



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
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## Case Summary

Country of Decision/Jurisdiction	<b>Ireland</b>
Case Name/Title	Skender Memishi v (1) Refugee Appeals Tribunal; (2) Rory McCabe; (3) the Minister for Justice, Equality and Law Reform; (4) The Attorney General; (5) Ireland
Court Name <i>(Both in English and in the original language)</i>	High Court
Neutral Citation Number	[2003] IEHC 65
Other Citation Number	Record number: 2002 No. 596 JR
Date Decision Delivered	25/06/2003
Country of Applicant/Claimant	Kosovo
Keywords	Credibility; persecution
Head Note (Summary of Summary)	This case is the appeal of a Kosovan asylum seeker against the lower Tribunal's refusal to recognise him as a refugee. The appeal was dismissed; however the Court made helpful comments about the general principles pertaining to the assessment of credibility, adopting some leading US case law.
Case Summary (150-500)	The applicant feared political persecution in Kosovo. The State refused his claim for asylum, and on appeal the Tribunal held that he had "embellished" his previous account (by failing to mention the approach by the KLA sooner) and was in any event not at real risk of persecution on return to Kosovo. The High Court made general comments on credibility, before dismissing the appeal on grounds that the credibility complaint was not actually central to the adverse decision – which turned on the persecution issue.
<i>Facts</i>	The applicant was a Kosovan national of Albanian ethnicity. He had been beaten by Kosovan police two or three times, while a teenager, on account of his Albanian ethnicity. He was approached by the Kosovan Liberation Army (KLA) and asked to join them; he refused and feared for his life as a result. His village was also shelled by the Serbs.
<i>Decision &amp; Reasoning</i>	The Court found that credibility was "not really an issue" as, although credibility had been questioned by the lower Tribunal, it had refused the appeal primarily because of the absence of a real risk of persecution in future. The Court noted that the applicant had only been approached once by the KLA, and no threats had actually been made. The situation on the ground in Kosovo had profoundly changed since the time of flight, and the Tribunal was entitled to its view that there was no real risk of further attempted recruitment by the KLA (which had in fact disbanded), or ill



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	<p>treatment by Serbs (who were not longer in control of Kosovo).</p> <p>On a true reading of the lower Tribunal’s decision, the Court felt that it had given the applicant the benefit of the doubt, despite its credibility concerns.</p> <p>The Court cited two important US cases and summarised (and adopted) the principles therein in the following way:</p> <p><i>"In relation to credibility, Mr. Christle referred to the Diaz decision and that in Cordon-Garcia, to which I have referred and quoted relevant passages. The principles which emerge from these decisions are that a Tribunal is not entitled to make adverse credibility findings against an applicant without cogent reasons bearing a nexus to the decision, that the reasons for any such adverse finding on credibility must be substantial and not relating only to minor matters, that the fact that some important detail is not included in the application form completed by the applicant when he/she first arrives is not of itself sufficient to form the basis of an adverse credibility finding, and finally that the fact that the authority finds the applicant's story inherently implausible or unbelievable is not sufficient. Mere conjecture on the part of the authority is insufficient, and that corroboration is not essential to establish an applicant's credibility."</i></p> <p><i>As general principles I agree..."</i></p>
<p><i>Outcome</i></p>	<p>Appeal dismissed.</p>