



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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| Country of Decision/Jurisdiction                                 | <b>Czech Republic</b>   |
| Case Name/Title  | S. N. 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  | 6 Azs 235/2004–57   |
| Other Citation Number  |   |
| Date Decision Delivered  | 21 December 2005  |
| Country of Applicant/Claimant                                    | Belarus   |
| Keywords   | Persecution; Persecution ground - political opinion; Credibility  |
| Head Note (Summary of Summary)                                   | Cassation complaint of the asylum applicant against judgment of the Regional Court in Hradec Králové which approved the dismissal of his application on grounds that the he did not substantiate a well-founded fear of persecution for reasons of his political opinion.   |
| Case Summary (150-500)   | S. N., a Belarusian national, claimed that he participated in several demonstrations directed against the regime of President Lukashenko. Subsequently, he was several times detained by the police, he was fined and beaten. The last detention was lasting one and half month. Furthermore, he was also threatened with physical liquidation. He asserted to represent democratic powers in Belarus; however, he was not member of any political party. He maintained to have well-founded fear on account of his political opinion and filed the asylum application on 20 April 2000.  |
| <i>Facts</i>   | <p>The Ministry of Interior (MoI) rejected that asylum application on 26 May 2003 since it did not consider the applicant's political activities to be of durable character and of having impact on the opposition political scene in Belarus. The applicant was not member of any political party and did not hold any significant post among the opposition. His political activities were not intensive enough and did not reach a level of repetition so that they could be considered as activities aimed at exercising political rights and freedoms. Furthermore, the applicant did not prove that he presented his political opinions in public.</p> <p>The Regional Court in Hradec Králové upheld the decision of the MoI with its judgment of 20 February 2004 stating that the detentions by the police did not reach the threshold of persecution.</p> <p>Therefore, the applicant lodged a cassation complaint with the Supreme Administrative Court (SAC).</p> |
| <i>Decision &amp; Reasoning</i>                                  | <p><b>Persecution on grounds of political opinion</b></p> <p>The SAC did not agree with the conclusion of the MoI (as approved by the</p>   |



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Regional Court) that the detention by police due to participation in demonstrations against the government does not reach the threshold of persecution only because the applicant was not member of any political party and visited the Czech Republic repeatedly in the past.

Similarly, the fulfilment of the conditions for granting of asylum is not undermined due to the fact that the applicant did not present his political opinions in public and that he did not have any significant influence on the opposition political scene. These requirements are not included in the definition of persecution. It is not possible to require from every ordinary citizen, no matter how politically active, to influence the opposition political scene significantly.

The SAC emphasised that “[m]embership of a political party is one of the ways how to participate in public life and express one’s political opinions; however, it is not the only one. The mere fact that an individual is not member of a political party but only its supporter does not mean that he did not present his political opinion in sufficient way. This holds true especially in a country where mere participation in demonstrations organized by the opposition leads usually to persecution by the State organs. One of the prerequisites for fulfilling of the concept of persecution for exercising political rights and freedoms is therefore that the individual has a certain political opinion, that he is able to express it in an adequate manner and that he credibly describes the hardship which he suffered because of that.”

“Členství v politické straně je jednou, nikoli, jedinou možností, jak mohou být jednotlivci účastni veřejného života a dávat najevo své politické názory. Ze samotné skutečnosti, že dotyčný nebyl členem, ale pouze sympatizantem, opoziční politické strany, tak nelze dovozovat, že neprojevil dostatečně svůj politický názor. To platí tím spíše, pokud jde o zemi, kde pouhá účast na demonstracích organizovaných opozičními stranami obvykle způsobuje perzekuci ze strany představitelů státní moci. Jedním z předpokladů naplnění pojmu pronásledování pro uplatňování politických práv a svobod proto je, aby žadatel o azyl nějaký politický názor měl, dokázal jej adekvátním způsobem prezentovat, a věrohodně popsal příkoří, kterého se mu právě z těchto důvodů dostalo.”

The fact that the applicant visited the Czech Republic in the past several times cannot cast doubt on the fulfilling of the concept of persecution since it is plausible that visiting a newly developing democratic country can ascertain the applicant’s political views.

## **Credibility**

In addition, the SAC pointed out that “[t]he applicant is not obliged to prove the persecution by other means than his own credible testimony. On the contrary, in case of doubts the administrative authority is obliged to gather all available evidence to refute or question the credibility of the applicant’s testimony.”

“Není povinností žadatele o azyl, aby pronásledování své osoby prokazoval jinými důkazními prostředky než vlastní věrohodnou výpovědí. Je naopak povinností správního orgánu, aby v pochybnostech shromáždil všechny dostupné důkazy, které věrohodnost výpovědí žadatele o azyl vyvracejí či



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|                | <p><i>zpochybňují."</i></p> <p>This last conclusion as to the credibility has been reiterated in a rather similar manner in various other cases such as No. 5 Azs 55/2008-71 of 31 July 2008, No. 5 Azs 40/2009-74 of 28 July 2009, No. 1 Azs 41/2009-59 of 22 December 2009, No. 2 Azs 100/2007-64 of 26 February 2008, No. 8 Azs 5/2009-61 of 6 March 2009, or No. 4 Azs 99/2007-93 of 24 January 2008.</p> |
| <i>Outcome</i> | <p>The SAC quashed the judgment of the Regional Court in Hradec Králové and referred the matter back for further proceedings.</p>   |