



KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

*A project of the Hungarian Helsinki Committee
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Case Summary

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| Country of Decision/Jurisdiction | Austria |
| Case Name/Title | O. 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 | 2008/23/0463 |
| Other Citation Number | |
| Date Decision Delivered | 15/09/2010 |
| Country of Applicant/Claimant | Nigeria |
| Keywords | Internal protection, procedural rules, individual assessment; |
| Head Note (Summary of Summary) | Complaint against the refusal of international protection as the claimed acts of persecution were denied relevance for asylum procedures and the complainant was considered to have an internal relocation alternative at disposal. |
| Case Summary (150-500) | The complainant, a Nigerian national, was taken by her uncle from Jos, Plateau-State, where she had been raised by her parents and had attended school, to Abraka, Delta-State. Her parents were originally from Jos and her whole family was domiciled there. To obtain money, her uncle wanted to make her marry a "Juju-Priest". The complainant refused to marry the priest and fled twice to a pastor in Jos who finally helped her to escape Nigeria via Lagos. The complainant, by then 16 years old, applied for international protection on the 30 th of December 2002 in Austria. She feared being killed by her uncle or the priest if she returned to Nigeria. |
| <i>Facts</i> | The Federal Asylum Agency (FAA) as the first instance administrative authority dismissed the application for international protection. The complainant appealed against this decision. The FARB, as the second instance administrative authority, after having conducted a hearing, dismissed the appeal. Although the complainant's statements were considered credible, the FARB determined that the persecution described stemmed from private actors and did not show relevance for asylum procedures nor could the home state's inability or unwillingness to protect be detected. |
| <i>Decision & Reasoning</i> | The Court objected to the FARB's reasoning by reminding it of its permanent jurisprudence, according to which forced marriage can be relevant to asylum procedures as it can be considered persecution for membership in a "particular social group" in terms of Article 1, Section A, para. 2 of the Geneva Convention relating to the Status of Refugees. |



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| | <p>Moreover, the Court criticised the FARB’s insufficient reasoning regarding the assumption of an internal relocation alternative:</p> <p>“When additionally referring generally to the possibility of a domestic change of domicile, the responding authority did not sufficiently take into account the individual situation brought forward by the complainant. According to the calculation of reasonableness, inherent in internal protection alternatives, the responding authority would have had to consider the complainant’s minority and the fact that all of her relatives, including her uncle, reside in Delta-State as well as the fact that the single female complainant had only completed secondary school but had not obtained any professional education yet. Consequently, the responding authority would have had to establish detailed findings on the complainant’s specific situation to be expected in case of change of location.”</p> <p><i>“Soweit die belangte Behörde überdies allgemein auf die Möglichkeit einer innerstaatlichen Wohnsitzverlegung verwies, nahm sie nicht ausreichend auf die individuelle, von der Beschwerdeführerin geltend gemachte Situation Bedacht. Die belangte Behörde hätte im Hinblick auf das einer inländischen Schutzalternative u.a. innewohnende Zumutbarkeitskalkül - im vorliegenden Fall insbesondere unter Berücksichtigung der damaligen Minderjährigkeit der Beschwerdeführerin, dem Umstand, dass sämtliche Verwandte der Beschwerdeführerin, ebenso wie ihr Onkel, im Bundesstaat Delta wohnen und die alleinstehende weibliche Beschwerdeführerin bislang lediglich eine Schul-, jedoch keinerlei Berufsausbildung absolvierte - nähere Feststellungen über die im Fall eines solchen Ortswechsels zu erwartende konkrete Lage der Beschwerdeführerin treffen müssen.”</i></p> <p>Accordingly, the Court concluded, that the responding authority – <i>inter alia</i> – had failed to sufficiently reason the assumption of an internal relocation alternative.</p> |
| <p><i>Outcome</i></p> | <p>The FARB’s decision was repealed for unlawfulness because of violation of procedural rules.</p> |