



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Country of Decision/Jurisdiction	Czech Republic
Case Name/Title	D. B. 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	8 Azs 37/2008-80
Other Citation Number	
Date Decision Delivered	30/12/2008
Country of Applicant/Claimant	Uzbekistan
Keywords	Persecution; Refugee sur place
Head Note (Summary of Summary)	Cassation complaint of the applicant for international protection against judgment of the Regional Court in Ostrava, which approved the dismissal of his application on grounds that he wanted merely to regularise his illegal stay.
Case Summary (150-500)	D. B., an Uzbek national, lived in the Czech Republic under the government scholarship for the study of economics in Ostrava. During his stay, the applicant provided a politically-oriented interview for the station, Radio Liberty, in which he criticized the economic development in Uzbekistan. After the interview, the Uzbek authorities refused to extend the validity of the applicant's passport, which he needed to continue his studies in the Czech Republic. In this situation, the applicant applied for international protection.
<i>Facts</i>	<p>The MoI dismissed the application as manifestly unfounded with its decision of 13 July 2007. After the passport of the applicant expired, a removal order was issued against him; this fact led the MoI to the conclusion that the applicant wanted merely to regularise his illegal stay. The MoI did not assess the conditions of Sec. 12 of the Asylum Act (i.e. the conditions for granting asylum) as it rejected the application in an accelerated procedure as manifestly unfounded.</p> <p>The Regional Court in Ostrava upheld the decision of the MoI with its judgment of 13 December 2007.</p> <p>Therefore, the applicant lodged a cassation complaint with the Supreme Administrative Court (SAC).</p>
<i>Decision & Reasoning</i>	<p>The applicant claimed that he could not apply for international protection earlier (i.e. prior the issuance of the removal order) because the reasons for his application did not exist before; they arose after the interview for Radio Liberty in the Czech Republic. Therefore, he maintained that he is a typical example of a refugee <i>sur place</i>.</p> <p>Relying on its previous case law (judgment No. 5 Azs 24/2008-48 of 15</p>



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August 2008) the SAC referred to the three-step test: (1) whether the complainant is threatened by deportation or extradition abroad (2) whether the applicant could apply for international protection earlier, and (3) whether the actions by the applicant show that the application for international protection was filed "merely" to avoid the threat of deportation or extradition abroad. These three conditions must be fulfilled cumulatively.

Whilst the first condition was not disputed, the SAC observed that the second condition was not fulfilled.

"In order to assess whether the applicant could have submitted his application for international protection earlier, it is necessary to consider whether the notion of a refugee sur place or a beneficiary of subsidiary protection sur place within the meaning of Article 5 of the Qualification Directive (International protection needs arising sur place). According to this provision a well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the applicant left the country of origin; a well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin. In the last paragraph of that provision the following exception is enshrined: without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin."

"Pro posouzení otázky, zda stěžovatel mohl podat žádost o mezinárodní ochranu dříve, je nutné zabývat se tím, zda je na případ stěžovatele aplikovatelný institut uprchlíka sur place či beneficianta doplňkové ochrany sur place ve smyslu článku 5 kvalifikační směrnice (potřeba mezinárodní ochrany vznikající na místě). Podle tohoto ustanovení mohou být odůvodněná obava z pronásledování nebo reálné nebezpečí vážné újmy založeny na událostech, k nimž došlo po odjezdu žadatele ze země původu; odůvodněná obava z pronásledování nebo reálné nebezpečí vážné újmy mohou být založeny na činnosti, kterou žadatel vyvíjel po opuštění země původu, zejména pokud se zjistí, že činnost, o kterou se dotýčná žádost opírá, představuje vyjádření a pokračování názorů a přesvědčení, které měl žadatel v zemi původu. V posledním odstavci citovaného ustanovení je stanovena následující výjimka: aniž je dotčena Ženevská úmluva, mohou členské státy rozhodnout, že žadateli, který podává následnou žádost, se postavení uprchlíka obvykle nepřizná, je-li nebezpečí pronásledování založeno na okolnostech, které vyvolal sám žadatel po opuštění země původu."

The MoI did not take into account the above-mentioned conditions, especially given the context of the instant case, and failed to consider that the applicant might be a refugee *sur place* or beneficiary of subsidiary



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	<p>protection <i>sur place</i>.</p> <p>For the same reason, it is in the present matter also doubtful whether the third condition of the three-step test was met (i.e. whether the applicant filed his application "merely" to avoid the threat of deportation).</p> <p>The SAC also recalled that according to its previous case law "<i>it is irrelevant whether the applicant for international protection in fact promoted certain political rights or held certain political views, of importance is whether these activities could have been attributed to him and that as a consequence, he was persecuted or has well-founded fear of persecution. It is thus important whether he is actually threatened by persecution or whether his fear is well-founded at the time of filing of the application for international protection or in the event of a return.</i>"</p> <p><i>"není rozhodující, zda žadatel o mezinárodní ochranu určitá politická práva prosazoval nebo určité politické názory zastával, ale zda mu tyto aktivity mohly být přisuzovány a zda v důsledku toho byl pronásledován nebo se odůvodněně pronásledování mohl obávat; důležité tedy je, zda mu pronásledování reálně hrozí nebo zda jsou jeho obavy opodstatněné v době podání žádosti o mezinárodní ochranu a v případě návratu."</i></p>
<i>Outcome</i>	<p>The SAC quashed the judgment of the Regional Court in Ostrava and referred the matter back for further proceedings.</p>