



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee
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Case Summary

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| Country of Decision/Jurisdiction | Austria |
| Case Name/Title | K. 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 | 2008/23/1443 |
| Other Citation Number | |
| Date Decision Delivered | 24/03/2011 |
| Country of Applicant/Claimant | Iran |
| Keywords | Persecution, religion, subsidiary protection; |
| Head Note (Summary of Summary) | Complaint against the refusal to grant refugee status as the claimed acts of persecution were denied relevance for asylum procedures. |
| Case Summary (150-500) | The complainant, an Iranian national and Assyrian Christian, entered Austria in December 2006. He actually had planned to reach the USA in order to unite with his family but was refused entry. In Iran, being a member of the Christian minority, he was exposed to discrimination. In case he returned to Iran, he feared further problems and being interrogated about what he had said about Iran abroad. He also feared being killed. If he returned to Iran after one year abroad, the authorities would cause him trouble for having applied for asylum in the USA and Austria. Additionally his expired visa would further raise suspicions. He had not had problems with the authorities before leaving the country. |
| <i>Facts</i> | The Federal Asylum Agency (FAA) denied the application for international protection in the first instance administrative procedure. However, the complainant was granted subsidiary protection status and limited right of residence. The FAA reasoned that the reasons for applying for asylum claimed by the complainant were credible and plausible. He had to fear detention, interrogations, surveillance, and charges of espionage and further state reprisal in case of return due to the expiry of his visa and his asylum applications in the USA and Austria. Additionally, he had to face discrimination in Iran for being an Assyrian Christian. The complainant's credible statement led to the conclusion that return to Iran seemed "unacceptable and dangerous" (" <i>unzumutbar und gefährlich</i> "). A real risk of a serious individual threat to the complainant's life could not be excluded. Accordingly, he was granted subsidiary protection status. However, the complainant was denied refugee status, since he had left Iran legally and had not feared state persecution prior to his departure. Being Assyrian Christian in Iran did not trigger persecution <i>per se</i> , and societal discriminations did not stem from the government and lacked necessary |



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| | <p>intensity. The complainant's reasons for asylum application did not show the threat of persecution relevant to the asylum procedure in terms of the Geneva Convention relating to the Status of Refugees.</p> <p>The FARB followed the FAA's reasoning and dismissed the complainant's appeal.</p> |
| <p><i>Decision & Reasoning</i></p> | <p>The Court found that the FARB had misjudged the legal situation. After 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, the court defined the term "persecution" as follows:</p> <p>" 'Persecution' in terms of Article 1, Section A, para 2 of the Geneva Convention relating to the Status of Refugees has to be understood as an unjustified interference of significant intensity with the individual's personal sphere to be protected (...)"</p> <p><i>"Unter "Verfolgung" im Sinne des Art. 1 Abschnitt A Z 2 FKonv ist ein ungerechtfertigter Eingriff von erheblicher Intensität in die zu schützende persönliche Sphäre des Einzelnen zu verstehen (...)."</i></p> <p>The Court noted the authorities' assumption that the complainant, in case of return to Iran, had to fear sufficient interference (detention and further reprisal) because of his stays abroad, applications for asylum and status as an Assyrian Christian, as well as their consideration of him being entitled to subsidiary protection. Assuming this – contrary to the responding authority's perception – a connection to one of the reasons numbered in the Geneva Convention relating to the Status of Refugees had to be detected, especially since the threat of persecution, according to the responding authority, was tied <i>inter alia</i> to the complainant's affiliation with the Assyrian Christians on the one hand, as well as to the complainant's (at least alleged) subversive political attitudes due to his stays abroad and intentions to migrate to the USA on the other hand.</p> <p>Subsequently, the Court clarified that:</p> <p>"For the existence of persecution to be relevant to asylum procedures it is not necessary that the asylum seeker is persecuted for a subversive political attitude that he actually stands up for. It is sufficient that a subversive political attitude is imputed and a fair trial to refute these imputations cannot be expected, or that the punishment for a crime connected to ethnic or political conflict is so unreasonably high that this punishment cannot be seen as a measure serving legitimate state interests. The responding authority has not ascertained, nor is it self-suggesting, that in the complainant's case a fair trial could be expected or that punishment would serve legitimate state interests."</p> <p><i>"Für das Vorliegen einer asylrelevanten Verfolgungsgefahr ist nicht maßgeblich, ob der Asylwerber wegen einer von ihm tatsächlich vertretenen oppositionellen Gesinnung verfolgt wird. Es reicht aus, dass eine staatsfeindliche politische Gesinnung zumindest unterstellt wird und die Aussicht auf ein faires staatliches Verfahren zur Entkräftung dieser Unterstellung nicht zu erwarten ist, oder dass die Strafe für ein im Zusammenhang mit einem ethnischen oder politischen Konflikt stehendes Delikt so unverhältnismäßig hoch festgelegt wird, dass die Strafe nicht mehr</i></p> |



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| | <p><i>als Maßnahme einzustufen wäre, die dem Schutz legitimer Interessen des Staates dient (...) Dass im Falle des Beschwerdeführers ein faires staatliches Verfahren zur Entkräftung dieser Unterstellung zu erwarten wäre oder es sich bei den drohenden Repressalien um eine Maßnahme handelte, die dem Schutz legitimer Interessen des Staates dient, hat die belangte Behörde nicht festgestellt. Fallbezogen liegt Derartiges - dem Beschwerdeführer wurde subsidiärer Schutz zuerkannt - auch nicht nahe."</i></p> <p>For these reasons, the Court found that the FARB had misjudged the legal situation.</p> |
| <i>Outcome</i> | The FARB's decision was repealed for unlawfulness of its contents. |