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Czech Republic - Supreme Administrative Court, 17 September 2010, M.Y. v. Ministry of Interior, 2 Azs 14/2010-92

Country of Decision:

Czech Republic

Country of Applicant:

Unknown

Date of Decision:

17-09-2010

Citation:

n.2Azs14/2010-92

Court Name:

The Supreme Administrative Court (SAC)

Keywords:

Inadmissible application

Non-refoulement

Personal circumstances of applicant

Relevant Facts

Subsequent application

Relevant Legislative Provisions:

International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [2]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [3] > [Art 23](#) [4] > [Art 23.4](#) [5] > [Art 23.4 \(h\)](#) [5]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [3] > [Art 23](#) [4] > [Art 23.4](#) [5]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [3] > [Art 23](#) [4]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [3] > [Art 25](#) [6] > [Art 25.2 \(f\)](#) [6]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [3] > [Art 25](#) [6]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [3] > [Art 32](#) [7] > [Art 32.3](#) [7]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#)

[3] > [Art 32](#) [7] > [Art 32.5](#) [7]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [3] > [Art 32](#) [7] > [Art 32.6](#) [7]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [8] > [Article 8](#) [9]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [10] > [Art 4](#) [11]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [10] > [Art 13](#) [12]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [10] > [Art 18](#) [13]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [10] > [Art 21](#) [14]

Headnote:

The case concerned a subsequent application for international protection based on the right to a family and private life (Art 8 of the European Convention on Human Rights (ECHR)) The application was rejected as inadmissible by the Ministry of Interior (MOI) on the basis that Art 8 considerations were deemed not applicable in asylum cases. However, the Supreme Administrative Court (SAC) made two important findings. Firstly it held that even if an application was considered to be inadmissible, there was an obligation to evaluate the risk of refoulement under Art 33 of 1951 Refugee Convention. Secondly, as provided by § 14(a)(2)(d) of the Asylum Act, in exceptional cases, to grant international protection for family life reasons, these have to be accepted as new elements in subsequent proceedings.

Facts:

The applicant lodged a subsequent application for international protection two years after her previous application. She presented new elements and findings to be examined: her newly established family life with an EU (Czech) citizen with whom she was expecting a child. The MOI classified the application as inadmissible as the applicant did not present any new elements or findings which would be of relevance to the asylum claim. The MOI held that the right to private and family life is not enumerated among the grounds for claiming international protection. As the application was classified as inadmissible, the country of origin situation was not examined further and the procedure was terminated. The applicant appealed to a regional court and her appeal was dismissed. The applicant challenged this decision before the SAC.

Decision & Reasoning:

The court evaluated the facts as above and concluded that:

Firstly, the situation in the applicant's country of origin must be examined within the context of a claim for subsidiary protection as well as in a procedure of inadmissible subsequent applications; otherwise there is a risk of breaching Art 33 of the 1951 Refugee Convention (non-refoulement obligation).

Secondly, to initiate a subsequent asylum procedure, two conditions must be met cumulatively as defined in previous judgements of the court - 1) the applicant must provide new elements or findings, 2) which through no fault of the applicant have not been examined in the previous asylum procedure. In this case, condition two was met, as the family life started after the first procedure

had finished and the authorities had not previously considered it.

New elements or findings were defined by the court as 'those, which can have, prima facie, an impact on the personal legal circumstances of the applicant'. Thus, not strictly only for asylum grounds. It is then the purpose of the subsequent asylum procedure to classify whether the particular elements or findings can be subsumed under international protection in the form of asylum, subsidiary protection, humanitarian asylum or none of these. In this particular case, the Regional Court failed to conclude that the element of family life (Art 8 of the ECHR) could not potentially be subsumed under provision § 14 and 14(a) of the Asylum Act (humanitarian or subsidiary protection provision). The court finally noted that in the new procedure it would be necessary to examine all factors in accordance with the ECHR jurisprudence (Bensaid v. United Kingdom).

Outcome:

The appeal was successful and the regional court decision annulled.

Observations/Comments:

Case available on the website of the Supreme Administrative Court - www.nssoud.cz [15]

Links:

- [1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>
- [3] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [4] [http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 23](http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2023)
- [5] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2023>
- [6] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2025>
- [7] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%20%2032>
- [8] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [9] https://www.asylumlawdatabase.eu/node/195#toc_46
- [10] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [11] [http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%204%20QD)
- [12] [http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 13 QD](http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2013%20QD)
- [13] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2018%20QD>
- [14] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#QD%20Art%2021>
- [15] <http://www.nssoud.cz>