



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

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| Country of Decision/Jurisdiction | Austria |
| Case Name/Title | A. v. Federal Asylum Review Board (FARB, by now: Asylum Court) |
| Court Name <i>(Both in English and in the original language)</i> | Supreme Administrative Court (Verwaltungsgerichtshof) |
| Neutral Citation Number | 2007/19/0459 |
| Other Citation Number | |
| Date Decision Delivered | 17/03/2009 |
| Country of Applicant/Claimant | Russian Federation (Chechnya) |
| Keywords | Persecution, internal protection, well-founded fear, humanitarian considerations, personal circumstances of complainant, subsidiary protection; |
| Head Note (Summary of Summary) | Complaint against the refusal to grant refugee status as the complainant's persecution took place three years before his departure. |
| Case Summary (150-500) | The complainant, a Russian national and ethnic Chechen, had supported the Chechen rebels in the first Chechen war, after which he was granted amnesty. He then supported the Chechen rebels in the second war. In the year 2000 he was stopped and interrogated by Russian soldiers. He told them that he had only helped women and children and got released. Some time after he was ordered to report with the authorities. The complainant ignored the order and tried to flee to Ingushetia by taxi instead. During the journey he was stopped by Russian soldiers. They arrested him and brought him to a detention camp where he was thrown into a pit. After a couple of days he was taken to a cell where he had to spend a night next to several dead bodies. Then he was interrogated and beaten with rubber batons as well as trampled on. He was questioned about rebel fighters and ordered to sign documents stating that he had committed assassinations, but he refused to do so. He was brought to a lieutenant colonel where it turned out that relatives had paid a ransom. He was released, but told that he had to leave the Russian Federation. From this time on, he remained in hiding, keeping up his support for the rebels, until his departure in October 2003. During this time period, masked men came to his parents' house to look for him. He had relatives in Saratov (South Russia) but they themselves were struggling to survive so he did not see any possibilities for himself there. |
| <i>Facts</i> | The Federal Asylum Agency (FAA), as the first instance administrative authority, dismissed the application for refugee status but granted subsidiary protection. Given the complainant's ascertained mental disorder and considering the current situation of medical care in the Russian Federation would put him at risk of inhuman treatment if returned. The complainant appealed against this decision. |



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| | <p>The FARB, as the second instance administrative authority, remarked that all acts of persecution directed against him took place until the year 2000, i.e. three years before his actual flight. The Russians looking for him at his parents' place during this time did not make him decide to flee. Instead, he stayed three more years in Chechnya without being arrested again. Notably, after being in Russian custody, he was released again, which led the FARB to the conclusion that the complainant could not be of major interest for the Russians. The complainant could not explain why he had waited three more years to leave the country. Apparently, the incidents in 2000 could not cause sufficient fear to make him flee. Additionally, the complainant had an internal relocation alternative at his disposal as he had family ties in Saratov. Although the complainant described his relatives' situation as difficult, considering the traditionally strong unity of Chechen families, he should have been provided with basic care. Therefore, neither the danger of hopelessness and misery sufficient to be a violation of Article 3 of the ECHR, nor the complainant being forced to return to Grosny for that reason, could be expected. For these reasons, the FARB dismissed the appeal.</p> |
| <p><i>Decision & Reasoning</i></p> | <p>The Court started his legal analysis by reiterating the definition of the term "refugee" according to Article 1, Section A, para 2 of the Geneva Convention relating to the Status of Refugees. Speaking in general terms, the Court agreed with the responding authority that the prerequisite of "well-founded fear" usually is only met if there is a temporal connection between the circumstances claimed as the motive for departure and the departure itself. But there can be exemptions as the Court reasoned:</p> <p>"However, the temporal connection between the claimed maltreatment and the departure of the complainant required the assumption that current danger of persecution exists, including in cases of acts of persecution that happened long ago, if the asylum seeker was able to evade persecution temporarily during his ongoing stay in his country of origin by hiding or disguising his identity by other means. Whether the duration of such an ongoing stay might cause doubts about the existence of a well-founded fear of persecution depends on the specific case's circumstances (...)."</p> <p><i>"Jedoch besteht der für die Annahme einer aktuellen Verfolgungsgefahr erforderliche zeitliche Zusammenhang zwischen behaupteten Misshandlungen und dem Verlassen des Landes auch bei länger zurückliegenden Ereignissen dann, wenn sich der Asylwerber während seines bis zur Ausreise noch andauernden Aufenthalts im Herkunftsstaat verstecken oder sonst durch Verschleierung seiner Identität der Verfolgung (einstweilen) entziehen konnte. Ab welcher Dauer eines derartigen Aufenthalts Zweifel am Vorliegen einer wohlbegründeten Furcht vor Verfolgung begründet erscheinen mögen, hängt von den Umständen des Einzelfalls ab (...)."</i></p> <p>Hence, the responding authority's view, which denied the complainant's well-founded fear at the moment of flight, is not conclusive as he had stated that the Russians continued to look for him and that he had to remain in hiding between his maltreatment and his departure.</p> <p>For this reason, the question as to whether the decision contested could still be sustained by the responding authority's assessment of an internal relocation alternative was considered of importance by the Court. In this</p> |



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| | <p>context, the Court defined the term "internal flight alternative" as follows:</p> <p>"Internal flight alternative is only given if the asylum seeker can make use of it in a reasonable way (...). If, at the location considered, conditions prevail that would threaten the well-being of a relocated person by violating Art. 3 of the ECHR, reasonableness has to be denied by all means."</p> <p><i>"Eine inländische Fluchtalternative ist aber nur dann gegeben, wenn sie vom Asylwerber in zumutbarer Weise in Anspruch genommen werden kann (...). Herrschen am Ort der ins Auge gefassten Fluchtalternative Bedingungen, die eine Verbringung des Betroffenen dorthin als Verstoß gegen Art. 3 EMRK erscheinen lassen würden, so ist die Zumutbarkeit jedenfalls zu verneinen (...)."</i></p> <p>In the present case, the Court continued, the responding authority assumed that an internal flight alternative was available, although the FAA had already granted subsidiary protection because his return would bring him into a situation that contradicted Art. 3 of the ECHR in the whole Russian Federation due to his psychic illness. The responding authority had failed to pay tribute to his circumstance. However, this circumstance opposes the assumption of an internal flight alternative by all means.</p> <p>The Court concluded that the responding authority had unlawfully denied the existence of a well-founded fear and erroneously assumed an internal flight alternative.</p> |
| <p><i>Outcome</i></p> | <p>The FARB's decision was repealed for unlawfulness of its contents.</p> |