



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee  
co-financed by the European Commission*

## Case Summary

Country of Decision/Jurisdiction	<b>Austria</b>
Case Name/Title	Y. 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	2008/23/0176
Other Citation Number	
Date Decision Delivered	24/03/2011
Country of Applicant/Claimant	Turkey
Keywords	Persecution, state protection, non-state agents of persecution, membership of a particular social group;
Head Note (Summary of Summary)	Appeal against the refusal to grant refugee status as the claimed acts of persecution were denied relevance for asylum procedures.
Case Summary (150-500)	The applicant, a Turkish national and ethnic Kurd of Alevi confession, was persecuted by her ex-husband ever since they separated. Her family was also threatened by him. During her matrimony, which had been arranged, she was repeatedly abused by her husband. After the divorce that she had pursued, she had to leave their son with the husband because she was not able to pay alimony. As she visited her son at her ex-husband's place, her ex-husband raped her and she became pregnant. Thereafter, because of social pressure, she returned to live with him. In fear of her violent ex-husband, she finally left the country with her daughter. She feared being killed by him if she returned to Turkey. As a result of the abuse, the applicant suffered massive psychic problems. She applied for international protection in Austria on the 21 <sup>st</sup> of June 2002.
<i>Facts</i>	<p>The Federal Asylum Agency (FAA) denied the application for international protection in the first instance administrative procedure.</p> <p>The applicant appealed against this decision, claiming that there was no effective protection by the state against domestic violence and presenting corresponding reports by Amnesty International and the European Commission. According to these reports, domestic violence was a widespread problem in Turkey, while an effective implementation of anti-violence-law did not exist. Frequently, security forces did not engage if women reported domestic violence and victims were not being taken care of.</p> <p>The FARB considered the applicant's fear of persecution by her ex-husband as credible. However, the attacks by the ex-husband were considered as not based on the applicant's membership to an ethnic or religious group, but rather as occurring "merely in the course of domestic violence" ("<i>rein im</i></p>



# KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

A project of the Hungarian Helsinki Committee  
co-financed by the European Commission

	<p><i>Zuge von häuslicher Gewalt</i>”). Therefore, the applicant had not been persecuted by her ex-husband in any of the ways listed in the Geneva Convention relating to the Status of Refugees. Accordingly, regarding questions of relevance for asylum procedures, it was considered of no importance whether or not the police were willing to offer protection. After conducting a public hearing, the FARB rejected the appeal but granted subsidiary protection status and a limited right of residence.</p>
<p><i>Decision &amp; Reasoning</i></p>	<p>The Court criticised the FARB for having erroneously assumed the lack of any reason listed in the Geneva Convention in the current case and for having abstained from further examination on the existence of state protection.</p> <p>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 stated as follows:</p> <p>“Cases such as the present case are situated within an area of conflict between gender-based persecution and belonging to the persecutor’s family (each one having regard to the Convention’s ground of membership of a “social group”) on the one hand, and mere criminal persecution which cannot be assigned to any Convention ground on the other hand. It has been clarified repeatedly in this Court’s jurisprudence that both gender-based persecution as well as for membership of the social group “family” can be of relevance for asylum procedures (...). ”</p> <p><i>“Fälle wie der vorliegende stehen im Spannungsfeld zwischen einer Verfolgung wegen des Geschlechts oder der Zugehörigkeit zur Familie des Verfolgers (jeweils unter dem Gesichtspunkt des Konventionsgrundes der Zugehörigkeit zu einer "sozialen Gruppe") einerseits und rein kriminellen, keinem Konventionsgrund zuordenbaren Bedrohungen andererseits. Dass sowohl die Verfolgung wegen des Geschlechts als auch wegen der Zugehörigkeit zur sozialen Gruppe "Familie" von Asylrelevanz sein kann, wurde in der hg. Rechtsprechung schon wiederholt klargestellt (...).”</i></p> <p>Accordingly, the Court continued:</p> <p>„Given this factual circumstances, the applicant’s persecution ground has to be viewed as (formerly) belonging to her persecutor’s family. Hence, for this reason, the existence of a Convention ground cannot be denied.”</p> <p><i>„Bei dieser Sachlage ist der Grund für die Verfolgung der Beschwerdeführerin in ihrer (früheren) Zugehörigkeit zur Familie des Verfolgers zu sehen, womit schon deshalb das Vorliegen eines Konventionsgrundes nicht zu verneinen ist. ”</i></p> <p>The Court finally found that the crucial question left unanswered by the FARB was the question of whether or not effective state protection should have been granted to the applicant.</p>
<p><i>Outcome</i></p>	<p>The FARB’s decision was repealed for unlawfulness of its contents.</p>