



Religious persecution as reason of granting international protection

Fact of the case:

Aslan K. made application for international protection in Germany. He is a citizen of the Russian Federation, he lived in Chechnya. In support of his application, he claimed that his membership in the revivalist movement within Sunni Islam, had forced him to leave his country of origin.

Aslan K. claimed that he practiced his religion at home and in public, according to the principles of his confession. While he prayed in public places, he had an appropriate external appearance (i.a. his beard was longer than that worn by believers in other Islamic factions), and he often talked about his religion with his fellow believers and followers of other Islamic movements.

He also stated that the religious community he is member to, is not tolerated by the Chechen authorities, who profess and promote a different version of Islam. Moreover, the Chechen authorities argue that members of the community Aslan K. belongs, should either stop confessing it, or face severe punishment.

Aslan K. informed that on several occasions he had been beaten by a group of people. Those people threatened to kill him and reported him to the police as heretic. He claimed, that one day he was stopped by the police and taken to the police station. There, he was placed in the basement, he was beaten and given little food and drink (a glass of water and some dry bread a day). He was kept in this conditions for about two weeks. When releasing, the police told him that if he did not stop professing his version of Islam, he would be killed. Then he decided to leave his country of origin.

The administrative authority refused his application for international protection. It admitted, that the version of Islam practiced by Aslan K. is not tolerated by Chechnya authorities. It also stated that Aslan K. is deeply committed to his faith and he was mistreated and imprisoned as a result of his religious beliefs.

However, the reason of refusal of his application was the fact, that he was a mere member of the religious community, not a person playing a significant role there. The administrative authority explained that if he did not manifest his religion (e.g. by his appearance), he would not be subjected to persecution, and he would be free to practice religion at home. It was therefore concluded that in the case of return to the country of origin, it is enough to change his external appearance and practice its religion privately. Therefore, as a member of his religious community, that is not recognizable in public, he will no longer be persecuted by the Chechen authorities. The administrative authority also stated, that persecution relevant for the purposes of the right of asylum takes place only, when there was interference with the 'core areas' of religious freedom, but not where there were restrictions to the public practice of faith. The administrative authority

concluded that restrictions which concern the practice of faith in public, do not constitute interference with those 'core areas'.

Aslan K. appealed against the decision to the Administrative Court. He argued that his religious convictions include the belief that the faith should be practiced in public. He argued that in the event of his return to Chechnya, he could not continue to practice his religion in public without being exposed to a risk of persecution. He also stated that as a member of his religious community he would be at risk of collective persecution in Chechnya.

Arguments to be considered

The Charter and other acts of international law define various human rights. However, it should be considered, whether any violation of human rights in the country of origin may be treated as an act of persecution that gives reason to grant an international protection.

Legal Framework

Relevant European Law

Directive 2011/95/EU (recast Qualification directive)

Article 2 Definitions

For the purposes of this Directive the following definitions shall apply:

(d) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;

(f) 'person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

Chapter III Qualification for being a refugee

Article 9 Acts of persecution

1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a). (...)

Article 10 Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution: (...)

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Chapter V Qualification for subsidiary protection

Article 15 Serious harm

Serious harm consists of:

(a) the death penalty or execution; or

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Relevant National Law

We assume that the national law is essentially equivalent to the EU legislation.

Questions

1. Did actions of the Chechen authorities against Aslan K. violated his freedom of religion under the Article 10.1 of the Charter, and can these activities be regarded as acts of persecution, or serious harm, justifying granting Aslan K. with international protection?

2. Did the administrative authority properly made a distinction between the 'core areas' of religious freedom and its external manifestation?