

## Greece - The Council of State, 5 February 2008, 441/2008

**Country of Decision:**

Greece

**Country of Applicant:**

Turkey

**Date of Decision:**

05-02-2008

**Citation:**

Council of State 441/2008

**Additional Citation:**

Council of State (Suspension Committee) 495/2000

**Court Name:**

The Council of State, Chamber D

**Keywords:**

Duty of applicant

Non-refoulement

Procedural guarantees

Protection

Real risk

Refugee Status

Revocation of protection status

Well-founded fear

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**Relevant Legislative Provisions:**International Law > [1951 Refugee Convention](#) [1] > [Art 1A](#) [2]International Law > [1951 Refugee Convention](#) [1] > Art 1CInternational Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [3]International Law > [1951 Refugee Convention](#) [1] > Art 2International Law > [1951 Refugee Convention](#) [1] > [Art 32](#) [4]International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [5]

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**Headnote:**

## Application for annulment of a decision by the Minister of Public Order

The case concerned deportation of a recognized refugee (Articles 32 and 33 of the 1951 Convention relating to the Status of Refugees) after a conviction for a criminal offence under common law. Final conviction for a particularly serious crime is not sufficient legitimate justification for an act of deportation.; instead, the Administration is required to issue a specific ruling that the convicted refugee, given the circumstances under which he committed the offence and his personality, is thereafter a risk to the community as a whole to such an extent that his stay in Greece is no longer tolerable and that his immediate removal from the country is required.

A threat to the legal interests of public order does not constitute a reason to revoke refugee status as this is not explicitly referred to in the reasons for terminating refugee status in accordance with Article 1C of the 1951 Convention. Furthermore, it falls within the competence of the Council of State to annul a ruling, issued by relying on Articles 32 and 33 of the 1951 Convention relating to the Status of Refugees, which involves the deportation of an alien who has been recognized as having refugee status under the said international Convention and who continues to have refugee status.

The case also considered the lack of competence of the body which issued the contested decision (General Secretary of the Ministry of Public Order instead of the competent Minister for Public Order).

### **Facts:**

The applicant, a Turkish national, was recognized as a refugee in 1989 (Article 1A of the 1951 Convention) by decision of the Minister for Public Order. In 2000 the applicant received a final conviction (Agrinio Court of Appeal 846/24.3.2000) and was sentenced to a total of eighteen months' imprisonment which was converted into a monetary payment, as well as to a total fine of 300,000 drachma, for the offences of misappropriating documents, of illegal and unlicensed employment of aliens, and of facilitating the illegal stay of aliens in Greece. Subsequently the General Secretary of the Ministry of Public Order issued a judgment which overturned the ministerial act recognizing the applicant's refugees status, and which ordered his deportation from the country on the grounds that 'During his stay here, with refugee status, he was engaged in unlawful activities and participated in acts which could be detrimental to public security in the Country?'. The applicant brought quasi-judicial proceedings against the General Secretary's decision. The contested decision by the Minister for Public Order and relevant rulings by the Special Committee accepted the appeal insofar as it related to overturning the act which recognized the appellant's refugee status and that he was subject to the 1951 Convention, on the grounds that a 'threat to the legal interests of public order is not explicitly referred to in the reasons for terminating refugee status in accordance with Article 1C of the 1951 Convention?'. Otherwise, however, the Minister of Public Order dismissed the appeal and ordered, relying on Articles 32 and 33 of the 1951 Convention, the expulsion of the applicant from the country, stating: 'A threat to the legal interests of public order (...) is referred to (...) in Articles 32 and 33 of the (...) Convention as being a reason which permits the deportation of a refugee and, therefore, his appeal against the part of the decision which ordered his deportation is dismissed because, during his stay here with refugee status, he was arrested and received a final conviction for particularly serious crimes and, therefore, is considered to be a danger to the country?'. The Minister did not take into consideration the opinion expressed by the majority of members of the Special Advisory Committee (the explicit opinion of 2 members and in the form of an annotation by 1 member, out of a total of 5 members) and he did not specifically justify his decision with regard

to the protection conferred on the applicant under Articles 3 of the ECHR, Article 3 of UNCAT, and Article 33 of the 1951 Convention.

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**Decision & Reasoning:**

The Court decided to annul the contested decision as incorrectly substantiated, for the following reasons:

It ruled that when an act to deport an alien with refugee status is issued for reasons of public order, the Administration is required to give a personalized ruling which may take place after the person concerned has received a final conviction by a criminal court for a particularly serious crime (Articles 32 and 33 of the 1951 Convention in conjunction with Article 6 of Presidential Decree 61/1999 which refers to both of the former Articles without specific reference to the scope of their implementation). In particular, the Court ruled that, in light of what is stipulated in Article 33(2) of the 1951 Convention concerning legitimate justification for an act to deport a refugee, it is not sufficient to simply invoke the existence of a final conviction against him for a particularly serious crime. The Administration is also required to issue a specific ruling that the convicted person, given the circumstances under which he committed the offence and his personality, is thereafter a risk to the community as a whole to such an extent that his stay in Greece is no longer tolerable and that his immediate removal from the country is required. This is precisely because the offender is subject to the special protection of refugee status under the 1951 Convention as a person who is at risk of persecution in his own country.

As for the crimes for which the applicant was convicted, particularly the crime of misappropriating documents, the Court ruled that they did indeed fall within the meaning of 'particularly serious crime' as referred to in Article 33(2) of the 1951 Convention but that the Minister for Public Order had merely relied on the applicant's final criminal conviction and his own judgment, based solely on that conviction, that the alien in question is therefore a danger; and that there was no evidence in the contested act, or in the other documents that had been presented to the Court in the dossier, that the Minister had made a specific substantive assessment as to whether, in view of the circumstances in which these crimes were perpetrated and the applicant's personality in general, the latter constitutes a danger to the community to such an extent that his immediate expulsion from Greece is necessary.

The Court also held that the Minister for Public Order needed to give details of this substantive assessment given that the final judgment which sentenced the applicant to imprisonment was converted to a financial penalty.

Finally, the Court ruled on the competence of the body which issued the contested decision (General Secretary of the Ministry of Public Order instead of the competent Minister for Public Order).

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**Outcome:**

The application was granted. The decision of the Minister of Public Order was annulled, ordering the repayment of the fee. The State shall bear the applicant's Court Costs.

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**Observations/Comments:**

The Council of State, Chamber D

A. Tsampasi, Vice-president, presiding in place of the President of the Chamber who was

indisposed

Ch. Rammos, D. Gratsias, Councillors,

O. Zygoura, M. Athanasopoulou, Associate Councillors

The decision correctly and strictly interprets the provisions of Articles 32(2) and 33(2) of the 1951 Convention. It holds that there is a requirement to give specific justification and details of the concept of a particularly serious crime, which (justification) is not limited to the existence of a final conviction by a criminal court. It also strictly interprets the fulfilment of conditions concerning national security or public order.

The decision also correctly holds that the grounds for revocation of refugee status are referred to exhaustively in Article 1C of the 1951 Convention, in contrast to the approach adopted by and enforced in Community and national legislation which is contrary to the 1951 Convention (Article 14 of the Directive ... and Article 14 of Presidential Decree 96/2008, according to which: ?

*4. The competent decision-making authority may not grant, may revoke, or may refuse to renew the status granted to a refugee when: (a) there are reasonable grounds for regarding that person as a danger to national security (b) that person constitutes a danger to the community, having been convicted by a final judgment of a particularly serious crime?).*

#### Attachment(s):



[Original Judgment - Council of State - 441-2008.pdf](#)[6]

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#### Other sources cited:

Universal Declaration of Human Rights (Articles 1,3,4,5,9 and 13)

#### National / Other Legislative Provisions:

[Greece - ?????????? ?????????? 61/1999 \(Presidential Decree\) Art 2](#) [7]

[Greece - ?????????? ?????????? 61/1999 \(Presidential Decree\) Art 3](#) [8]

[Greece - ?????????? ?????????? 61/1999 \(Presidential Decree\) Art 3\(3\)](#) [9]

[Greece - ?????????? ?????????? 61/1999 \(Presidential Decree\) Art 6](#) [10]

[Greece - ?????? 15 ????. 1 ?????????? ??? ??? ????. 3 ?????????? ?? ??? ?. 3068/2002 \(Art 15\(3\)\(b\)\)](#) [11]

[Greece - ?????? 1 ????. 3 ?????????? ?? ??? ?. 2408/1996 \(Art 1\(3\)\(a\) of Act 2408/1996\)](#) [12]

[Greece - ?????? 24 ????. 1 ??? ?. 1975/1991 ????? ?????????????????? ?? ?? ?????? 1 ??? ?. 2452/1996 \(Art 24\(1\) of Act 1971/1991 as amended by Art 1 of Act 2452/1996\)](#) [13]

[Greece - ?????? 33 ????. 7 ??? ?. 1975/1991 \(Art 33\(7\) of Act 1975/1991\)](#) [14]

[Greece - ?????? 33 ????. 9 ??? ?. 1975/1991 \(Art 33\(9\) of Act 1975/1991\)](#) [15]

[Greece - ?????? \[16\]](#)

[Greece - 82 ????. 2 ?????????? ??????? \(Art 82\(2\) Penal Code\)](#) [17]

[Greece - 222 ?????????? ??????? \(Art 222 Penal Code\)](#) [18]

[Greece - ?????? 15 ????. 1 ??? ?. 3068/2002 \(Art 15\(1\)\)](#) [19]

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#### 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#1f>

[4] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#32>

- [5] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>
- [6] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20Judgment%20-%20Council%20of%20State%20-%20441-2008.pdf>
- [7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7290>
- [8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7291>
- [9] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7292>
- [10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7293>
- [11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7296>
- [12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7301>
- [13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7297>
- [14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7302>
- [15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7303>
- [16] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7298>
- [17] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7306>
- [18] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7307>
- [19] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7308>