



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Country of Decision/Jurisdiction	Czech Republic
Case Name/Title	A. M. 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	2 Azs 66/2006-52
Other Citation Number	No. 1066/2007 Coll. of Reports of the SAC
Date Decision Delivered	5/11/2006
Country of Applicant/Claimant	Armenia
Keywords	Persecution; Membership of a Particular Social Group
Head Note (Summary of Summary)	Cassation complaint of the asylum applicant against judgment of the Regional Court in Prague, which approved the dismissal of his application on grounds that the experienced hardship is not tantamount to persecution.
Case Summary (150-500)	A. M., an Armenian national, claimed to have a well-founded fear of persecution for reasons of his sexual orientation. He revealed his sexual orientation while performing military service; as a consequence, he was repeatedly maltreated by other soldiers (they used to deprive him of food and beat him). The army tolerated these practices. Until recently, homosexuality in Armenia represented a criminal offence; therefore, the hatred against homosexuals is deeply rooted in the Armenian society and people discriminate against homosexuals in numerous ways.
<i>Facts</i>	<p>The MoI rejected the application with its decision of 22 March 2005 on grounds that homosexuality is not a criminal offence in Armenia anymore and that the described hardship in the army is unlikely to repeat since the military service of the applicant is over. Mere discrimination from the members of public is not tantamount to persecution.</p> <p>The Regional Court in Prague upheld the decision of the MoI with its judgment of 30 September 2005.</p> <p>Therefore, the applicant lodged a cassation complaint with the Supreme Administrative Court (SAC).</p>
<i>Decision & Reasoning</i>	<p>The SAC first assessed whether homosexuals form a particular social group.</p> <p><i>„The answer is undoubtedly affirmative if this characteristic is, in the relevant society, considered as a relevant distinguishing criterion and if the characteristic is, as regards a particular individual, relatively immutable - 'given'; in other words, homosexuals create a social group where this characteristic is a significant factor for the perception of others (or for the society as a whole). There exists a strongly prevailing consensus in Western</i></p>



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sexology that homosexuality is - except in cases of enforced or occasional homosexuality (e.g. in prisons or in case of homosexual prostitution) - a 'given' characteristic in the sense that it has not been chosen by the individual, but in principle it is an innate characteristic. Homosexuals would not create a social group if this characteristic were, in the eyes of their surroundings, more or less irrelevant [...]. In this sense, homosexuals represent a particular social group in the majority of Western liberal democracies since this characteristic is usually for their surroundings, i.e. other people, interesting and sometimes even important; moreover, in the eyes of other people this characteristic classifies those people as members of a group of people with similar relevant characteristics. Thus, for the purposes of the Asylum Act it is, a fortiori, appropriate to consider homosexuals as a particular social group in countries where membership of a sexual orientation minority singles out the individual in the eyes of its surroundings from the 'majority' and where it is perceived as an important (and - it should be noted - negative) characteristic. In Armenia, where [...] there is a general intolerance of homosexuality in the society, homosexual orientation, if not carefully concealed, i.e. if the individual concerned outwardly manifests as gay, even if only by admitting his sexual orientation (without necessarily leading a gay partner life or even performing in public activities related to his sexual orientation), classifies the individual in a social group of homosexuals."

„Nepochybně tomu tak je, pokud tato vlastnost je ve společnosti, v rámci níž se příslušnost jedinců k určitým sociálním skupinám posuzuje, relevantním rozlišovacím kritériem a pokud je u konkrétního jedince relativně nezměnitelná – „daná“; jinak řečeno, homosexuálové vytvářejí sociální skupinu tam, kde je tato jejich charakteristika významná pro náhled okolí (či v širším ohledu společnosti jako takové) na ně; že se jedná – vyjma případů vynucené či příležitostné homosexuality (např. ve věznicích či při homosexuální prostituci) – o „danou“ vlastnost v tom smyslu, že není volbou dotyčného jedince, nýbrž v zásadě vrozenou vlastností, existuje v západní sexologii výrazně převažující konsensus. Homosexuálové by nevytvářeli sociální skupinu, pokud by tato vlastnost byla v očích jejich okolí víceméně irelevantní [...]. V tomto smyslu jsou homosexuálové sociální skupinou stále ještě i v drtivé většině liberálních západních demokracií, neboť i zde zpravidla tato jejich charakteristika je pro jejich okolí, tj. jiné lidi, zajímavá a někdy dokonce důležitá a v očích těchto jiných lidí je zařazuje do určité skupiny lidí s obdobnou relevantní vlastností. Tím spíše pak lze pro účely zákona o azylu o homosexuálech hovořit jako o sociální skupině v zemích, v nichž příslušnost k menšinové sexuální orientaci dotyčného jedince v očích jeho okolí výrazně vyděluje z „většiny“ a v nichž je vnímána jako jeho důležitá (a – nutno poznamenat – negativní) vlastnost. V Arménii, kde [...] ve společnosti existuje všeobecná intolerance k homosexualitě, tedy homosexuální



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	<p><i>orientace, pokud není důkladně tajena, tj. pokud se dotyčný jedinec navenek projevuje jako homosexuál, byť již jen tím, že tuto svoji sexuální orientaci přiznává (aniž by nutně vedl homosexuální partnerský život či dokonce vyvíjel veřejné aktivity související s jeho sexuální orientací), „zařazuje“ tohoto jedince do sociální skupiny homosexuálů.“</i></p> <p>The SAC further referred to Article (10)(1)(d) pursuant to which a particular social group might include a group based on a common characteristic of sexual orientation.</p> <p>Therefore, homosexuality may be a relevant asylum ground. However, it is necessary to assess the degree of hardship that is connected with this characteristic. Mere social ostracism is not tantamount to persecution if it does not reach the level of psychological violence. The SAC concluded that such a level of hardship was not present in the applicant's case - with the exception of the military service, which is, however, only an episode in the life of the applicant which has already ceased.</p>
<i>Outcome</i>	The SAC dismissed the cassation complaint.