

Greece - Special Appeal Committee, 15 November 2011, 95/52986

Country of Decision:

Greece

Country of Applicant:

Afghanistan

Date of Decision:

15-11-2011

Citation:

2nd Special Appeal, Committee 95/52986

Court Name:

2nd Special Appeal Committee

Keywords:

Actor of persecution or serious harm
Actors of protection
Country of origin information
Credibility assessment
Discrimination
Internal protection
Membership of a particular social group
Non-state actors/agents of persecution
Persecution (acts of)
Persecution Grounds/Reasons
Protection
Real risk
Refugee Status
Relevant Documentation
Religion
Unaccompanied minor
Well-founded fear

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

International Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [4]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [5]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6] > [Article 9](#) [7]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [8]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [6] > [Article 10](#) [9]

[UNHCR Handbook](#) [10]

Headnote:

Appeal against the General Secretary of the Ministry of Public Order's negative decision no 95/52986 of 28.4.2006 on a claim for asylum before the Appeal Committees formed pursuant to Articles 26 & 32 of Presidential Decree 114/2010 and the Minister of Citizen Protection's decision 5401/3-505533 of 7.11.2011 (385/8-11-2011 FEK YODD) pursuant to which the present Committee was formed.

This case involved a fear of persecution because of religious beliefs (atheism) as well as because of membership of a particular social group (personality shaped in a non-Islamic society / westernisation). In particular, the Committee ruled that if the Applicant were to return to Afghanistan now or in the near future, because of his atheism and the consequent non-conformity with the Islamic way of life of the society into which he would need to integrate, in conjunction with the fact that his personality has been shaped in a non-Islamic society with customs and a way of life totally different from those of Muslims, he would be reasonably likely to suffer aggressive social attitudes, threats and social exclusion which, taken cumulatively, could amount to persecution. Besides, should he return to a small rural community in Afghanistan ? given the Applicant's particular personality and how it had been shaped ? it is very likely that he would not be able to conceal his religious beliefs (atheism) and thus there was a reasonable chance that he would be at risk of criminal prosecution because of his atheism and his 'apostasy' from Islam (prosecution which is reasonably likely to lead to imprisonment or execution). This, however, would constitute a direct and severe violation of his fundamental right to religious freedom, especially in the context of the specific social, religious and political unrest and the absence of legal guarantees in the Applicant's country of origin.

It was held that even if he were not criminally prosecuted, the Applicant would, in any case, be at risk of suffering harm from non-state actors in the form of persecution; and that the Afghan State, police and other authorities were incapable of providing adequate and effective protection, mainly because of the lack of organisation and the corruption which prevails at all levels.

Facts:

The Applicant claimed that he belongs to the Hazara tribe and is irreligious, that he was born in the town of Bidnow in the Ghowr region of Afghanistan but, after his parents' deaths in 1997, that he went with his uncle and his family to the town of Herat and then, immediately afterwards, to Iran; and he remained there ? without the required legal papers ? in the town of Mashad until 2005. He worked there as a tailor and also, for 4 years, he attended an informal school in the local Afghan community. He further explained that he had already been working in Afghanistan since he was 5 years old, making carpets. He then claimed that he left Iran because he felt unsafe: he was not

free to circulate or attend a "normal" school. Indeed, when he was fifteen he was arrested by the Iranian police and was detained at the Sang-e Safid (white stone) prison camp, from which he was released after his uncle bribed a police officer who, however, warned that he would demand twice as much money if the Applicant were arrested again. He added that his uncle also lacked legal documents in Iran, and that he had since died.

Regarding his reasons for leaving his homeland, the Applicant stated that his parents had been killed by a rocket in 1997 after the Taliban organised an attack on his village, Bidnow, while he himself was at school with his cousins. His parents belonged to the Hezb-i Wahdat Party and were Shiite Muslims. His father, a farmer, carried a gun and was "along with his brother, the Applicant's uncle, active in the Party and they would sometimes be away for two days. The Applicant added that they even had a photograph of the Party leader, Mazari, in their home. He also explained that the Party was against the Taliban and that they were fighting for the rights of people from the Hazara tribe, such as himself, who lived mainly in the area where he used to live; but he didn't know if they were all members of the Party. He added that although his uncle hadn't told him much about events concerning his parents, he had explained that the attack was connected to the fact that his parents, like all those who were killed, were Hazara and belonged to the Party. He also said that he did not know if there were other relatives in Afghanistan and that his uncle used to say that he and his family were his relatives. The uncle's wife and children are still in Iran, without legal papers.

Regarding the risks he would encounter if he were to return to Afghanistan, the Applicant stated that there was a reasonable likelihood that he would, as a Hazara and as a member of Hezb-i Wahdat be persecuted by the Taliban; and that the journey from Kabul to his village was dangerous because of the Taliban and the "Kuchis": nomads from the Pashtun tribe, Sunni Muslims who used to leave their flocks in Hazara fields and kill anyone who reacted. Also, there were still armed conflicts in the region which would make him feel unsafe living there. The lack of security was exacerbated by the fact that, despite now being an adult, the lack of any protective family network in Afghanistan would not allow him to survive; and because, should he need to seek protection from the authorities he would encounter problems because they would ask him which family he belonged to, but he no longer had any relatives as a point of reference and protection.

Furthermore, the Applicant stated that he was irreligious and that he had grown up with a Greek way of life, since he left Afghanistan when he was 7 and had at that time been living in Greece for 6 years. Thus, should he be required to return to Afghanistan it would be impossible for him to conform to the customs and traditions of the Muslim religion. The Applicant stated that Afghan society is controlled by religion and that his village is governed by a council of elders. He did not agree with those customs and traditions. As examples, he stated that he drinks alcohol and eats pork; and he stressed that he did not agree with the position of women within Islam. Since he did not follow those traditions, he was afraid that he would be in danger. If he were to keep quiet, on the other hand, he considered that his freedom of expression would be restricted, a fact which, as confirmed by his lawyer would be incompatible with his character as a person who is restless, liberal and "reactionary". The Applicant also feared that, should he return to his village, someone could link him to his father's death.

Finally, the Applicant attended Greek lessons in Greece at the "Pyxida" school (a Greek language school operated by the Greek Council for Refugees (G.C.R.)) and in 2007 he started attending Greek state school (2nd Multicultural Middle and High School) from which he graduated in 2011. He now works for the G.C.R. as an interpreter and lives in the home of one of his teachers.

Decision & Reasoning:

The Committee unanimously accepted the above appeal and held that there was a well-founded fear of persecution. Specifically, it decided that it cannot be concluded, in general, that any Afghan citizen returning to any region of the country would suffer serious harm from the authorities or his compatriots purely and simply on the grounds of him being irreligious or rejecting local social customs. However, in this case, the Applicant's lack of religion and the fact that he left Afghanistan at a very young age and developed his personality in Greece, a non-Islamic country could, should he be forced to return to Afghanistan, make it very difficult for him to express his beliefs without suffering adverse consequences, given that he had no supportive family network and given the fragile, in terms of security, situation in the region. Furthermore, it held that if the Applicant were to return to Afghanistan now or in the near future, because of his atheism and the consequent non-conformity with the Islamic way of life of the society into which he would need to integrate, he would be reasonably likely to suffer aggressive social attitudes, threats and social exclusion which, taken cumulatively, could amount to persecution. Besides, it was very likely that he would not be able to conceal his religious beliefs (atheism) and thus there was a reasonable chance that he would be at risk of criminal prosecution because of his atheism and his 'apostasy' from Islam (prosecution which was reasonably likely to lead to imprisonment or execution). This, however, would constitute a direct and severe violation of his fundamental right to religious freedom, especially in the context of the specific social, religious and political unrest and the absence of legal guarantees in the Applicant's country of origin.

The Committee based the substance of its ruling on both the Applicant's claims and the relevant documentation which was submitted which showed a high level of activity and expression in public life; and also the 11/11/2011 report to the Committee from Maria Michailidou, a social worker with the Greek Council for Refugees, whom the courts appointed as his guardian in December 2006. That report states that the Applicant 'having a firm framework of values, always acted taking into consideration his belief in human rights, including the right to self-determination, freedom of religion and the equality of men and women'. It also points out that 'throughout all of these years he has not hesitated to express his opinions, even when they conflicted with the views of others of his age who, in obedience to the principles of Islam, expressed a much more conservative world-view; and he was willing to suffer the consequence of being alienated from his peers' as well as that 'he would not under any circumstances be able to adjust and operate in a restrictive social environment such as that of his country of origin. Such an outcome would have a very significant detrimental effect on his psyche and development because it would really cripple his chances and capacity to develop emotionally and intellectually since, as a young adult, he would not only be traumatically uprooted, but he would also experience cultural disorientation, which would be difficult to survive'.

The Committee deliberated on the viability of internal relocation, something which could only be considered in areas where there were family or tribal ties since it was unlikely that an Afghan could live a normal life without difficulties if he relocated to any area without the protection of family, clan or race, including urban areas. It was held that this was not a possibility given that the Applicant left his country at a young age and no longer had any family ties in Afghanistan.

Outcome:

The Committee unanimously upheld the appeal.

It ruled that the Applicant fulfilled the requirements for recognition of refugee status in accordance with Article 1A(2) of the United Nations Convention on Refugees of 28 July 1951, and it recognised his refugee status.

Observations/Comments:

Committee composed of: Xenofontas Chondromitros ? Ministry of the Interior official; Panagiota Theodoropoulou ? representative of the UN High Commissioner for Refugees; and Eleni Kalampakou ? a lawyer selected from the relevant list compiled by the National Commission for Human Rights.

Attachment(s):



[Original Judgment - Greece ? Special Appeal Committee, 15 November 2011, 95.52986.pdf](#)

[11]

Other sources cited:

- US Central Intelligence Agency, CIA Factbook: Afghanistan, 18/10/2010,
- Program for Culture & Conflict Studies, 23 October 2008
- Minority Rights Group International, World Directory of Minorities and Indigenous Peoples. Afghanistan: Hazaras 2008
- UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 17/12/2010, HCR/EG/AFG/10/04
- UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, July 2009
- The New York Times, Taliban Kill 9 'Members of Minority in Ambush, 25 June 2010
- Ruttig, Thomas/Afghanistan Analysts Network: A new Taliban front? 21 June 2010, FP - Foreign Policy
- Austrian Red Cross, Accord, Response a- 7367 of 6.9.2010, UNHCR Protection Information Unit
- Zia Ahmadi ? Afghanistan, ARR Issue 393, 17 Mar 11 Afghanistan: Ghor Warlords Accused of Abusing Women
- AOG, Armed Opposition Groups, specifically Islamic Emirate of Afghanistan (Taliban), Haqqani Network and Hezb-I-Islami Hekmatyar HH- ANSO, July 2011
- IRIN, Afghanistan: Kuchi minority complain of marginalization, 23 November 2010
- Internal Displacement Monitoring Centre (11 April 2011) Afghanistan: Need to minimise new displacement and increase protection for recently displaced in remote areas
- Council of the European Union, Afghanistan, Hezb-i-Wahdat, Human Rights violations, Brussels, 26.4.2001
- Refugee Review Tribunal AUSTRALIA RRT Research Response: AFG17439, Afghanistan, 5.8.2005
- Office of the UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, 6th Edition, Athens 2009
- Guidelines for Assessing the International Protection of Refugees, ?Membership of a particular social group?
- The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 6th Edition, Athens 2009
- The New York Times (NY Times), Afghan Officials Say Jailed Convert Is Free, 24.2.2011
- Refugee Review Tribunal, Australia RRT research response, no AFG33041, Afghanistan, 29 February 2008
- RRT Case No. 071852303, [2008] RRTA 17, Australia: Refugee Review Tribunal, 25 January 2008
- UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights, January 2010
- UNODC, Corruption in Afghanistan: Bribery as reported by the victims, January 2010

- Human Rights Watch, Selling Justice Short: Why Accountability Matters for Peace, 7 July 2009
- UNHCR, Guidelines on International Protection No. 4: Internal Flight or Relocation Alternative? Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04, 23 July 2003

National / Other Legislative Provisions:

[Greece - ??????? ???? ??????? 1951 ?????????? ????????? 3989/1959 \(Geneva Convention 1951 Legislative Decree\)](#) [12]

[Greece - ?????????????? ?????? 389/1968 \(????? ?????????????? ?????????????? 125 ?????? ?\) \(Emergency Act\)](#) [13]

[Greece - ?????? ?????????????? ?????????????? \(????? 2690/ 1999\) \(Administrative Procedure Code\)](#) [14]

[Greece - ?????????? ?????????? 69/2008 \(Presidential Decree 69/2008\)](#) [15]

[New York Protocol to the 1951 Convention relating to the Status of Refugees](#) [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#1d>

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

[5] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

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

[7] https://www.asylumlawdatabase.eu/node/195#toc_49

[8] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[9] https://www.asylumlawdatabase.eu/node/195#toc_52

[10] <http://www.asylumlawdatabase.eu/en/content/unhcr-handbook-procedures-and-criteria-determining-refugee-status>

[11] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20Judgment%20-%20Greece%20%E2%80%93%20Special%20Appeal%20Committee%2C%2015%20November%202011>

[12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4374>

[13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7333>

[14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4378>

[15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7850>

[16] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7965>