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Country of Decision:

Czech Republic

Country of Applicant:

Ukraine

Date of Decision:

19-05-2004

Citation:

5 Azs 63/2004-60

Court Name:

Supreme Administrative Court

Keywords:

Membership of a particular social group

Persecution Grounds/Reasons

Relevant Legislative Provisions:

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

International Law

Headnote:

The judgment defined a particular social group as a group of persons that objectively share common characteristics or who at least are perceived to do so by society. This characteristic is often of an innate and unchangeable nature or is otherwise fundamental to human identity, conscience or to the exercise of those particular persons' human rights. This characteristic cannot be constituted by the risk of persecution itself.

Facts:

The Applicant, who came from the Ukraine, claimed to be a member of a social group of unemployed people. He did not have the opportunity to find a job in his country of origin; he was

not even paid minimum social benefits or the security benefits of a job applicant. The only possibility for making a living was either criminal activity or leaving the country of origin. The state authorities tolerated and did not address the situation, which, according to the Applicant, indicated persecution on the grounds of membership of a social group of unemployed persons. Discrimination or other similar acts committed by the local population may be understood to be persecution if state authorities knowingly tolerate them or if they refuse or are unable to provide effective protection against them.

The Ministry of the Interior did not grant asylum to the Applicant.

The Regional Court in Plzeň rejected the case.

The Applicant filed a cassation complaint with the Supreme Administrative Court.

Decision & Reasoning:

The Supreme Administrative Court pointed out that Act no. 325/1999 Coll., on Asylum does not define the term "membership of a particular social group". The term is not clarified in Article 1A(2) of the 1951 Refugee Convention. The Court therefore referred to the case law of foreign jurisdictions (which, however, the Court did not specify). This case law distinguishes between two approaches.

The first is based on the so-called protected characteristic. It emphasises an immutable characteristic that is so fundamental to humans that the person should not be forced to give up. It is either innate (e.g. gender, ethnicity) or it is unalterable for other reasons (e.g. for historical reasons, occupational status). For instance, social groups of family, women and homosexuals are defined this way.

The second approach is based on social perception and examines whether a group is connected to a particular characteristic that identifies or separates the group from society.

The result of these two approaches may not be the same view of situations where a social group is characterised by a fact that is not innate or inherent to human dignity, e.g. a particular occupation or social class.

Furthermore, the Court pointed out that "persecution" itself is not a definitional element that can determine a social group, even though the persecution may contribute to a certain group of people being perceived as a particular social group.

It is not necessary for members of a particular social group to know each other; they do not even have to meet each other or form a coherent group.

The Court then concluded that a particular social group is a group of persons that objectively share a common characteristic, or who are at least perceived to do so by society. This characteristic is often of an innate, immutable character or is otherwise inherent to a person's identity, conscience or the exercise of those particular persons' human rights. This characteristic cannot be constituted by the risk of persecution itself. In relation to this, the Court pointed to the UNHCR Guidelines on International Protection, HCR/GIP/02/02 of 7 May 2002.

According to the Court, taking into account the above mentioned criteria, it is actually possible to speak of a social group of unemployed persons.

In this case, the Applicant had not however shown that he would be persecuted in any way for

his membership of the social group of unemployed persons, since the difficult economic situation itself is not persecution in accordance with the established case law of the courts. Other forms of persecution were not claimed by the Applicant and cannot be inferred from the content of the evidence collected by the Ministry.

Outcome:

The Supreme Administrative Court rejected the cassation complaint of the Applicant.

Observations/Comments:

The Supreme Administrative Court made its decision before the transposition period of the Qualification Directive expired. It defined the social group more favourably for the Applicant than Article 10(1)(d) of the Qualification Directive; it set the conditions of a common characteristic or, alternatively, social perception thereof. That is to say, that a particular social group objectively shares a common characteristic or is at least perceived to do so by society. The Qualification Directive states that a group shares common characteristics and is perceived differently by society.

Attachment(s):

 [5 Azs_63_2004.pdf](#)[3]

Other sources cited:

UNHCR Guidelines on International Protection, HCR/GIP/02/02 of 7 May 2002

National / Other Legislative Provisions:

[Czech Republic - Asylum Act \(325/1999 Coll.\) - Art 12](#) [4]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/5%20Azs_63_2004.pdf

[4] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1270>