



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	Austria
Case Name/Title	K. v. Federal Asylum Review Board (FARB)
Court Name <i>(Both in English and in the original language)</i>	Supreme Administrative Court (Verwaltungsgerichtshof)
Neutral Citation Number	2011/01/0016
Other Citation Number	
Date Decision Delivered	18/02/2011
Country of Applicant/Claimant	Russian Federation (Chechnya)
Keywords	Internal protection, subsidiary protection, torture, procedural rules, individual assessment;
Head Note (Summary of Summary)	Complaint against the refusal to grant refugee status as the complainant was considered to have an internal relocation alternative at disposal.
Case Summary (150-500)	Russian soldiers arrested the complainant, a Russian national and Chechen, in 1996 for having supported Chechen rebels. He was kept in detention for one month during which he was repeatedly tortured. He was released after his family had paid a ransom. After that, he stayed at his father's place in Krasnojarsk (Siberia) until the year 1999. That year, he returned to Chechnya and could not leave again due to the starting of the second Chechen war. He was arrested a second time by the Russians for being suspected of having received military training in a "Chatab-Camp". He was kept in a pit and suffered maltreatment again. After approximately eight days of detention, he was again released after the payment of ransom by relatives. In March 2001, he returned to Krasnojarsk together with his mother, brother and sister, where he stayed until 2002. After ignoring two police summons, the police questioned the complainant's father about his son's whereabouts. After this, the complainant hid at some friends' places near Krasnojarsk and left the Russian Federation to finally apply for international protection in Austria on the 7 th of August 2002.
<i>Facts</i>	<p>The Federal Asylum Agency (FAA), as the first instance administrative authority, dismissed the application for refugee status but granted subsidiary protection. The complainant appealed against this decision.</p> <p>The FARB, as the second instance administrative authority, considered the complainant's statement as – almost entirely – credible. Under this assumption, the FARB concluded that the complainant had been targeted by the Russian forces', to the extent that, considering his prior detentions and maltreatment, in case of return "unjustified interference of significant intensity with the complainant's personal sphere to be protected would have to be expected" ("<i>mit maßgeblicher Wahrscheinlichkeit ein ungerechtfertigter</i></p>



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	<p><i>Eingriff von erheblicher Intensität in die zu schützende persönliche Sphäre des Beschwerdeführers zu erwarten wäre.</i>)". However, as he had lived in Krasnojarsk, where his mother and siblings still lived with an apparently sufficient means of existence, from 1997 to 1999 and from 2001 to 2002 without problems, an internal protection alternative in Krasnojarsk had to be assumed. The FARB accordingly dismissed the appeal.</p>
<p><i>Decision & Reasoning</i></p>	<p>The Court determined that the FARB's reason did not meet the standards of plausibility, comprehensibility and conclusiveness. Then, it reiterated its perception of an internal protection alternative:</p> <p>"According to the Supreme Administrative Court's permanent jurisprudence, the assumption of an internal protection or flight alternative requires, in view of its (<i>inter alia</i>) immanent calculation of reasonableness, more detailed findings on the expectations of the complainant's specific situation in case of relocation (...)."</p> <p><i>"Die Annahme einer innerstaatlichen Schutz- oder Fluchtalternative erfordert nach der Rechtsprechung des Verwaltungsgerichtshofes im Hinblick auf das ihr u.a. innewohnende Zumutbarkeitskalkül insbesondere nähere Feststellungen über die im Falle des Ortswechsels zu erwartende konkrete Lage des Beschwerdeführers (...)."</i></p> <p>In the specific case, the Court continued, the FARB had not met this requirement: As to the assumption of an internal protection or flight alternative in Krasnojarsk with reference to the complainant's mother and siblings still living there and "apparently" having a sufficient means of existence, the Court objected that these relatives – in contrast to the complainant – according to the file, had not been exposed to reprisal at any moment or gotten into the Russian forces' sights, which is why their conditions of living in Krasnojarsk do not permit any conclusions for the complainant's specific situation in case of return. Regarding the FARB's referral to the complainant's (second) supposedly "unhindered" (<i>"unbehellig"</i>) stay in Krasnojarsk, the Court noted that the FARB failed to examine thoroughly that the fact that the complainant was summoned twice by the police and the fact that his father was questioned on his whereabouts and on his need to remain in hiding.</p> <p>Therefore, the Court found that the FARB's decision was insufficient regarding the question for an internal protection or flight alternative.</p>
<p><i>Outcome</i></p>	<p>The FARB's decision was repealed for unlawfulness because of violation of procedural rules.</p>