



Hungarian Helsinki Committee

# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee  
co-financed by the European Commission

## Case Summary

Country of Decision/Jurisdiction	<b>Spain</b>
Case Name/Title	
Court Name <i>(Both in English and in the original language)</i>	High National Court/ Audiencia Nacional
Neutral Citation Number	483/2009
Other Citation Number	
Date Decision Delivered	16/12/2009
Country of Applicant/Claimant	Costa Rica
Keywords	Delay; Credibility; Manifestly unfounded application
Head Note (Summary of Summary)	The applicant appealed before the High National Court against the decision of the Ministry of Interior to reject his refugee status. The applicant declared to have suffered persecution in Costa Rica because of his sexual orientation. The demand was denied at first instance by the Ministry of Interior alleging that the report is not credible; basing this allegation on the fact that, among others, he presented the application more than one year after his entry in Spain, staying in an irregular situation, which entailed the risk of being expelled during this period.
Case Summary (150-500)	
<i>Facts</i>	<p>The applicant declared to have suffered persecution in Costa Rica because of his sexual orientation. He specified that the discrimination suffered took place in his social and labour environment and was also addressed by the authorities, specifically, the police. After experiencing important discriminatory incidents (also from the police), in 2006 he got death threats and decided to leave.</p> <p>He entered Spain as a tourist in July 2006 and stayed in an irregular situation until October 2007, when he claimed for asylum.</p> <p>The fact discussed in this decision regards the credibility of the applicant's declaration. On one hand, the credibility of his report was analysed; the possibility of internal protection is considered possible in Costa Rica, as this country generally respects homosexual rights.</p> <p>And in the other hand, the fact of the delay in applying for asylum is considered as a sign of non-credibility. The applicant took 15 months to claim for asylum after first entering in Spain.</p>
<i>Decision &amp; Reasoning</i>	The question developed by the Court was whether the delay on presenting the asylum application can be considered as a reason to determine non-credibility. It is alleged against the applicant that he stayed in Spain for



Hungarian Helsinki Committee

# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
co-financed by the European Commission*

	<p>more than one year without claiming asylum, even though there was no obstacle keeping him from doing so. This circumstance affirms that it is not reasonable to believe that someone who is being persecuted, and is seeking protection, would arrive in a country and neglect to claim protection for more than one year. Furthermore, the applicant had undertaken the steps needed to obtain a residence permit.</p> <p>In opposition to these allegations, the applicant declared that he didn't know he could benefit from international protection during this time. As soon as he learnt about this possibility he rapidly presented the asylum application.</p> <p>Spanish law states that the maximum period allowed for applying for asylum is one month from the entrance into Spain, except if there is a circumstance of persecution <i>sur place</i>.</p> <p>Finally, the High National Court presented its position about the question regarding the delay in presenting the asylum application, stating that we don't have to interpret that this delay means a lack of credibility. However, we have to infer that the delay means that there is not a real need of persecution or, at least, we have to deduce that the facts in which the persecution is based are not current. It can be presumed that someone who stays in the country in an irregular situation with the risk of being expelled does not have an imperative need to be protected. Nevertheless, it is important to highlight that the delay on presenting the application does not necessarily imply the non-credibility of what is reported by the applicant.</p>
<i>Outcome</i>	The appeal was not successful and the High National Court declared that refugee status can't be granted.