



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	Austria
Case Name/Title	S 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	2001/01/0169
Other Citation Number	
Date Decision Delivered	25/03/2003
Country of Applicant/Claimant	Senegal
Keywords	Credibility, standard of proof, country of origin information, procedural rules;
Head Note (Summary of Summary)	Complaint against the refusal to grant refugee status/subsidiary protection as the complainant was found not credible regarding his identity, escape route and reasons.
Case Summary (150-500)	The Senegalese applicant and his father were members of the rebel group MFDC (Mouvement des Forces Démocratiques de la Casamance). Rebel arms were hidden in the basement of his father's home, where the complainant lived as well. The applicant possessed a pistol out of these arms, which had been given to him by his father. When the complainant's father returned from a ten-day-travel trip to Guinea-Bissau in January 1999, the police came to his house, searched for it and found the hidden guns, among them, in his room, the complainant's pistol. The complainant and his parents were detained and he was brought to Ziguinchor prison. He had no information on where his parents were brought. The police wanted to know who the guns belonged to but the complainant did not share any information. He got ill during detention and was brought to a military hospital in Segan Sor in October 1999. There, the complainant became friends with a guardsman who told him that he would face lifetime imprisonment or even a death sentence. On the 27 th November 1999, many injured persons were brought to the hospital after a big accident in town. Since all guards were helping to carry injured persons, the hospital gate remained unguarded. This opened the complainant's possibility to escape the hospital. Subsequently, the complainant fled to Gambia by foot and entered Austria on the 16 th of December 1999.
<i>Facts</i>	The Federal Asylum Agency (FAA) denied the application for international protection in the first instance administrative procedure as the complainant was found not credible. The complainant appealed against this decision. The FARB decided to follow the FAA's reasoning according to which the Senegalese criminal code enforced the death sentence only for espionage and treason, but not for mere MFDC-membership. Additionally, the details of



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	<p>the complainant's escape from the hospital were found implausible as it was considered irreproducible that a person sentenced to death had been able to flee this way. Especially, it was deemed not credible that all guards had to help carrying injured persons and as a consequence, the gate had remained unguarded. Finally, the appeal was dismissed without any public hearing of the complainant.</p>
<p><i>Decision & Reasoning</i></p>	<p>The Court did not follow the FARB's argumentation. First of all, it pointed out that the complainant did not allege that he had been sentenced to death for his MFDC-membership. More precisely, he had stated that he had been sentenced by a military court "because a pistol was found in my room, because I was MFDC-member and because rebel stock had been found in the house". The Court, however, considered such facts as quite qualified to be categorised and persecuted as "treason". Additionally, according to the most up-to-date COI-source used by the FARB itself, even alleged MFDC-members had been detained and police in Casamance were suspected to have tortured and committed extrajudicial killings.</p> <p>Moreover, the Court objected to the FARB's assessment on the credibility of the complainant's escape details, reminding the authority that for the sake of assessing the credibility of described occurrences, European standards could not be applied directly to African countries:</p> <p>"Also, it is not comprehensible, for which reasons the responding authority dismissed the complainant's escape from the hospital as implausible. As for the responding authority's doubts concerning the trueness of the flight details as stated by the complainant and the subsequent deduction of his lack of credibility for this reason, the responding authority has to be opposed, considering the conditions in African countries which shall not be measured by European standards. The complainant's statement on how he managed to escape from the hospital does not <i>a priori</i> negate plausibility. The responding authority did not establish any conclusions which would exclude the described occurrences."</p> <p><i>"Es ist auch nicht nachvollziehbar, aus welchen Gründen die belangte Behörde die vom Beschwerdeführer geschilderte Flucht aus dem Krankenhaus als unwahrscheinlich abtut. Insoweit die belangte Behörde Zweifel an der Richtigkeit der vom Beschwerdeführer gemachten Angaben über die näheren Umstände seiner Flucht geäußert und daraus seine Unglaubwürdigkeit abgeleitet hat, ist ihr unter Bedachtnahme auf die nicht mit europäischen Maßstäben zu messenden Verhältnisse in afrikanischen Ländern entgegenzuhalten, dass die Geschichte des Beschwerdeführers über seine Flucht aus dem Krankenhaus (...) nicht von vornherein jeglicher Wahrscheinlichkeit entbehrt (...). Feststellungen, die die geschilderten Vorgänge ausschließen würden, hat die belangte Behörde aber nicht getroffen."</i></p>
<p><i>Outcome</i></p>	<p>The FARB's decision was repealed for unlawfulness because of violation of procedural rules.</p>