



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee
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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	2003/20/0389
Other Citation Number	
Date Decision Delivered	26/11/2003
Country of Applicant/Claimant	Georgian Republic
Keywords	Credibility, country of origin information, procedural rules;
Head Note (Summary of Summary)	Complaint against the refusal to grant refugee status as it was not determinable that the complainant left Georgia for the reasons he claimed.
Case Summary (150-500)	The complainant ran a transportation business in Kutaisi. Returning from a delivery in Achmeta in August 2000, he was stopped by policemen who ordered him to carry some goods for them. The complainant refused to do so as he feared the police wanted to plant drugs on him. Instead, on the policemen's request, he carried a group of Chechens to Tiflis. However, in Tiflis, he was arrested by the local police accusing him, <i>inter alia</i> , of being a follower of former president Gamsachurdia and of having carried the Chechens for that reason. He was detained for one month and tortured during that time period. Shortly after his release, having returned to Kutaisi, local police confronted him with monetary claims. After having sold his truck, masked policemen assaulted the complainant and his wife, stealing the sales profit from truck. After another monetary claim by the police, he left the country. The complainant, who had been a politician's chauffeur in the past, had prior problems with the police in 1995 when they tried to obtain information on the whereabouts of the politician, who's employment he was under, from him. During detention in 2000, he was faced with this incident again. The complainant arrived in Austria on the 31 st of October 2001.
<i>Facts</i>	The Federal Asylum Agency (FAA) denied the application for international protection in the first instance administrative procedure. After having conducted a public hearing on the case, including the applicants interrogation, the FARB dismissed the complainant's appeal in the second instance. The FARB reasoned its decision based on contradictions and implausibility stemming from the complainant's and his wife's statements. Both claims, for refugee status and subsidiary protection, were dismissed.



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<p><i>Decision & Reasoning</i></p>	<p>The FARB founded its conclusions on the credibility of the complainant based on alleged contradictions during three different interrogations regarding the amount of money claimed by the police, the way the police came into possession of the complainant’s money and the time period between his return to Kutaisi and his first arrest. The alleged implausibility, firstly, concerned his pregnant wife pulling down the mask of one police man during the assault and, secondly, the instance of the complainant not prompting the Chechens to leave his truck after getting out of the policemen’s sight.</p> <p>The Court decided not to follow the FARB’s argumentation as it considered that, regarding the first alleged contradiction, the complainant had been confronted with an erroneous amount of money by the FARB itself. Concerning the second alleged contradiction, the Court found that the FARB had omitted to question the complainant or his wife on that detail. Regarding the third alleged contradiction, the Court pointed out that the FARB had ignored the complainant’s explanation for not being able to recall the exact number of days between his return and his arrest, blaming the multitude of visits by the police.</p> <p>As for the first alleged implausibility, the Court could not comprehend the FARB’s finding, as it was not sustained by any factual knowledge or experience of life. Regarding the second alleged implausibility, the Court criticised that the FARB had not considered the complainant’s explanation of not having forced the Chechens to leave because he felt pity.</p> <p>Additionally, the Court criticised that the FARB had omitted to confront the complainant with the COI considered by the first instance authority.</p> <p>The Court concluded that:</p> <p>“On the whole, the picture reveals that the responding authority sustained its consideration of evidence on isolated considerations. Although a part of them does not seem to be inappropriate to account for a solution, they themselves, alone, without consideration of the overall context of the complainant’s statements, without evaluation of his personal credibility and without examination of the current country of origin information regarding incidents as the ones claimed by the complainant, cannot be sufficient to found the decision in a comprehensive way.”</p> <p><i>“Insgesamt ergibt sich somit das Bild, dass die belangte Behörde ihre Beweiswürdigung auf isolierte Überlegungen gestützt hat, die zwar zumindest zum Teil nicht ungeeignet erscheinen, zur Lösung beizutragen, für sich allein und ohne Bedachtnahme auf den Gesamtkontext des Vorbringens, ohne Beurteilung der persönlichen Glaubwürdigkeit des Beschwerdeführers und ohne Auseinandersetzung mit der aktuellen Berichtslage betreffend Vorfälle der behaupteten Art in Georgien aber nicht ausreichen, um die Entscheidung nachvollziehbar zu begründen.”</i></p>
<p><i>Outcome</i></p>	<p>The FARB’s decision was repealed for unlawfulness because of violation of procedural rules.</p>