



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, by now: Asylum Court)
Court Name <i>(Both in English and in the original language)</i>	Supreme Administrative Court (Verwaltungsgerichtshof)
Neutral Citation Number	2000/20/0269
Other Citation Number	
Date Decision Delivered	26/11/2003
Country of Applicant/Claimant	Afghanistan
Keywords	Credibility, standard of proof, subsidiary protection, country of origin information, procedural rules
Head Note (Summary of Summary)	Complaint against the refusal to grant refugee status/subsidiary protection.
Case Summary (150-500)	The applicant, an Afghan national and ethnic Tajik, was persecuted by the Taliban. His father had been colonel under the Najibullah. In 1992, after the Mudjahedin had come into power, he retired. For that reason, initially, his father did not face any difficulties, even when the Taliban conquered Kabul in September 1996. However, one evening in August 1998, the Taliban raided their home and detained the complainant's father accusing him of still having arms from his time in the military. The complainant himself managed to escape and to hide at his aunt's place. His mother told him that the Taliban were searching for him and that he was expected to report himself and hand over arms. About two weeks later, he left the country. He could not give a reason why the Taliban showed such a long time after having had come into power in Kabul. In case he returned to Afghanistan, he feared that he would be killed or forced to work as drug runner or "killer" by the Taliban. The complainant arrived in Austria on the 17 th of September 1998.
<i>Facts</i>	The Federal Asylum Agency (FAA) deemed the complainant's statements as not credible and denied the application for asylum. However, considering the situation in Afghanistan, he was granted subsidiary protection. The FARB held a public hearing during which further questioning of the complainant was conducted. The consideration of evidence was not based on possible contradictions within his statements, but on the aspect that the complainant's father had been detained "too late". The FARB reproached the complainant with his father not having had any difficulties neither for six years after Najibullah's loss of power, nor during two years of Taliban occupation in Kabul. Besides, the complainant could not explain his father's place being searched for arms after such a long time. This aspect was considered justifying the conclusion that the complainant did not tell the



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	truth about the claimed occurrences.
<i>Decision & Reasoning</i>	<p>The Court did not follow the FARB's reasoning and stated in contrast:</p> <p>„On the contrary, it is consistent with historical common knowledge that the process of consolidation of command, as to be assumed for the Taliban regarding Kabul from September 1996 until August 1998, can also have the contrary effect to a decrease of measures against actual or alleged enemies or other disliked persons. The asylum seeker cannot be demanded to substantiate the credibility of his statement based on an alleged knowledge of the motives that made his persecutors choose a certain moment in time (...). Considerations regarding the objective probability of the claimed occurrences would rather have needed to be based on the state of country of origin information regarding similar incidents.”</p> <p><i>"Dem gegenüber entspricht es dem historischen Allgemeinwissen, dass die Konsolidierung einer Herrschaft - wie sie bei den Taliban in Bezug auf Kabul für den Zeitraum von September 1996 bis August 1998 anzunehmen ist - statt eines Nachlassens von Maßnahmen gegen wirkliche oder vermeintliche Gegner oder sonst missliebige Personen auch die gegenteilige Wirkung haben kann. Vom Asylwerber kann auch nicht verlangt werden, dass er die Glaubwürdigkeit seines Vorbringens durch eine behauptete Kenntnis der Motive, die den Verfolger zur Wahl eines bestimmten Zeitpunktes bewogen haben, zu untermauern versucht (...). Überlegungen zur objektiven Wahrscheinlichkeit des Behaupteten hätten vielmehr von der Berichtslage in Bezug auf vergleichbare Vorfälle ausgehen müssen."</i></p> <p>Additionally, the Court pointed out that regarding the plausibility of the complainant's statements concerning the alleged incident in August 1998, the responding authority had not questioned the country expert who was present at the public hearing although it was a crucial part of the authority's reasoning.</p>
<i>Outcome</i>	The FARB's decision was repealed for unlawfulness because of violation of procedural rules.