

Greece - Supreme Civil and Criminal Court - Decision 1690/2019, 29 October 2019

Country of Decision:

Greece

Country of Applicant:

Iran

Date of Decision:

29-10-2019

Citation:

?? 1690/2019

Court Name:

Supreme Civil and Criminal Court (Areios Pagos)

Keywords:

Gender Based Persecution

Inhuman or degrading treatment or punishment

Non-refoulement

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [3]

European Union Law

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [4]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 3](#) [6]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 6](#) [7] > Art 6.3

Headnote:

A mother was accused of kidnapping her daughter and using forged travel documents when leaving her country of origin in order to ask for asylum. Her detention and extradition orders were quashed based on the risk of inhuman or degrading treatment upon return.

Facts:

The appellant was accused in Iran of committing two crimes in December 2018, namely kidnapping a minor, her 6-year-old daughter, and of using forged travel documents. She was subsequently arrested on 04/04/2019 in Orestiada, Greece, as an international arrest warrant was issued by Interpol for her arrest and extradition to the Islamic Republic of Iran. She was initially detained in a Greek prison on the order of temporary arrest and detention, issued by the Prosecutor and the President of the Appellate Court. She did not consent to her return to Iran and appealed against the decision that ordered her extradition.

She argued that the requirements for her extradition to Iran were not met because she was in need of international protection and her asylum application was still pending. In addition, she claimed that there was a well-founded fear of being subject to torture or inhuman or degrading treatment during her detention in Iran. Lastly, she claimed that her daughter's best interest would be disregarded if they were extradited to Iran.

Decision & Reasoning:

The Appellate Court partly accepted her appeal. After taking into consideration the Resolutions of the UN General Assembly (17/12/2018) and the European Parliament (19-9-2019, 14-3-2019, 13-12-2018, 31-5-2018, 3-4-2014, 8-10-2015, 17-11-2011) on the human rights situation in Iran, regarding arbitrary detention, inhuman conditions in prison, limited access to healthcare, and abuse of women in the exercise of their rights, the court held that the appellant would face a real risk of inhuman or degrading treatment during her detention in Iran.

Moreover, it held that there was a risk of torture or persecution due to her participation in a particular social group, having been a victim of domestic violence. Lastly, because she left Iran and requested asylum in Greece, there is the risk she would be considered an enemy to the Islamic Republic of Iran and thus be subject to inhuman treatment, or even death penalty on that account. Consequently the Court ordered her release and annulled the previous decision on her extradition.


Outcome:

Appeal partly accepted. Annulment of previous decision 29/2019. Release of the appellant.

Observations/Comments:

This summary was completed by Danai Spentzou, Human Rights LLM student at Queen Mary University of London.

Attachment(s):

 [Supreme Court.pdf](#)[8]

Other sources cited:

The Court referred to its previous jurisprudence in cases 1260/1987, 301/2017, 341/2017, 1324/2016, 1366/2016, 311/2015, 1088/2015, 462/1992, 276/2011, 132/2008, 276/2011.

The Court further looked into Articles 523, 535, 621 of the Islamic Penal Code of Iran, as well as the UN General Assembly Resolution of 17-12-2018 and the European Parliaments Resolutions

of 19-9-2019, 14-3-2019, 13-12-2018, 31-5-2018, 3-4-2014, 8-10- 2015 ??? 17-11-2011), concerning the human rights situation in Iran.

National / Other Legislative Provisions:

[Articles 436 \(1\)](#) [9]

[437- 457 Greek Criminal Procedure Code](#) [10]

[Articles 324 \(1\)](#) [11]

[\(2\) and 216 \(1\) Greek Criminal Code](#) [12]

[Article 28 \(1\) \(a\) Greek Constitution](#) [13]

[Article 5 \(2\) ??. 114/2010 \(presidential decree\)](#) [14]

[replaced by article 35 \(4\) ??. 113/2013 \(presidential decree\)](#) [15]

[Greece - Law 3251/2004](#) [16]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[3] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>

[4] <https://www.asylumlawdatabase.eu/node/453>

[5] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[6] https://www.asylumlawdatabase.eu/node/195#toc_12

[7] https://www.asylumlawdatabase.eu/node/195#toc_34

[8] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Supreme%20Court.pdf>

[9] <https://www.asylumlawdatabase.eu/el/taxonomy/term/11335>

[10] <https://www.asylumlawdatabase.eu/el/taxonomy/term/11336>

[11] <https://www.asylumlawdatabase.eu/el/taxonomy/term/11337>

[12] <https://www.asylumlawdatabase.eu/el/taxonomy/term/11338>

[13] <https://www.asylumlawdatabase.eu/el/taxonomy/term/11339>

[14] <https://www.asylumlawdatabase.eu/el/taxonomy/term/11340>

[15] <https://www.asylumlawdatabase.eu/el/taxonomy/term/11341>

[16] <https://www.asylumlawdatabase.eu/el/taxonomy/term/7963>