Czech Republic. The Respondent will also use updated information on the Russian Federation in order to complete its evidence since the existence of obstacles to departure must be assessed at the time, when the rejected asylum seeker is supposed to terminate his residence in the Czech Republic).