

[Home](#) > Czech Republic - Supreme Administrative Court, 28 November 2008, P.T. v Ministry of the Interior, 5 Azs 46/2008-71

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## **Czech Republic - Supreme Administrative Court, 28 November 2008, P.T. v Ministry of the Interior, 5 Azs 46/2008-71**

**Country of Decision:**

Czech Republic

**Country of Applicant:**

Ukraine

**Date of Decision:**

28-11-2008

**Citation:**

5 Azs 46/2008-71

**Court Name:**

Supreme Administrative Court

**Keywords:**

Accelerated procedure

Manifestly unfounded application

Serious harm

Subsidiary Protection

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**Relevant Legislative Provisions:**

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [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 \(i\)](#) [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] > [Art 23.4 \(j\)](#) [5]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 8](#) [6]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 9](#) [7]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Art 13](#) [9]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8] > [Art 18](#)

**Headnote:**

Examining the application as manifestly unfounded requires a three-stage test: (1) whether there is a risk of expulsion abroad or extradition of the person, (2) whether the Applicant could have filed the application sooner, (3) whether it is obvious from the steps taken by the Applicant that they had filed the application with the sole intention of avoiding imminent expulsion or extradition.

Article 9 of the European Convention on Human Rights does not have, for instance, extraterritorial effect in comparison with Articles 3 and 8 of the same Convention. The return of an individual to a country where he is threatened with constraints on his religious freedom, which do not reach the level of interference with his rights pursuant to Article 3 of the Convention, is not in contradiction with the Convention. Such a return cannot even represent *prima facie* serious harm for the purpose of examining subsidiary protection.

**Facts:**

The Applicant, who came from the Ukraine, said he had a car accident in the Ukraine. The owner of the other car demanded compensation in the amount of EUR 10,000 from him and threatened him. The Applicant did not go to the state authorities, since the owner of the damaged car was a prosecutor for the Rovno area.

In the case of return to the country of his origin, the Applicant was afraid of (1) actualisation of threats in relation to the car accident, (2) possible health risks resulting from staying in the area affected by the accident at Chernobyl, and (3) harm resulting from his conversion from the Eastern Orthodox religion to the Evangelical religion.

The Ministry of the Interior refused the application as manifestly unfounded.

The Regional Court in Ostrava rejected the case.

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

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**Decision & Reasoning:**

The Supreme Administrative Court first referred to its judgment of 15 August 2008, Azs 24/2008-48, in which it deduced that from Articles 13 and 18 of the Qualification Directive in combination with Article 23(4)(i) and (j) of the Procedures Directive, the application for international protection may be examined as manifestly unfounded if the applicant completes the application ?only? in order to defer or obstruct the execution of a previous or forthcoming decision that would lead to their expulsion.

The use of the provisions of Article 16(2) of the Act on Asylum (manifestly unfounded application) requires a three-stage test: (1) whether expulsion or extradition to another country for prosecution for a criminal offence is imminent for the Claimant, (2) whether the Claimant could have completed their application for international protection sooner, and (3) whether it is obvious from the steps taken by the Claimant that they had completed the application for international protection ?only? with the intention of avoiding imminent expulsion or extradition abroad for prosecution for a criminal offence. These three conditions must be met in a cumulative manner.

In this instance, the Claimant had been staying in the Czech Republic for three years and he admitted that he had known about the possibility of filing an application for international protection. These two factors significantly lower the trustworthiness of the Claimant, yet they are not decisive in themselves. The Court therefore examined the Applicant's by applying Article 12 (conditions for granting the asylum) and Article 14a (conditions for granting subsidiary protection) of the Act on Asylum.

In relation to the alleged harm connected with the Claimant's conversion from the Eastern Orthodox religion to the Evangelical religion, the Supreme Administrative Court pointed out that the European Court of Human Rights has never stated that the return of an individual to a country where he is threatened with constraints on his religious freedom that do not reach the intensity of Article 3 of the ECHR, is in contradiction with the ECHR. Courts of other ECHR State Parties reached the same conclusion [compare e.g. *Ullah* in *Special Adjudicator* [2002] EWCA Civ 1856 (16.12.2002), [2002] EWCA Civ 1856, [2003] 1 WLR 770, [2003] INLR 74, Art. 63-64; or *R* in *Special Adjudicator (Respondent) ex parte Ullah* [2004] UKHL 26 (17.06.2004)] and doctrine (compare e.g. JORRO, P., SYMES, P.: *Review of Asylum Law & Practice*. Lexis Nexis, 2003, p. 403-404). Article 9 of the ECHR does not have extraterritorial effect, unlike, for example, Articles 3 and 8 of the Convention.

The Court concluded that the Applicant did not meet the conditions for granting asylum. In the case of the alleged threats that might be carried out as a result of the car accident and the threat of possible health risks resulting from staying in the area that was affected by the Chernobyl accident, the Court did not find any connection to reasons relevant to asylum. As for the alleged fear of persecution for his religious conversion, the Applicant did not prove that this threat could occur if he were to return to the Ukraine (in any form).

The Applicant also did not meet the conditions for granting subsidiary protection: (1) concerning a threat of serious harm because of his religious conversion, expulsion of the individual to a country where there is a threat of constraints on his religious freedom that do not reach the intensity of Article 3 of the ECHR, is not in contradiction with the ECHR since Article 9 of the ECHR does not have extraterritorial effect; (2) as for possible health risks, the Applicant did not consider the possibility of moving to a different part of the Ukraine; (3) the threats in relation to the car accident did not reach the degree of intensity required by Article 3 of the ECHR and the Applicant did not satisfy the burden of proof demanded by Article 3 of the ECHR. The Claimant's personal or family relations in the Czech Republic could not *prima facie* represent a reason that would hinder him from leaving the country according to Article 8 of the ECHR.

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**Outcome:**

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

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**Observations/Comments:**

Although the Supreme Administrative Court criticised the fact that conditions for refusing the application as manifestly unfounded were not completely met (point 3), ultimately the Claimant's cassation complaint failed as the Court examined whether the conditions for both forms of protection were met on their merits, and reached the conclusion that the Applicant did not meet them.

The Supreme Administrative Court dealt with the possible extraterritorial application of Article 9 of the ECHR as the Act on Asylum contains a fourth ground for granting subsidiary protection beyond the terms of the Qualification Directive ? a discrepancy with regard to international obligations.

**Attachment(s):**



[5 Azs\\_46\\_2008.pdf](#)[11]

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**Other sources cited:**

JORRO, P., SYMES, P.: Review of Asylum Law & Practice. Lexis Nexis, 2003

**National / Other Legislative Provisions:**

[Czech Republic - Asylum Act \(325/1999 Coll.\) - Art 16\(2\)](#) [12]

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**Links:**

- [1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [2] [https://m.asylumlawdatabase.eu/node/195#toc\\_12](https://m.asylumlawdatabase.eu/node/195#toc_12)
- [3] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [4] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 23>
- [5] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2023>
- [6] [https://m.asylumlawdatabase.eu/node/195#toc\\_46](https://m.asylumlawdatabase.eu/node/195#toc_46)
- [7] [https://m.asylumlawdatabase.eu/node/195#toc\\_49](https://m.asylumlawdatabase.eu/node/195#toc_49)
- [8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 13 QD>
- [10] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art%2018%20QD>
- [11] [https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/5%20Azs\\_46\\_2008.pdf](https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/5%20Azs_46_2008.pdf)
- [12] <https://m.asylumlawdatabase.eu/en/taxonomy/term/1327>