



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	Lithuania
Case Name/Title	K. S. v. Migration Department under the Ministry of Interior of the Republic of Lithuania (Migration Department)
Court Name <i>(Both in English and in the original language)</i>	Vilnius Regional Administrative Court (Vilniaus apygardos administracinis teismas), Supreme Administrative Court of Lithuania (Lietuvos vyriausiasis administracinis teismas)
Neutral Citation Number	A ⁸²² - 41/2009
Other Citation Number	
Date Decision Delivered	03/12/2009
Country of Applicant/Claimant	Nepal
Keywords	Credibility, persecution, internal relocation
Head Note (Summary of Summary)	Applicant appeal against refusal to grant asylum on the ground that the applicant did not prove the individual threat of persecution.
Case Summary (150-500)	The applicant claims that in his country of origin he was the president of the youth club „Jana Chetana”. One of the club’s policies was the fight against drugs. He, along with four friends from the club, helped the police to stop a car that was carrying drugs. After this, drug traffickers began to persecute them. According to the applicant, he was beaten and the attackers tried to kidnap him, but he was saved by the villagers. Then the applicant fled the village and was hiding in Kathmandu until he managed to leave Nepal. The applicant alleges that it was not safe for him to live in Nepal as the network of drug traffickers is supported by influential politicians and Maoist groups. After the applicant was beaten, he reported it to the police, but they fail to protect people from drug traffickers in Nepal.
<i>Facts</i>	The Migration Department rejected the asylum application, as the information submitted by the applicant was inaccurate and misleading. There was no information found about the youth club “Jana Chetana”. Though, according to the country of origin information, in Nepal such informal organizations as youth clubs exist, but the goals of these organizations are not associated with the fight against drugs. The Migration Department noted that after the applicant had been beaten, he had been living in Kathmandu for a year and had not suffered any violation of his rights. The applicant left the country of origin only after he got a visa. K. S. arrived to Lithuania in 2006 as a student and in 2007 he travelled to Austria, where he lodged the asylum application. After K. S. was transferred to Lithuania, both refugee status and subsidiary protection were rejected (31-08-2007).



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<p><i>Decision & Reasoning</i></p>	<p>The Migration Department claimed that the information submitted by the applicant was not verified by the country of origin information and the applicant did not prove the individual threat of persecution.</p> <p>The Vilnius Regional Administrative Court agreed with the position of the Migration Department and concluded that the applicant left Nepal because of economic reasons, as he did not submit any evidence proving his fear of persecution. The Regional Court refused the appeal of the applicant.</p> <p>The applicant appealed against the decision of the Regional Court.</p> <p>The Supreme Administrative Court of Lithuania stated:</p> <p><i>"(...) the Court unreasonably requests the applicant to submit objectively impossible evidence of the beating and the smugglers' attempt to kidnap; in this case the benefit of doubt should be applied (...)."</i></p> <p><i>„(...) teismas nepagrįstai reikalauja iš pareiškėjo objektyviai neįmanomų pateikti įrodymų dėl jo sumušimo ir kontrabandininkų bandymo pagrobti, šiuo atveju turėtų būti taikoma abejonės privilegija (...)."</i></p> <p>The Regional Court concluded that the applicant could use the internal flight alternative.</p> <p>The Supreme Court did not agree with the conclusion of the Regional Court and explained:</p> <p><i>"In the city of Kathmandu, where the applicant could have relocated, a friend of him, who had been hiding there, was shot, it shows that the internal flight alternative for the applicant was not possible."</i></p> <p><i>„Katmandu mieste, kur pareiškėjas būtų galėjęs persikelti, buvo nušautas vienas iš jo besislapsčiusių draugų, tai rodo, kad vidaus persikėlimo alternatyva pareiškėjo atveju buvo negalima."</i></p> <p>Also the Supreme Court noted:</p> <p><i>„The fact that the applicant did not apply for asylum as soon as he arrived to Lithuania, cannot be assuredly associated with the conclusion that the applicant does not meet the criteria of Articles 86 and 87 of the Law (grounds for granting asylum in Lithuania)."</i></p> <p><i>„Teisėjų kolegija atkreipia dėmesį, kad ta aplinkybė, kad pareiškėjas, atvykęs į Lietuvos Respubliką, ne iš karto kreipėsi dėl prieglobsčio suteikimo negali vienareikšmiškai būti siejama su išvada, kad pareiškėjas neatitinka Įstatymo 86 ir 87 straipsnių kriterijų."</i></p>
<p><i>Outcome</i></p>	<p>The Supreme Administrative Court of Lithuania revoked the decision of the Vilnius Regional Administrative Court and returned the asylum application to the Migration Department for re-examination.</p>