



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	Austria
Case Name/Title	T. 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	2011/23/0064
Other Citation Number	
Date Decision Delivered	23/02/2011
Country of Applicant/Claimant	Republic of Moldova
Keywords	Persecution, state protection, non-state agents of persecution, trafficking;
Head Note (Summary of Summary)	Complaint against the refusal to grant international protection as the claimed acts of persecution were considered mere private actor persecution which could not be subsumed under the Geneva Convention relating to the Status of Refugees.
Case Summary (150-500)	The complainant is Moldovan national and ethnic Gagausian. Because she could not pay back a loan, she was kidnapped and trafficked abroad where she was meant to be forced into prostitution.
<i>Facts</i>	<p>The Federal Asylum Agency (FAA) denied the application for international protection in the first instance administrative procedure. It considered the occurrences claimed by the complainant as mere private actor persecution, which could not be subsumed under the Geneva Convention relating to the Status of Refugees. Additionally, the complainant was assumed to have an Internal Relocation Alternative.</p> <p>The FARB, as the second instance administrative authority, conducted a public hearing. It took the complainant's statements as basis for its decision. Furthermore, the FARB ascertained that it could not be determined that the complainant's country of origin would lack any livelihood, nor that every woman would be exposed to the danger of becoming a victim of human trafficking. Regarding the legal part of its decision, the FARB concluded that the complainant was not able to credibly demonstrate a threat of persecution in terms of the Geneva Convention relating to the Status of Refugees in her country of origin. Finally, it dismissed the appeal filed by the complainant against the first instance decision.</p>
<i>Decision & Reasoning</i>	The Court firstly reiterated the definition of the term "refugee" according to Article 1, Section A, para 2 of the Geneva Convention relating to the Status of Refugees and secondly reiterated its legal view on how private actor persecution can become relevant to asylum procedures:



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"(...) persecution stemming from private persons or groups can be attributed as relevant for asylum procedures (only) if the state is not able or willing to prevent these acts of persecution. Lack of a state's capability to protect cannot be assumed if a state is not able to protect citizens from any assaults by third parties. To answer the question as to whether there exists a sufficiently functioning authority, it is rather important that – despite state protection – a significant probable hindrance is to be expected of sufficient, asylum-relevant intensity for a person persecuted by third parties for reasons named in the Geneva Convention. That is to say: for a person persecuted it makes no difference if he has to expect such hindrance from state persecution or from persecution stemming from a third party, which the state is incapable to inhibit. In both cases, the victim of persecution cannot expect, or be expected, to rely on his home state's protection (...)."

„(...) kommt einer von Privatpersonen bzw. privaten Gruppierungen ausgehenden Verfolgung (nur) dann Asylrelevanz zu, wenn der Staat nicht gewillt oder nicht in der Lage ist, diese Verfolgungshandlungen hintanzuhalten. Von einer mangelnden Schutzfähigkeit des Staates kann nicht bereits dann gesprochen werden, wenn der Staat nicht in der Lage ist, seine Bürger gegen jedwede Übergriffe seitens Dritter präventiv zu schützen. Entscheidend für die Frage, ob eine ausreichend funktionierende Staatsgewalt besteht, ist vielmehr, ob für einen von dritter Seite aus den in der FIKonV genannten Gründen Verfolgten trotz staatlichen Schutzes der Eintritt eines - asylrelevante Intensität erreichenden - Nachteils aus dieser Verfolgung mit maßgeblicher Wahrscheinlichkeit zu erwarten ist. Für einen Verfolgten macht es nämlich keinen Unterschied, ob er auf Grund staatlicher Verfolgung mit der maßgeblichen Wahrscheinlichkeit einen Nachteil zu erwarten hat, oder ihm dieser Nachteil auf Grund einer von dritten Personen ausgehenden, vom Staat nicht ausreichend verhinderbaren Verfolgung mit derselben Wahrscheinlichkeit droht. In beiden Fällen ist es ihm nicht möglich bzw. im Hinblick auf seine wohlbegründete Furcht nicht zumutbar, sich des Schutzes seines Heimatlandes zu bedienen (...).“

The Court then applied this measure to the specific case and concluded:

"Considering the complainant's statement, abductions in order to enforce prostitution were not only an individual fate, as many women from her country of origin faced that threat, the complainant's statements relevance to asylum procedures cannot be precluded *a priori*. It is not sufficient to argue, as the responding authority does, that not 'every woman' would be in danger of becoming a victim of human trafficking in the Republic of Moldova. Since the responding authority failed to examine the complainant's country of origin's ability and willingness to protect from persecution and coercion into prostitution by human traffickers, it committed a fundamental error in the decision."

„Angesichts des Vorbringens der Beschwerdeführerin, die Verschleppung zwecks Zuführung zur Prostitution sei kein Einzelschicksal, sondern eine vielen Frauen ihres Herkunftsstaates drohende Gefahr, kann die Asylrelevanz des Fluchtvorbringens nicht von vornherein ausgeschlossen werden. Dass in der Republik Moldau - wie die belangte Behörde ausführte - nicht "jede Frau" Gefahr laufe, Opfer von Menschenhändlern zu werden, greift zu kurz (...). Da die belangte Behörde eine Auseinandersetzung mit der Frage der



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	<i>Schutzfähigkeit und -willigkeit des Herkunftsstaats der Beschwerdeführerin in Bezug auf eine Verfolgung mit dem Ziel der Zuführung zur Prostitution durch Frauenhändler unterließ, belastete sie den angefochtenen Bescheid mit relevanten Begründungsmängeln.“</i>
<i>Outcome</i>	The FARB's decision was repealed for unlawfulness because of violation of procedural rules.