



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
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## Case Summary

Country of Decision/Jurisdiction	<b>Germany</b>
Case Name/Title	
Court Name <i>(Both in English and in the original language)</i>	Federal Administrative Court (Bundesverwaltungsgericht)
Neutral Citation Number	1 B 392/01
Other Citation Number	
Date Decision Delivered	10/05/2002
Country of Applicant/Claimant	Ethiopia
Keywords	Credibility, Individual Assessment, Personal Interview
Head Note (Summary of Summary)	Case concerning credibility of claims of persecution by Ethiopian applicants
Case Summary (150-500)	Complaint against an appeals judgement by which the application was rejected for lack of credibility, based solely upon the findings of the administrative asylum authority, without the applicant being heard by the Court of Appeals
<i>Facts</i>	The Court of Appeals (Higher Administrative Court of Bavaria; Bayerischer Verwaltungsgerichtshof München) had overturned the Administrative Courts ruling in favour of the applicant as it considered his submission concerning an alleged risk of persecution for certain political activities in Ethiopia incredible, resting its decision upon the findings of the Federal Office for the Recognition of Foreign Refugees (now Federal Office for Migration and Refugees). The applicant issued a procedural complaint against this decision.
<i>Decision &amp; Reasoning</i>	<p>The Federal Administrative Court has found that the Court of Appeals has not complied with its obligation to investigate the facts (Section 86(1) Code of Administrative Court Procedures) for the latter had omitted to hear the applicant in person. With reference to the relevant jurisprudence of the Federal Constitutional Court (Bundesverfassungsgericht) as well as its own jurisprudence, it restated central requirements concerning the individual assessment of credibility.</p> <p>The Federal Administrative Court laid out that when it comes to the verification of a foreigners submission regarding his personal fate of political persecution, he typically finds himself in a situation of lack of evidence ("<i>Beweisnot</i>"). He himself, as witness for his own cause ("<i>Zeuge in eigener Sache</i>"), is mostly the only means of evidence available. It is accordingly the credibility of his submission ("<i>Glaubhaftigkeit</i>") as well as his personal credibility ("<i>Glaubwürdigkeit</i>") that is decisive (Federal Constitutional Court, judgement of 14 May 1996, 2 BvR 1516/93). Therefore an elevated significance has to be attributed to his personal assertions and their</p>



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	<p>consideration (Federal Administrative Court, judgement of 16. April 1985, 9 C 109.84).</p> <p><i>„Geht es um die Wahrheitsfindung im Hinblick auf das Vorbringen eines Ausländers, der politische Verfolgung geltend macht, kommt hinzu, dass er sich typischerweise in Beweisnot befindet, soweit es sein individuelles Verfolgungsschicksal betrifft. Er ist als "Zeuge in eigener Sache" zumeist das einzige Beweismittel. Auf die Glaubhaftigkeit seiner Schilderung und Glaubwürdigkeit seiner Person kommt es entscheidend an [...]. Seinem persönlichen Vorbringen und dessen Würdigung ist daher gesteigerte Bedeutung beizumessen.“</i></p> <p>A personal hearing may, however, still be unnecessary, provided the argument, as documented in writing by the asylum authority, lacks any credibility because of grave contradictions or considerable inconsistencies. But whenever the judges' assessment of an individual assertion is significantly dependant upon his personal credibility, a personal hearing will be necessary as a general rule (Federal Administrative Court, decision of 31 January 1996, B 417.95). A trial court cannot replace its own assessment of individual credibility with the assessment of the asylum authority. A personal hearing will also enable the court to address inconsistencies or contradictions by way of questioning. As a general rule, it is mainly incumbent upon the asylum seeker to articulate the reasons for a personal threat of persecution in a coherent form (Federal Administrative Court, decision of 19 October 2001, 1 B 24.01). The trial court is usually not obliged to indicate to him possible inconsistencies and contradictions in advance (consolidated jurisprudence; <i>cf. e.g.</i> Federal Administrative Court, decision of 26 November 2001, 1 B 347.01). It can, however, be incumbent upon the trial court as a result of its obligation to investigate and give advice (Section 86(1) Administrative Procedures Act) to pose respective questions in the course of the personal hearing, particularly concerning the need for further substantiation of the presentation of persecution in individual cases when such questions manifestly appear (<i>cf.</i> Federal Constitutional Court, decision of 28 December 1999).</p> <p>The trial court has to personally hear the applicant in any case, whenever it intends to interpret the findings of the asylum authority – or the Court of first instance – differently or intends to dissent respectively.</p>
<p><i>Outcome</i></p>	<p>The complaint was successful as far as the Court of Appeals had to conduct a personal hearing.</p>