



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee
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Case Summary

Country of Decision/Jurisdiction	Spain
Case Name/Title	1528/2007
Court Name <i>(Both in English and in the original language)</i>	High National Court/Audiencia Nacional
Neutral Citation Number	1528/2007
Other Citation Number	
Date Decision Delivered	13/01/2009
Country of Applicant/Claimant	Algeria
Keywords	Persecution; Membership of a particular social group; Gender-based persecution; Non-state actors; State protection; Sufficient protection; Domestic violence.
Head Note (Summary of Summary)	The Ministry of Interior rejected the asylum request of an Algerian woman who asked for protection based on gender persecution by a non-state agent. The High National Court, on appeal, ruled that gender is considered as a "social group" and that persecution is not obliged to be undertaken solely by national actors, but by non-state agents under certain circumstances as well. Refugee status was granted.
Case Summary (150-500)	
<i>Facts</i>	<p>The case concerned an appeal against a decision of the Ministry of Interior to refuse refugee status to an applicant from Algeria who claimed asylum on the grounds of gender based persecution, alleging that physical and mental abuse was inflicted upon her, and her children, by her husband. A residence permit was granted on humanitarian grounds; however the decision to deny refugee status was appealed to the High National Court.</p> <p>The Attorney General, challenging the appeal, alleged that the facts presented by the claimant did not amount to persecution within the meaning of Article 1A of the 1951 Refugee Convention. The Attorney General argued that because the persecution occurred in the past the claimant had no current need for protection since the circumstances in the country of origin had changed. Consequently, the claimant failed to establish past persecution and a well-founded fear of persecution upon return.</p>
<i>Decision & Reasoning</i>	<p>The High National Court presented the final judgement on 13 January 2009, ruling that:</p> <p>Sexually violent acts, such as domestic and family violence, which are found to result in serious physical and mental harm, constitute grounds upon which</p>



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	<p>persecution can be claimed.</p> <p>Gender-based persecution is included in the Convention ground 'membership of a particular social group' because both "sex" and "women" can be considered social groups.</p> <p>Persecution can be carried out by "both state and non-state actors". Acts of persecution are not limited to discriminatory state action but can occur when non-state actors commit serious acts of discrimination and other offences that are deliberately tolerated by state authorities who refuse or are unable to provide effective protection.</p> <p>The Algerian authorities did not guarantee the rights of the claimant or provide protection against serious abuse. Therefore, the discrimination suffered due to the lack of protection can cause serious harm and constitute persecution.</p> <p>Once the claimant established past physical and mental abuse, and the possibility that it may occur in the future, then a well-founded fear of persecution and a real risk of suffering inhuman treatment (according to Article 3 of the European Convention on Human Rights and to the European Court of Human Rights jurisprudence) have been proved sufficiently.</p>
<i>Outcome</i>	The appeal was successful. The High National Court overturned the decision of the Ministry of Interior and granted refugee status.