

[Home](#) > Czech Republic - Supreme Administrative Court, 5 October 2006, A.M. v. Ministry of the Interior, 2 Azs 66/2006-52

---

## **Czech Republic - Supreme Administrative Court, 5 October 2006, A.M. v. Ministry of the Interior, 2 Azs 66/2006-52**

**Country of Decision:**

Czech Republic

**Country of Applicant:**

Armenia

**Date of Decision:**

05-10-2006

**Citation:**

2 Azs 66/2006-52

**Court Name:**

Supreme Administrative Court

**Keywords:**

Membership of a particular social group

Persecution (acts of)

Persecution Grounds/Reasons

Sexual orientation

---

**Relevant Legislative Provisions:**

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 2](#) [2] > Art 2 (a)

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 2](#) [2]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [1] > [Art 9](#) [3] > [Art 9.1](#) [3]

---

**Headnote:**

The sexual orientation of the Applicant for asylum may, depending on circumstances and with regard to the situation in the country of origin, be considered a sign of his membership of a particular social group. The threat of injury to the Applicant for asylum as a result of actions causing psychological pressure may not be as serious as injuries that result in threats to life or freedom, but must be at least of a comparable type.

**Facts:**

The Applicant, who came from Armenia, stated that he had been persecuted whilst carrying out his military service since he had confessed to being homosexual. The army, which is the armed unit of the state, systematically tolerated the physical and psychological bullying of the Applicant by other servicemen, who took his meals away from him and beat him. The intolerance of other members also continued after the termination of his military service.

Armenian legislation sanctioned homosexual relations as a criminal offence until 1 August 2003.

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

The Regional Court in Prague dismissed the action against the ruling of the Ministry.

The Applicant filed a cassation complaint with the Supreme Administration Court against the ruling of the Regional Court.

---

**Decision & Reasoning:**

At the outset, the Supreme Administrative Court stated that it was not contentious between the Applicant and the Ministry that the Applicant is homosexual and that he had been the subject of verbal and physical attacks because of his sexual orientation.

According to the Supreme Administrative Court, homosexuality causes an individual to become a member of a particular social group if it is understood to be a relevant, distinguishing criterion by society and if it is relatively unchangeable in a particular individual (i.e. a 'given' not, for example, forced or occasional homosexuality in prisons or in prostitution). On the contrary, in a society where this attribute is more or less irrelevant, then homosexuals do not form a particular social group. In this sense, homosexuals are still a social group in the great majority of liberal western democracies. For the purpose of the Act on Asylum, homosexuals may all the more be understood to be a social group in countries in which the individual's minority sexual orientation significantly and negatively sets them apart from the majority. Armenia is such a country.

The Supreme Administrative Court concluded that the sexual orientation of the Applicant for asylum might, depending on circumstances and with regard to the situation in the country of origin, be considered a sign of his membership of a particular social group.

Membership of a social group of homosexuals or the resulting consequences thereof must be the reason (direct or indirect) for manifestations of negative behaviour towards the Applicant, as specified by law. This condition may be met if homosexual orientation itself is perceived as undesirable, disgraceful or unacceptable by the social environment surrounding the particular individual and it is the reason for the generally and significantly negative reactions in the social environment towards the individual. This condition was met in the case under consideration (at least for a certain period of time). Negative manifestations in the environment undoubtedly caused psychological injury to the Applicant as they acted to exclude the Applicant from his social

environment.

The Supreme Administrative Court however did not find that the alleged forms of negative reactions in the Applicant's environment reached such an intensity that they could be considered as causing 'psychological pressure' in this particular case, pursuant to Article 2(6) of the Act on Asylum. The threat of injury to the Applicant for asylum as a result of actions causing psychological pressure may not be as serious as injury resulting in threats to life or freedom, but it must be at least comparable by type. It is therefore not enough if it is a mere series of unlawful occurrences – even if in particular cases they are quite intensive in their entirety – unless these occurrences of unlawfulness reach such an intensity and systemic nature in total that the quality of life experienced by a particular person is degraded to such an extent that their outlook on life results in a total feeling of futility and hopelessness at their situation. Moreover, the intensity of the aforementioned occurrences of unlawfulness have to be 'objective', which means that the aforementioned negative feelings on life would also be present in other individuals in a similar situation in the country of origin of the Applicant for asylum.

However, the occurrences of unlawfulness did not reach such intensity in the case of the Applicant. The Supreme Administrative Court admitted that the Applicant experienced a period of rather intensive problems when he carried out his military service, however, its intensity may be ascribed in particular to the specific situation of a masculine military environment that represents a temptation to bully, even in the armies of many advanced liberal, democratic states. The military service was, however, only a temporary period in the life of the Applicant and the intensity of his problems decreased significantly after it finished. A refusal of his neighbours and some of his relatives to accept the Applicant certainly negatively affects his psyche, yet in this case it cannot be called such a negative acceptance that it affects the Applicant's perspective on life. Problems with finding a job as was stated in the Applicant's statement, cannot be clearly ascribed to the sexual orientation of the Applicant.

Moreover, there is not even an indication that the public authority exerts the aforementioned pressure, or organises, supports or tolerates its existence based on the political and legislative development of the country of origin.

---

**Outcome:**

The cassation complaint by the Applicant was refused.

---

**Observations/Comments:**

The judgment is based on the legal situation before the transposition of the Qualification Directive; it however refers to Article 10(1)(d) of the Directive.

**Attachment(s):**

 [2 Azs 66\\_2006\\_judgment.pdf](#)[4]

---

**Other sources cited:**

Walter Kälin, *Grundriss des Asylverfahrens*, Basel/Frankfurt 1990, p. 97.

**National / Other Legislative Provisions:**

[Czech Republic - Asylum Act \(325/1999 Coll.\) - Art 2\(6\)](#) [5]

[Czech Republic - Asylum Act \(325/1999 Coll.\) - Art 12](#) [6]

---

**Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[2] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%202%20QD>

[3] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%209%20QD>

[4]

[https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/2%20Azs%2066\\_2006\\_judgment.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/2%20Azs%2066_2006_judgment.pdf)

[5] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7825>

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