



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	Austria
Case Name/Title	O. I. M. et. al. 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	2007/01/1199
Other Citation Number	
Date Decision Delivered	24/06/2010
Country of Applicant/Claimant	Somalia
Keywords	Persecution, membership of a particular social group, procedural rules;
Head Note (Summary of Summary)	Complaint against the refusal to grant refugee status as the complainants were not able to show credibly that the claimed escape reasons were true.
Case Summary (150-500)	The first complainant is the second through fourth complainants' mother. They are all Somali nationals. The first complainant's husband, who is the father of the further complainants, had been granted subsidiary protection under the Federal Asylum Agency (FAA) decision of the 28 th of July 2004. Because the mother feared the female genital mutilation of her daughters, they fled to Kenya. At the Austrian Embassy in Nairobi, they applied for international protection according to family procedure provisions under Article 35 para 1 of the 2005 Asylum Act (<i>Asylgesetz 2005</i>). Subsequently, the complainants received visas, entered Austria on the 7 th of June 2006 and applied for international protection at the FAA.
<i>Facts</i>	<p>The Federal Asylum Agency (FAA) denied the application for international protection in the first instance administrative procedure. However, the complainants were granted subsidiary protection status and limited right of residence.</p> <p>The FARB, as the second instance administrative authority, acknowledged that female genital mutilation is widespread all over Somalia. Nevertheless, regarding the specific case, the FARB held the view that the claimed escape reasons were not consistent with the facts and that the first complainant only pretended to fear her daughters' female genital mutilation. The first complainant's corresponding statements were found to be contradictory. For instance, the FARB reasoned, the first complainant had claimed for the first time during the appeal hearing that a neighbour had demanded her daughters' mutilation and sent a man and two women to her apartment. During her hearing at the FARB she had not mentioned a neighbour, but, instead, religious men from the Hawiye tribe to have demanded the mutilations. Moreover it appeared implausible to the FARB that persons who did not belong to her clan or family had demanded the daughters' mutilation.</p>



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	<p>The first complainant was not able to explain plausibly why non-family-members should have such interest in her children’s mutilation. The FARB concluded that well-founded fear of being persecuted in the sense of Article 1, Section A, para 2 of the Convention relating to the Status of Refugees was not established as the complainants were not able to credibly show the claimed escape reasons.</p>
<p><i>Decision & Reasoning</i></p>	<p>The Court started its decision by clarifying the definition of the term “refugee” in Austrian asylum law:</p> <p>“Article 3, para 1 of the 2005 Asylum Act refers to the definition of a refugee (threat of persecution in the country of origin) in terms of Article 1, Section A, para 2 of the Geneva Convention relating to the Status of Refugees. Accordingly, it is crucial that the complainants are being threatened by persecution in their country of origin. This is the case, if a reasonable person, in the same specific situation of an asylum seeker, considering the circumstances in the persecuting country, would suffer fear. By this measure, it has to be investigated additionally, if persecution for membership of a particular group is credible (...).”</p> <p><i>“§ 3 Abs. 1 AsylG 2005 verweist auf den Flüchtlingsbegriff (drohende Verfolgung im Herkunftsstaat) im Sinne des Art. 1 Abschnitt A Z. 2 Genfer Flüchtlingskonvention. Danach ist entscheidend, ob glaubhaft ist, dass den beschwerdeführenden Parteien in ihrem Herkunftsstaat Verfolgung droht. Dies ist dann der Fall, wenn sich eine mit Vernunft begabte Person in der konkreten Situation der Asylwerber unter Berücksichtigung der Verhältnisse im Verfolgerstaat fürchten würde. Anhand dieses Maßstabes ist auch zu ermitteln, ob eine asylrelevante Verfolgung wegen Zugehörigkeit zu einer bestimmten Gruppe glaubhaft ist (...).”</i></p> <p>Based on this, the Court continued its reasoning, and given the FARB’s ascertainment regarding female genital mutilation in Somalia, its opinion that the threat of the children’s mutilation does not consist with the facts and that the first complainant only pretended to fear her daughters’ female genital mutilation has to be considered as insufficiently founded.</p> <p>The Court followed the complainants’ arguments that, according to the FARB’s own ascertainment, 98% of girls and young women in Somalia suffered female genital mutilation regardless of clan or tribe membership. The FARB reasoned implausibly as to why, specifically, the first complainant’s daughters would not be exposed to this threat. Furthermore, the FARB did not demonstrate why the first complainant’s daughters should be part of the 2% group of women who do not suffer female genital mutilation. The ascertainment of COI does not sustain the FARB’s conclusions.</p> <p>Finally, the Court concluded that, concerning the alleged lack of probability of the daughters’ persecution by female genital mutilation, the reasoning has to be considered incoherent.</p>
<p><i>Outcome</i></p>	<p>The FARB’s decision was repealed for unlawfulness because of violation of procedural rules.</p>