



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee
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Case Summary

Country of Decision/Jurisdiction	Austria
Case Name/Title	A. v. Federal Asylum Review Board (FARBAsylum Court)
Court Name <i>(Both in English and in the original language)</i>	Supreme Administrative Court (Verwaltungsgerichtshof)
Neutral Citation Number	2003/20/0111
Other Citation Number	
Date Decision Delivered	01/03/2007
Country of Applicant/Claimant	Turkey
Keywords	Persecution, procedural rules, armed conflict, membership of a particular social group;
Head Note (Summary of Summary)	Complaint against the refusal to grant international protection as mere membership to the Kurdish minority was considered not to trigger the threat of persecution in terms of the Geneva Convention relating to the Status of Refugees.
Case Summary (150-500)	The complainant, a Turkish national and Kurd, left his country to evade military service, as he feared discrimination and abuse as a Kurd.
<i>Facts</i>	<p>The Federal Asylum Agency (FAA) denied the application for international protection in the first instance administrative procedure.</p> <p>The complainant appealed against this decision. He argued that if he had to complete military service he feared serving in the country's east where the Turkish military committed grave human rights violations against the Kurdish and that he would have to kill his own "Kurdish brothers and sisters".</p> <p>The FARB dismissed the appeal as it was of the opinion that the complainant did not have to expect persecution relevant to asylum procedures merely for being a Kurd. Persecution of Kurds without any individual reasons and exclusively for membership to this ethnic group could not be detected. Besides, according to the FARB, clashes and violence in Kurdish areas had almost stopped since the detention of Abdullah Öcalan and the proclamation of cease-fire by the PKK.</p>
<i>Decision & Reasoning</i>	<p>The Court initially reiterated its opinion on draft evasion and asylum procedures and noted:</p> <p>" (...) that punishment for draft evasion, which all conscientious objectors or deserters face equally, has to be attributed relevance for asylum procedures if the person affected evaded military service for religious or political beliefs or if the evasion triggers the imputation of oppositional attitudes and the penalty lacks any reasonableness, as in case of application of torture.</p>



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	<p>Additionally, considering coercion to acts in violation of international law, "mere" imprisonment could also be considered as persecution relevant to asylum procedures."</p> <p><i>"(...) dass der Gefahr einer allen Wehrdienstverweigerern bzw. Deserteuren im Herkunftsstaat gleichermaßen drohenden Bestrafung asylrechtliche Bedeutung zukommt, wenn das Verhalten des Betroffenen auf politischen oder religiösen Überzeugungen beruht oder dem Betroffenen wegen dieses Verhaltens vom Staat eine oppositionelle Gesinnung unterstellt wird und den Sanktionen - wie etwa der Anwendung von Folter - jede Verhältnismäßigkeit fehlt. Weiters könne unter dem Gesichtspunkt des Zwanges zu völkerrechtswidrigen Militäraktionen auch eine "bloße" Gefängnisstrafe asylrelevante Verfolgung sein."</i></p> <p>Then, the Court continued:</p> <p>„The Supreme Administrative Court has to review the decision contested according to the legal and factual basis in the moment of its issue. In order be able to assume a relevant change of circumstances (in terms of Article 1, Section C (5) of the Geneva Convention relating to the Status of Refugees), according to the Supreme Administrative Court’s jurisprudence, a sustained period of observation is required (...).“</p> <p><i>„Der Verwaltungsgerichtshof hat den angefochtenen Bescheid anhand der Sach- und Rechtslage zum Zeitpunkt seiner Erlassung zu überprüfen. Um eine relevante Lageänderung (im Sinn des Art. 1 Abschnitt C Z 5 der Genfer Flüchtlingskonvention) annehmen zu können, bedarf es nach der Rechtsprechung des Verwaltungsgerichtshofes in der Regel eines längeren Beobachtungszeitraumes (...).“</i></p> <p>Considering the long duration of the Kurdish conflict and the armed confrontations since the 80s, the Court continued, the FARB would have had to deal with the question if, in the meantime, human rights violations by Turkish forces, in which the complainant would be involved in the course of his military service, did not occur with significant probability.</p> <p>Since the FARB failed to examine this point, the Court found there to be a violation of procedural rules.</p>
<p><i>Outcome</i></p>	<p>The FARB’s decision was repealed for unlawfulness because of violation of procedural rules.</p>