Case Summary

Country of Decision/Jurisdiction	**Austria**
Case Name/Title	F. et al. v. Federal Asylum Review Board (FARB)
Court Name *(Both in English and in the original language)*	Supreme Administrative Court (Verwaltungsgerichtshof)
Neutral Citation Number	2003/01/0210, 0213 - 0216
Other Citation Number	
Date Decision Delivered	24/08/2004
Country of Applicant/Claimant	Former Republic of Yugoslavia (Kosovo)
Keywords	Internal relocation, past persecution, change in circumstances, circumstances ceased to exist;
Head Note (Summary of Summary)	Complaint against the refusal to grant international protection because of lack of current danger of persecution and the possibility to move to another part of Kosovo.
Case Summary (150-500)	The complainants, an ethnic Albanian family from Zvecan, near Mitrovica, Kosovo, were expelled from their village by Serbians during the Kosovo war in 1999. They applied for international protection in Austria on the 29th of June 1999. The complainants feared discrimination by the Serbians if they returned, their village, situated close to the Serbian "border", remained unsafe for them. If they moved to another area of the Kosovo, they would face hopelessness. They had no more family in Kosovo as most of their relatives lived in Germany.
Facts	The Federal Asylum Agency (FAA), as the first instance administrative authority, dismissed the applications for international protection. The complainants appealed against this decision. The FARB, as the second instance administrative authority, after having heard the complainants, dismissed the appeals. After elaborating on the general situation in Kosovo, the FARB was of the opinion that the applications for international protection had to be dismissed, as the danger of persecution, which might have existed back in March 1999 had, in the meantime [date of decision: 9th of December 2002] had ceased to exist. Therefore, no current danger of persecution could be identified. Furthermore, the complainants additionally had the possibility to move to another part of Kosovo.
Decision & Reasoning	The Court considered the FARB's reasoning regarding the negation of actual danger of persecution insufficient as it had failed to investigate the specific situation of ethnic Albanians in the Mitrovica area.

	For this reason the question as to whether the contested decision could still be sustained by the responding authority's assessment of an internal relocation alternative was considered of importance by the Court. In this context, the Court observed that the responding authority had not even tried to demonstrate that such an alternative had existed at the time of the complainants' expulsion, nor could it be assumed, given the Court's judgements concerning the situation in the Kosovo, between the middle of March and the 20th of June 1999. Furthermore, the Court found that referring to an internal relocation alternative, which had arisen after the complainants' flight, would have been unlawful: "Now, referring to a 'way out' within the country of origin, which arose afterwards – while danger of persecution at the place of origin is still existent – would be contradictory (in the view of the Supreme Administrative Court) to the principle formulated in the UNHCR paper from March 1995 on the interpretation of Article 1 of the Geneva Convention, according to which the legal 'internal flight alternative' can serve as an objection to a person's refugee status only if the possibility to find safety in another part of the country had already existed at the time of flight *('The possibility to find safety in other parts of the country must have existed at the time of flight and continue to be available when the eligibility decision is taken')*." "*Eine nunmehrige Verweisung der beschwerdeführenden Parteien auf eine erst nachträglich entstandene "Ausweichmöglichkeit" innerhalb des Herkunftsstaates - bei weiterhin aufrechter Verfolgungsgefahr am Herkunftsort - widerspräche aber dem in einem Informationspapier des UNHCR vom März 1995 über die Auslegung des Art. 1 FIKonv nach Ansicht des Verwaltungsgerichtshofes zutreffend formulierten Grundsatz, dass sich die Rechtsfigur der "internen Fluchtalternative" gegen die Flüchtlingseigenschaft einer Person nur ins Treffen führen lässt, wenn die Möglichkeit, in einem anderen Landesteil Schutz zu finden, auch schon im Zeitpunkt der Flucht gegeben war ("The possibility to find safety in other parts of the country must have existed at the time of flight and continue to be available when the eligibility decision is taken")*."
Outcome	The FARB's decision was repealed for unlawfulness of its contents.