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## **Czech Republic - Supreme Administrative Court, 25 January 2013, T.T.P. v. Ministry of the Interior, 5 Azs 7/2012-28**

**Country of Decision:**

Czech Republic

**Country of Applicant:**

Vietnam

**Date of Decision:**

25-01-2013

**Citation:**

5 Azs 7/2012-28

**Court Name:**

Supreme Administrative Court

**Keywords:**

Subsidiary Protection

Family reunification

More favourable provisions

**Relevant Legislative Provisions:**

European Union Law

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]

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**Headnote:**

It is the duty of the administrative body to deal reasonably with objections to intrusion into the private and family life of the applicant within international protection proceedings.

**Facts:**

The applicant from Vietnam applied for international protection in the Czech Republic after her stay in the territory had not been prolonged. She applied on the grounds that her husband and son were to stay in the Czech Republic based on permission to stay in the long-term, and so could not

return to Vietnam.

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### **Decision & Reasoning:**

It is the duty of the administrative body to deal reasonably with objections to interference in the private and family life of the applicant within the international protection proceedings, since a violation of an international obligation may be, pursuant to the Asylum Act, reason for granting subsidiary protection (in the case of humanitarian asylum). If the administrative body states that no interference to the family life of the applicant is caused by her leaving the country, which would be in violation of Article 8 of the European Convention on Human Rights, then such conclusions have to be based on factual conditions. In this case, the applicant stayed in the Czech territory with her husband and underage son and has no one in Vietnam. Her husband has lived in the Czech Republic for more than 20 years, keeps a business and supports all the family. The applicant used to look after their son who was not yet three years old. It is not proved that family life could be maintained in Vietnam. The administrative body must evaluate the legal and factual obstacles faced in leaving the country, typically a degree of dependency upon the family breadwinner in the Czech territory, the age of the minor, and the conditions of the family background in Vietnam. Automatic conclusions by the defendant that no breach of Article 8 of the Convention will be caused by the applicant leaving the country cannot be accepted without thorough examination and for this reason, the conditions for granting subsidiary protections are not met.

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### **Outcome:**

Judgment and decision of the administrative court is revoked.

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### **Observations/Comments:**

In the Czech Republic, serious harm in the case of leaving the country according to the definition in Article 14(2)(d) of the Asylum Act may mean "violation of the international obligations of the Czech Republic". Applicants typically invoke this provision in cases where they consider that their leaving the country would interfere with their private and family life pursuant to Article 8 of the Convention. This is a purely national adaptation that exceeds the Qualification Directive. However, with regard to Article 3 of the Qualification Directive that enables the member states to implement more favourable provisions, the adaptation is compatible with the directive.

### **Attachment(s):**



[5Azs\\_7\\_2012.pdf](#)[2]

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### **National / Other Legislative Provisions:**

[Czech Republic - Asylum Act \(325/1999 Coll.\) - Art 14](#) [3]

[Czech Republic - Asylum Act \(325/1999 Coll.\) - Art 14a\(2\)](#) [4]

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### **Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/5Azs\\_7\\_2012.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/5Azs_7_2012.pdf)

[3] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1272>

[4] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1268>