

Greece - Council of State, 10 February 2009, Application No. 434/2009

Country of Decision:

Greece

Country of Applicant:

Afghanistan

Date of Decision:

10-02-2009

Citation:

Application No. 434/2009

Court Name:

Council of State

Keywords:

Assessment of facts and circumstances

Country of origin information

Individual assessment

Non-refoulement

Personal circumstances of applicant

Relevant Documentation

Residence document

Subsidiary Protection

Torture

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > Art 1A (1)International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [3]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [4]

Council of Europe Instruments

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [4] > [Article 3](#) [5]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [6] > [Art 8](#) [7]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#)

Headnote:

A permit to stay, granted on humanitarian grounds to a foreigner whose application for asylum has been rejected until such time as it becomes feasible for him to go abroad, is of a temporary nature. It is possible to extend the validity of such a permit if there are exceptional circumstances relating to the prevailing situation in the foreigner's country of origin and/or relating to his personal circumstances. When an application to extend a permit to stay is submitted, the Administration should examine any exceptional grounds that may have been put forward.

Facts:

The Applicant, a citizen of Afghanistan, submitted an application for asylum which was finally rejected by the General Secretary of the Ministry of Public Order in decision 4/147576/20.5.2002 which, however, allowed him to remain in the country on humanitarian grounds. This had been the wish expressed by the majority of the Asylum Advisory Committee, citing the 'fluid situation which prevails in Afghanistan'. Pursuant to this, the Applicant was granted a 'special residence permit on humanitarian grounds' valid until 20.5.2003. On 5.5.2003 the Applicant requested that the permit be extended, claiming that he had been a victim of torture in his country and that he would be at risk if he were to return, and also claiming that he had become integrated into Greek society. That request was rejected by the General Secretary of the Ministry of Public Order's decision of 1.9.2003 which gave the following justification: 'The person in question is attempting to gain permanent residence in our country and cannot qualify for the protective provisions of Article 8(2) of Presidential Decree 61/1999 because he did not claim exceptional reasons for not returning to his country, such as serious health problems, nor did he cite details of the general situation in his country to show that he would be exposed to risk. However it is worth noting that after the Bonn Agreement (2001) the foundations were set for building a new State in Afghanistan, with the hope of eradicating the remaining pockets of Taliban and Al Qaida and forming a National Army and Police Force. It should be noted that under the same agreement 2.5 million refugees were repatriated.' Document 4/147576/9.9.2003 from the Immigration Directorate informed the Political Asylum Office that the application had been rejected, and then the Applicant was informed (office record of 20.9.2003). The Applicant petitioned for annulment of the 1.9.2003 decision from the General Secretary of the Ministry of Public Order which, accepting the Immigration Directorate's recommendation 4/147576/21.8.2003, rejected the application which the Applicant had submitted to have his residence permit renewed for humanitarian reasons.

Decision & Reasoning:

The Council of State (CoS) began by citing the relevant domestic, European and international legislation. It also explained that, in terms of administrative procedure, summoning the interested party to a hearing before issuing an administrative decision which may be unfavourable to him (as required by Article 20(2) of the Constitution) may be omitted in cases where the procedure to have the administrative decision issued was initiated pursuant to the interested party's own application, in which he has an opportunity to present his views and submit any necessary supporting documentation. Therefore, since the contested decision was issued pursuant to the Applicant's

own application, there was no need to observe the formality of having a prior hearing. The Applicant claimed that he had been a victim of torture in his country and that he would be at risk of persecution should he return there, and he stated that he had attached photographs which showed the torture he had suffered. He also claimed that he was working legally in Greece and that he had become integrated into Greek society. However, the Council of State held that the Applicant's claims about the risk of individual persecution had been presented in a totally vague manner without citing any specific facts to support them, and that the photographs proving the facts which were said to have been attached to the application were not found in the Administration's file, nor had they been submitted by the Applicant. The Council of State also stressed that finding employment in Greece and becoming integrated into Greek society did not in itself constitute a reason to grant a temporary residence permit for humanitarian reasons. Therefore, rejecting those claims did not require any specific justification by the Administration so the plea that the contested negative decision did not have the legally required justification was groundless. However, the Council of State held that in view of the fact that the initial permit to remain on humanitarian grounds was issued because of the general situation which prevailed in Afghanistan ? obviously because it was thought that, even though the party's application for asylum had been rejected, the situation in his country did not allow his return ? simply referring, two years later, to a not well-specified Ministry of Foreign Affairs document and to general and vague assessments of the normalisation of conditions in Afghanistan following the above-mentioned Bonn Agreement (which, it was noted, already existed at the time the initial residence permit was issued) was not adequate justification for the rejection of the application for renewal of the Applicant's permit to remain for humanitarian reasons. The Council of State concluded that when an application to extend a permit to stay is submitted, the Administration should examine any exceptional grounds that may have been put forward.

Outcome:

The C.o.S. accepted the application, annulled the contested 1.9.2003 decision by the General Secretary of the Ministry of Public Order which had accepted recommendation 4/147576/21.8.2003 from the Immigration Directorate of the Hellenic Police Headquarters, referred the case back to the Administration, ordered the State to pay the Applicants' court costs and ordered the return of the fee.

Observations/Comments:

The Council of State, Athens, Chamber D

Court composed of: A. Tsampasi, Vice-president, presiding in place of the President of the Chamber who was indisposed; E. Sarp, A. Christoforidou, Councillors; M. Athanasopoulou, S. Lampropoulou, Associate Councillors. Clerk: A. Ripi.

Attachment(s):

[Original decision - 434-2009.pdf](#)[11]

Other sources cited:

Bonn Agreement, November 2001

National / Other Legislative Provisions:

[UNCAT - Art 3](#) [12]

[Greece - Act 1975/1991 - Article 25](#) [13]

[Greece - ????? 2 ??? ????? 2452/1996 \(Art 2 of Act 2452/1996\) \[14\]](#)
[Greece - ????? 72 ????. ?? ??? ?. 2910/2001 \(Art 72\(a\) of Act 2910/2001\) \[15\]](#)
[Greece - ???????? ??? ???????? 1951 ???????????? ?????????? 3989/1959 \(Geneva Convention 1951 Legislative Decree\) \[16\]](#)
[Greece - ?????????????? ????? 389/1968 \(????? ?????????????? ?????????????? 125 ?????? ?\) \(Emergency Act\) \[17\]](#)
[Greece - Presidential Decree No. 61/1999 \[18\]](#)
[Greece - Legislative Decree 53/74 \[19\]](#)
[Greece - Law 1782/1988 \[20\]](#)
[Greece - Constitution - Art. 20 \[21\]](#)

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] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [5] https://www.asylumlawdatabase.eu/node/195#toc_12
- [6] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [7] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art 8>
- [8] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%209>
- [9] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [10] <http://www.asylumlawdatabase.eu/en/content/qualification-directive#Art 4 QD>
- [11] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20decision%20-%20434-2009.pdf>
- [12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1938>
- [13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7983>
- [14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7319>
- [15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7320>
- [16] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4374>
- [17] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7333>
- [18] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7960>
- [19] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7961>
- [20] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7956>
- [21] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7995>