

## Greece - Council of State, 8 May 2012, Application No. 1661/2012

**Country of Decision:**

Greece

**Country of Applicant:**

India

**Date of Decision:**

08-05-2012

**Citation:**

??? 1661/2012

**Court Name:**

Council of State, Chamber D

**Keywords:**

Actor of persecution or serious harm  
Exclusion from protection  
Humanitarian considerations  
Inhuman or degrading treatment or punishment  
Protection  
Refugee Status  
Religion  
Serious non-political crime  
Subsidiary Protection

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**Relevant Legislative Provisions:**

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

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**Headnote:**

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

This case concerned special protection status in accordance with the 1951 Refugee Convention and exclusion from protection of those who have committed a serious crime under 'common law'. The crime committed by the applicant (attempted murder of the Indian Ambassador in Romania) does not fall within the concepts of 'political', 'composite' or 'related' crimes, even if it was carried out because of the offender's political opinions or principles, or with the intent of achieving such aims. The implementation of the exclusion clause is not precluded because of the fact that the party has already served the sentence which was imposed. The judgment regarding the applicant having committed a serious criminal offence was justified. The decision was opposed by a minority. Consideration was given to the severity of the persecution the applicant risked suffering should he return to India and non-refoulement was approved, his deportation was given suspensive effect, and he was given temporary leave to remain on humanitarian grounds.

**Facts:**

The Applicant, a citizen of India, illegally entered Greece on 11.11.1998 via Bulgaria, and was arrested on the same day, along with some compatriots. On 13.11.2008, while he was being detained pending deportation, he submitted an application to be granted political asylum in which, via an interpreter, he stated that he had left his country because he was afraid of persecution for religious and political reasons. More specifically, the Applicant claimed that he belonged to the Sikh faith and was a member of a pan-Indian student organization as well as being a member of a dissident organisation whose activities aimed to bring about independence for the Khalistan region. The Applicant claimed that as a result of this activity he was wounded by a bullet in the abdominal area, and that he was the victim of harassment by the local authorities, as were other members of his family.

Fearing for his life, the Applicant took a flight to Switzerland. After a seven-month stay he fled to Romania in 1991 and remained there until he arrived in Greece. He also stated that the purpose of his visit to Romania was to meet the Indian Ambassador in Bucharest whom, after an argument and whilst 'beside himself' with rage, he tried to kill because the latter, as Chief of the Punjabi Police from 1986 to 1988, was responsible for the deaths of 16,000 Sikhs and for the imprisonment of members of his family. The Bucharest Military Court sentenced the Applicant to ten years in prison for the crime of the particularly serious, aggravated, attempted murder of a representative of a foreign state as well as for firearms offences, because 'as part of an organized gang and after preparation' the Applicant and four other Sikhs opened fire on the said Indian Ambassador and his wife on 20.8.1991 and, after following them as they tried to escape, the Applicant injured the Ambassador, causing him permanent disability.

Having been released on parole for good behaviour on 28.4.1998, on 29.4.1998 he submitted an application for political asylum to the Romanian authorities, but this was rejected on 6.11.1998. The Applicant then entered Greece illegally (11.11.1998) and submitted an asylum application. That application was rejected because it was held that the Applicant, whilst in principle having refugee status under the 1951 Convention, should be excluded from the special protection status 'implementing Article 1F(b) of the Convention' because of having committed a serious offence of common law. The Applicant brought a quasi-judicial action against that rejection, requesting a review of his application for reasons which would be given during the proceedings. The Minister for Public Order's contested decision 3/443581/30.3.1999, which cited the Advisory Committee's minutes of 11.2.1999, was a second instance rejection of the Applicant's application for special protection status under the 1951 Convention, implementing the Convention's exclusion clause in Article 1F(b).

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## **Decision & Reasoning:**

The Council of State held that the Administration had given lawful and sufficient reasoning for its decision since it had considered the guiding principles of the UNHCR Handbook relating to the use of common criteria for applying the exclusion clause and, in particular, the Applicant's behaviour which is classed as criminal and not prompted by purely political motives. The Administration found that there was no causal link between the crime that was committed and the purported political objective for carrying it out. The Administration also held that, in view of what had been stated, the political objective was not predominant over the criminal nature of the offence and, therefore, the offence constituted a non-political crime under the terms of the 1951 Convention. The Council of State held that the Administration's judgment ? which had assessed the factors which determine the non-political nature of the crime committed by the Applicant ? was lawfully and sufficiently reasoned, and it rejected pleas to the contrary as grounds for annulment.

The Council of State held that the particular plea that the offence in question was a ?composite? political crime, according to Areios Pagos (Supreme Court) case law, should also be rejected. The Council of State rejected that claim because, as regards implementation of the 1951 Convention, the concepts of a ?political? crime, and also ?composite? political crimes and crimes ?related? to political crimes, are not determined by the relevant domestic law in the country where asylum is being sought. The Council of State ruled that the crime which was committed did not fall within any of the said definitions because case law holds that a ?political? crime, as opposed to a common criminal offence, is a crime which is directed against the State with the aim of overthrowing or changing the existing regime i.e. it refers only to crimes of treason or preparatory acts with that intention. ?Composite? political crimes or crimes ?related? to political crimes are considered to be those which are so closely connected to a political crime that the effect on some legal entity results in the creation of a means to commit a political crime under the foregoing meaning, the political crime then being deemed to have been committed. Furthermore, the Council of State held that any other crime which does not have these features, such as the Applicant's crime, cannot fall within the above-mentioned concepts even if it is carried out by the offender because of his political opinions or principles, or with the intent of achieving such aims. Finally, the Council of State stressed that in view of the stated purpose of establishing the exclusion clause, implementation of clause 1F(b) of the 1951 Convention is not precluded merely by the fact that the person seeking the special protection status of a refugee has already served the sentence which was imposed for the crime he committed, but this factor may be taken into consideration along with other relevant factors when assessing such a crime.

As for the claim that the Administration unlawfully failed to take into consideration the severity of the persecution that the Applicant risked suffering should he return to India compared to the severity of the crime he committed, the Council of State held that it must be rejected as being unfounded. It reached this conclusion because the General Secretary of the Ministry of Public Order's decision 3/443581/30.3.1999 approved non-refoulement of the Applicant to India and, furthermore, suspended the Applicant's deportation from the country and allowed him, for humanitarian reasons, to remain temporarily in order for him to make his own arrangements to go to a country of his choosing. The Council of State also took into account the fact that the General Secretary of the Ministry of Public Order's decision 3/443581/17.9.2001 granted the Applicant, pursuant to his request, permission to stay on humanitarian grounds. This was done (regardless of the Administration's evaluation, as aforementioned, of the extent of the potential persecution of the Applicant should he return to his country of origin) within the context of having weighed up the significance of the absolute nature of the prohibition on refoulement to his country of origin since there is a risk of him being subjected to torture or other inhuman or degrading treatment or punishment.

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**Outcome:**

The application was rejected as inadmissible. The court ordered forfeiture of the fee and required the Applicant to pay the State's legal costs.

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**Observations/Comments:**

The Council of State, Chamber D

Judges: P. Pikrammenos, Vice-president, presiding in place of the Chamber's President and Deputy President who were indisposed; Chr. Rammos, P. Kotsonis, Aik. Christoforidou, E. Nika, Councillors; V. Kintziou, Chr. Mpolofi, Associate Councillors. Registrar: Aik. Ripi.

**Attachment(s):**

[MIP StE 1661\\_2012.pdf](#)[5]

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**Other sources cited:**

Cases:

Council of State C.E. 23.02.2001

Council of State M.T. & C.R.R 05.07.2004

Council of State M.D. 25.07.2005

Decision 2661/20.12.2005 by the 1st Chamber of the Five-member Court of Appeal of Athens.

**National / Other Legislative Provisions:**

[New York Protocol to the 1951 Convention relating to the Status of Refugees - Article 1\(2\)](#) [6]

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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/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[5] [https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/MIP%20StE%201661\\_2012.pdf](https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/MIP%20StE%201661_2012.pdf)

[6] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7964>