

## **Austria ? Verwaltungsgerichtshof (VwGH - Higher Administrative Court), 06/27/2017, Ra 2017/18/0118**

**Country of Decision:**

Austria

**Country of Applicant:**

Gambia

**Date of Decision:**

27-06-2017

**Citation:**

Ra 2017/18/0118

**Court Name:**

Higher Administrative Court

**Keywords:**

Assessment of facts and circumstances

Benefit of doubt

Burden of proof

Child Specific Considerations

Credibility assessment

Unaccompanied minor

---

**Headnote:**

In case of reasonable doubt, the statement of the applicant for asylum about his or her date of birth has to be viewed as a credible statement.

**Facts:**

A Gambian citizen applied for asylum in Austria on July 29<sup>th</sup> 2016. During the subsequent interview he stated his date of birth (DOB) to be February 2<sup>nd</sup> 2000 and therefore legally still underage. Nevertheless he was processed as legally of age by the Federal Office of Foreign Entities and Asylum (BFA), relying on the fact, that the applicant had been treated as legally of age during former asylum application procedures in Norway and Italy. Finally the BFA dismissed the application reasoning that the application was inadmissible.

The appeal filed by the applicant before the Federal Administrative Court (BVwG) was granted on the basis of Sec. 21 BFA-VG (BFA Procedural Act), stating that the application process conducted by aforementioned agency was flawed. The BFA's appeal on points of law before the VwGH (Higher Administrative Court) was dismissed.

---

### **Decision & Reasoning:**

The BVwG stated that there was reasonable doubt that the applicant had been of legal age the moment he had applied for asylum.

During the entire proceedings the applicant had consistently stated his DOB to be February 2<sup>nd</sup> 2000 and therefore legally underage. The stated DOB could even be found on his filed Gambian birth certificate - which during an ordered examination was declared to be a likely authentic document.

Furthermore the responsible Italian and Norwegian authorities both lacked an explanation for their respective choices to treat the applicant as of age. The applicant's statement regarding the faulty procedures leading to a false estimation of his age during his former asylum applications could therefore not be contested. And while the multifactorial medical examination ordered by the BFA estimated that the applicants age at the time he was examined was 18.44 years, the medical report also explicitly stated, that an age of 17.04 years at the moment of application in Austria was possible as well. The court found that these facts warranted reasonable doubt that the applicant was legally of age at the moment of application. Consequently the court found that on the basis of Sec. 13 BFA-VG (BFA procedural act) the applicant had to be treated as legally underage.

---

### **Outcome:**

Appeal is dismissed.

---

### **Observations/Comments:**

This case summary was written by Lusalla Nzanza, undergrad student at Cologne University .

### **Attachment(s):**



[ris.vwght\\_.JWT\\_2017180118\\_20170627L00 Age assessment.pdf](#)[1]

---

### **National / Other Legislative Provisions:**

[Austria ? Sec. 5 AsylG 2005 \(Asylum Act\)](#) [2]

[Austria ? Sec. 13](#) [3]

[21 BFA-VG \(Procedural Act\)](#) [4]

[Austria ? Sec. 133 B-VG \(Constitution\)](#) [5]

[Austria ? Sec. 28](#) [6]

[34 VwGG \(Higher Administrative Court Act\)](#) [7]

[Austria ? Sec. 9 ZustG \(Notification Act\)](#) [8]

---

### **Links:**

[1]

[https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/ris.vwght\\_.JWT\\_2017180118\\_20170627L00](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/ris.vwght_.JWT_2017180118_20170627L00)

[2] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-sec->

5-asylg-2005-asylum-act

[3] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-sec-13>

[4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/21-bfa-vg-procedural-act>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-sec-133-b-vg-constitution>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-sec-28>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/34-vwgg-higher-administrative-court-act>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/austria-%E2%80%93-sec-9-zustg-notification-act>