



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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## Case Summary

Country of Decision/Jurisdiction	<b>Slovak Republic</b>
Case Name/Title	U. A. A. v. Migration Office of the Ministry of Interior of the Slovak Republic
Court Name <i>(Both in English and in the original language)</i>	Regional Court in Bratislava (Krajský súd v Bratislave)
Neutral Citation Number	11 Saz 39/2004
Other Citation Number	
Date Decision Delivered	25/01/2005
Country of Applicant/Claimant	Russian Federation – Chechnya
Keywords	Credibility, persecution and its coexistence with the armed conflict, discriminatory measures as acts of persecution
Head Note (Summary of Summary)	Appeal against the decision of the Migration Office of the Ministry of Interior of the Slovak Republic to deny asylum to the applicant, and against the judgement that there is no ban on his deportation to the Russian Federation.
Case Summary (150-500)	The applicant, from Russia, Chechnya, applied for asylum in Slovakia because of the fear of persecution for his political activities against the Russian Federation and his favour of the separation of Chechnya. He was active in a movement called Achamsa, which was a movement that spread propaganda on creating the Chechen government by peaceful means. He held an open speech against Basayev, a Chechen Warlord, and collected evidence on the Kadyrov's cooperation with the secret service of the Russian Federation. For his activities he was threatened and he found at his door a decapitated human head with the seal of Kremlin as a warning.
<i>Facts</i>	In the appeal procedure the applicant objected to the accuracy of the respondent's decision due to the insufficiently ascertained facts. He also argued in the appeal that the decision had insufficient reasoning. He claimed that he wanted to live a normal life in a civilized state without a fear of being killed or tortured.
<i>Decision &amp; Reasoning</i>	The Regional Court made remarks concerning the credibility of the applicant and the fact-finding process of the respondent:  "The applicant comes from a region cursed with an armed conflict, but he also claims that in his case there was not just a war conflict [to be considered], but also persecution, as he had to face the fear of persecution for his political opinion. <u>Armed conflict and persecution can exist side by side</u> even though the conflict itself can often represent the method used by the persecutor to eliminate certain groups [of people]."  <i>Žalobca prichádza z oblasti, ktorá je postihnutá vojnovým konfliktom ale</i>



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tvrdí, že tu existuje nielen vojnový konflikt ale aj perzekúcia, nakoľko musel čeliť strachu z perzekúcie na základe politického názoru. Vojnový konflikt a perzekúcia môžu vedľa seba existovať bok po boku, aj keď konflikt môže často predstavovať metódu perzekútora na eliminovanie určitých skupín.

"In the present case it will be necessary that the respondent will interview the applicant again on his reasons for asylum in order to be able to reason appropriately and convincingly as to whether the applicant's case falls within the definition of the refugee [as defined in the Refugee Convention] with reference to the statutory requirements for granting asylum, or whether the applicant is just escaping the war conflict."

*V danom prípade preto bude potrebné, aby žalovaný správny orgán žalobcu opätovne vypočul na dôvody pre udelenie azylu na území SR, aby náležitým a presvedčivým spôsobom vedel vyargumentovať, či žalobca patrí – spadá do definície utečenca zakotvenej v Dohovore o utečencoch s poukazom na existenciu zákonných podmienok pre udelenie azylu alebo sa u žalobcu jedná o útek pred vojnovým konfliktom.*

"In the connection it is necessary to state that the lack of the identification documents or the lack of written or other evidence, which would prove the truthfulness of the applicant's statements, cannot represent a burden for the applicant. This is why the lack of such evidence cannot be used against the applicant and clearly the non-existence of such documents cannot lead to a conclusion that the applicant's statements were not proved and that the applicant is therefore not credible."

*V tejto súvislosti je potrebné uviesť, že nedostatok dokladu totožnosti alebo nedostatok písomných dôkazov alebo iných dôkazov, ktoré by preukazovali pravdivosť tvrdení žalobcu nemôžu byť na ťarchu žalobcu. Preto ich nedostatok nemôže byť vyhodnotený v neprospech tvrdení žalobcu a jednoznačne nemožno z ich neexistencie vyvodit' záver o nepreukázaní tvrdení žalobcu a z tých vyvodit' jeho nedôveryhodnosť.*

„Inaccuracies in [applicant's] statements concerning the determination of the public appearances in which the applicant was supposed to appear, the number of such displays or the name of the programme in which these public displays were broadcasted on public television, cannot be used against the applicant, mainly with reference to the relatively long time period passed since these events occurred."

*Nepresnosti vo vyjadreniach ohľadne časového určenia verejných vystúpení, na ktorých mal žalobca vystúpiť, resp. počtu opakovaní alebo názvu relácie, pod ktorou malo byť verejné vystúpenie odvysielané vo verejnej televízii, nemôžu byť vyhodnotené v neprospech žalobcu, najmä s poukazom na pomerne dlhé časové obdobie, ktoré uplynulo od týchto udalostí.*

„According to the generally valid principle, the burden of proof always rests upon the person submitting the asylum application. Often, however, the applicant is not able to support his statements with documents or other



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evidence and the cases when the applicant is able to prove all his statements are rather an exception than a rule. In the present case it is necessary to take into account the fact that the applicant together with his wife and children are coming from the region affected by war conflict."

*Podľa všeobecného platného princípu, spočíva ťarcha dokazovania vždy na osobe, ktorá podáva žiadosť o udelenie azylu. Často krát však žiadateľ nie je schopný podoprieť svoje vyhlásenia dokladmi alebo inými dôkazmi a prípady, keď žiadateľ vie dokazovať všetky svoje tvrdenia sú skôr výnimkou než pravidlom. V danom prípade je potrebné prihliadnuť na skutočnosť, že žalobca spoločne s manželkou a deťmi prichádzajú z oblasti postihnutej vojnovým konfliktom.*

„Likewise, inaccurate or false statements should *per se* lead to a conclusion on denying asylum, and it is a duty of the respondent to consider these statements in the light of all the circumstances known about the given case. It is misleading to remove particular events out of context, and this is why it is necessary to take into account the cumulative effect of the life-long experience of the respondent.“

*Rovnako ani nepresné, resp. nepravdivé výroky by nemali predstavovať samé o sebe výrok o zamietnutí žiadosti o azyl a je povinnosťou žalovaného tieto výroky vyhodnotiť vo svetle všetkých okolností známych o danom prípade. Je zavádzajúce vytrhávať jednotlivé udalosti z kontextu, a preto je potrebné brať do úvahy kumulatívny účinok celoživotnej skúsenosti žalobcu.*

„It is possible that despite all the efforts of the applicant to present exact facts, his statements will not be clearly provable. As the applicant can hardly prove all the details of his case, it is inevitable, that the given case must be analysed with discretion, which is applicable only after having collected and checked all the available information about the country of origin in connection with the resolution of the question of the overall credibility of the applicant.“

*Je možné, že aj napriek všetkým snahám žalobcu predložiť presné fakty nebudú jeho tvrdenia jasne preukázateľné. Pretože žalobca s poukazom na krajinu pôvodu môže len ťažko dokázať všetky náležitosti svojho prípadu, preto je nutné v danom prípade sa riadiť voľnou úvahou, ktorá je aplikovaná len po zhromaždení a prekontrolovaní všetkých dostupných informácií o krajine pôvodu v nadväznosti na vyriešenie otázky všeobecnej dôveryhodnosti žalobcu.*

„Even though the discriminatory measures are not *per se* serious, nevertheless they can provoke the well-founded fear of persecution of the applicant, mainly when he develops feelings of terror and insecurity in relation to his destiny and that of his family.“

*Aj keď diskriminačné opatrenia nie sú samé o sebe závažné, môžu napriek tomu u žalobcu vyvolať dôvodné obavy z prenasledovania a to hlavne vtedy, keď u neho vyvolávajú pocit strachu a neistoty o svoj osud a osud svojej rodiny.*



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	<p>"The question as to whether all these discriminatory measures are <i>per se</i> persecutions can be solved only when considering all the circumstances of the given situation."</p> <p><i>Problém či všetky tieto diskriminačné opatrenia sú same osebe perzekúciami, môže byť vyriešený iba pri zvážení všetkých okolností danej situácie.</i></p>
<i>Outcome</i>	<p>The decision of the Migration Office was cancelled by the Regional Court in Bratislava and the case was returned to the respondent for further consideration.</p>