



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Country of Decision/Jurisdiction	<b>Czech Republic</b>
Case Name/Title	A. R. v. the Ministry of Interior
Court Name <i>(Both in English and in the original language)</i>	Supreme Administrative Court (Nejvyšší správní soud)
Neutral Citation Number	5 Azs 7/2009-98
Other Citation Number	No. 1913/2009 Coll. of Reports of the SAC
Date Decision Delivered	22/05/2009
Country of Applicant/Claimant	Kazakhstan
Keywords	Persecution
Head Note (Summary of Summary)	Cassation complaint of the applicant for international protection against judgment of the Regional Court in Hradec Králové, which approved the dismissal of his application on grounds that he could have found protection in his country of origin and that the requirement to register a religious group is not contrary to freedom of religion.
Case Summary (150-500)	A. R., a Kazakh national, left his country of origin because he was allegedly maltreated by police on account of his religion – “pure Islam”. After being arrested by police when having prayer with his religious group, he was severely beaten in his face and kidneys at the police station. Subsequently, he was warned that he might be accused of some trumped-up offence. Therefore, he feared that the police could plant drugs or weapons on him in order to charge him in a criminal case and sentence him to a long prison term. Allegedly, this is not an exceptional practice in Kazakhstan. The main reason why his religious group became the target of interest of the security forces was the fact that they refused (because of conscience) compulsory registration of their group.
<i>Facts</i>	<p>The MoI rejected his application with its decision of 31 August 2007 on grounds that he could have found protection in his country of origin and that the requirement to register a religious group is not tantamount to persecution. If the applicant was attacked by some police officer, he could have approached some police officer of a higher rank. It can happen in any country that individual public officials violate the laws when using inappropriate force; however, this does not correspond to the systematic nature of persecution. The claim that he might be accused of some trumped-up offence is not substantiated.</p> <p>The Regional Court in Hradec Králové upheld the decision of the MoI by its judgment of 24 July 2008.</p> <p>Therefore, the applicant lodged a cassation complaint with the Supreme Administrative Court (SAC).</p>



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<p><i>Decision &amp; Reasoning</i></p>	<p>The SAC referred to the case 5 Azs 66/2008-70 of 30 September 2008 and held that whereas the legal requirement to register a religious group by State authorities by itself does not amount to persecution, “<i>enforcement [of this registration] by violent means through security forces or other public authorities, which is an apparent misuse of powers [such as brutal physical violence or threat of trumped-up charges of serious crimes followed by long prison terms] can individually or in conjunction with other measures targeted to a particular person reach the threshold of persecution</i>” within the meaning of the Asylum Act (Act No. 325/1999 Coll.) read in accordance with Art. 9 of the Qualification Directive – either by itself or on cumulative grounds in connection with other measures targeted against the individual.</p> <p><i>“represivní jednání bezpečnostních složek či jiných kazašských státních orgánů, která jsou zcela zjevným excesem ze sféry zákonem dovolených opatření a která zároveň mohou buďto samostatně nebo ve vzájemné kumulaci s ostatními opatřeními namířenými vůči konkrétní osobě dosáhnout intenzity pronásledování.”</i></p> <p>Furthermore, given that the alleged actors of persecution were State authorities, “<i>it is particularly necessary to carefully consider whether the authority of higher rank or other actors of protection are able and willing to provide effective protection within the meaning of Article 7(2) of the Qualification Directive. If not, the applicant cannot be required to seek protection from them.</i>”</p> <p><i>“je totiž nutné obzvláště obezřetně zvažovat, zda-li výše instančně postavené orgány či jiní poskytovatelé ochrany jsou schopni a ochotni poskytnout účinnou ochranu ve smyslu čl. 7 odst. 2 kvalifikační směrnice. Pokud tomu tak není, nelze po stěžovateli požadovat, aby se na tyto orgány obracel.”</i></p> <p>The SAC concluded that the MoI did not gather enough information to establish whether the acts of the police were a mere sporadic excess of individuals or whether it was a common practice which was tolerated by the authorities of higher rank. Only further research can lead to a definitive conclusion as to whether the applicant has a well-founded fear of persecution on grounds of religion.</p>
<p><i>Outcome</i></p>	<p>The SAC quashed the judgment of the Regional Court in Hradec Králové and referred the matter back for further proceedings.</p>