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## **Greece - Special Appeal Committee, 19 January 2012, A.R. v Chief of Security and Order of the (former) Ministry of Public Order, Application No. 95/51447**

**Country of Decision:**

Greece

**Country of Applicant:**

Afghanistan

**Date of Decision:**

19-01-2012

**Citation:**

Application No. 95/51447

**Court Name:**

2nd Special Appeal Committee, Ministry for Citizen Protection

**Keywords:**

Country of origin information  
Credibility assessment  
Individual threat  
Inhuman or degrading treatment or punishment  
Internal protection  
Persecution (acts of)  
Protection  
Race  
Serious harm  
Standard of proof  
Subsidiary Protection  
Well-founded fear

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**Relevant Legislative Provisions:**

International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]

International Law > [1951 Refugee Convention](#) [1] > Art 25.2

International Law > [1951 Refugee Convention](#) [1] > Art 25.3

International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [3]

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

[4]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 3](#) [6]

European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [7]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 15](#) [8]

European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [9]

[UNHCR Handbook](#) [10] > Para 38

[UNHCR Handbook](#) [10] > Para 39

[UNHCR Handbook](#) [10] > Para 40

[UNHCR Handbook](#) [10] > Para 41

[UNHCR Handbook](#) [10] > Para 42

[UNHCR Handbook](#) [10] > Para 51

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### **Headnote:**

The Applicant's objective fear was not considered well-founded as persecution was not considered reasonably likely. It was held that there was a reasonable likelihood that, should he return, the Applicant would be forced to live as an internally displaced person in degrading conditions because he lacked the family network that would be required in order to reintegrate him into his homeland socially and financially. Exposure to extreme living conditions constitutes degrading treatment and deporting a person to a country where he would be subject to such conditions violates Article 3 of the ECHR. Subsidiary protection status was therefore granted.

### **Facts:**

The Applicant was a Hazara from the town of Sheik Ali in the Parwan region of Afghanistan. He left his country with his family in 1992/3 at the age of 4 or 5. He lived in Iran for around 10 years and then came to Greece in September 2004. In Afghanistan his family had a property dispute with a neighbour named Chamza. His son was killed and Chamza accused the Applicant's family of the murder. The Applicant's father was killed and his family was threatened by Chamza's sons. The family left for Bamiyan, then Charikar (where they did not stay because of the enmity between the Tajiks and the Hazar), and finally they went to the district of Ghazni which is a mainly Hazar area, but they were not welcome there either, because they were not locals and the Kuchi objected. During the journey, the Applicant's life was in danger and his brother was injured by bullets. The Applicant's opinion was that the culprit was Chamza. The family fled to Iran. The Applicant was deported three times, but returned to Iran on each occasion. Fearing that he would be deported again, he left Iran and came to Greece. On 1.3.2005 he submitted an asylum application, which was rejected by decision 95/51447 of 8.11.2005 by the General Secretary of the Ministry of Public Order. The Applicant appealed against that decision on 7.3.2006, and the Applicant was examined verbally as part of that hearing on 17.11.2011.

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### **Decision & Reasoning:**

The Committee believed that the Applicant's claims were probably true. It made extensive references to the situation of the Hazara ethnic group; it accepted that members of that group had suffered systematic discrimination which continues to the present day, that there was a long history of ethnic conflict between the Hazara and the Kuchi, and that internally displaced persons attempting to reclaim their property would be likely to face conflict over the land and its produce.

However, in the Committee's opinion, in this case it was not reasonably probable that there was 'objective fear' because the risk of being found and possibility of being persecuted or killed upon his return was very remote due to the passage of a long period of time and because he had totally changed, physically, as he grew from a 4/5 year old child into an adult. According to the Committee, 'persecution' of the Applicant was also not reasonably likely: he was too young then to have any responsibility for his family's dispute with the other family, and the chances of him being found by his persecutor after being away from his country for more than nineteen years were remote. Therefore, the Committee decided not to proceed to examine the other conditions of Article 1A(2) of the 1951 Convention on the ground that the failure to satisfy even one element of the definition of refugee leads to recognition of that status being denied. The Committee went on to examine the conditions for granting subsidiary protection. It initially held that there was no risk of the Applicant being subject to the death penalty or execution (Article 15(a), nor a danger to his life or physical integrity due to indiscriminate violence (Article 15(c). Regarding Article 15(b) of the Directive, the Committee reported that internally displaced persons in Afghanistan are exposed to extremely difficult conditions (lack of shelter, food, and access to drinking water; insanitary conditions; inadequate medical care; lack of access to education and employment; generally insecure conditions) which, in the light of Article 2 of the ECHR and recent ECtHR case law (M.S.S. v. Belgium and Greece), falls within the definition of 'degrading treatment'. Furthermore, regarding the possibility of relocation, the Committee stated that the reasonableness of this must be assessed on an individual basis, taking into account the availability of traditional support mechanisms; the availability of basic infrastructure and access to basic services; the ability of those involved to support themselves, including opportunities for a livelihood; the crime rate and degree of insecurity; and the amount of dislocation in the region to which they would be relocated. In the case of a person with no family ties who is not able to benefit from some informal social network (extended family or clan) internal relocation should not be considered a reasonable option. Thus, the Committee held that since the Applicant (an orphan without any relatives with a stable place of residence in Afghanistan) did not have the necessary family network to assist his social and economic reintegration into his homeland and that, should he return, it was reasonably likely that he would be forced to survive as an internally displaced person in extreme social conditions (degrading conditions). For that reason the Committee, holding that the deportation of a person to a country where he would be subjected to such conditions would violate Article 3 of the ECHR, ruled that the Applicant must be awarded subsidiary protection in accordance with Article 15(2)(b) and Article 18 of Presidential Decree 95/2008 which transposed the equivalent Articles 15 and 18 of Council Directive 2004/83/EC of 26 April 2004 into Greek law.

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#### **Outcome:**

Appeal formally accepted. Application for recognition of refugee status rejected. Recognised subsidiary protection status for two (2) years.

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#### **Observations/Comments:**

It is particularly significant that subsidiary protection has been awarded based on point (b) of Article 15 Council Directive 2004/83/EC of 26 April 2004, which refers to 'torture' or inhuman or degrading treatment or punishment of an applicant in the country of origin, because it was held that the term 'degrading treatment' included being subjected to extreme social conditions (a violation of community rights) such as lack of shelter and food, lack of access to drinking water and sanitary conditions, inadequate medical care, lack of access to education and employment and generally insecure conditions.

Also significant is the extensive reference to the ECtHR decision in M.S.S. v. Belgium and Greece, 21.1.2010 (appeal no. 30696/09) in order to reinforce the inclusion of extreme living conditions in

the term 'degrading treatment' and, then, to reach the conclusion that deporting the Applicant to his country of origin where he may be subjected to such conditions would constitute a breach of Article 3 of the ECHR; and thus that the conditions of Article 15(2)(b) and Article 18 of Presidential Decree 95/2008 (Article 15(b) of Council Directive 2004/83/EC of 26 April 2004) had been met.

Committee composed of:

A.K., Ministry for the Interior official, vice-President,

B.A., UNHCR representative, regular member,

S.A., a lawyer selected from the relevant list compiled by the National Commission for Human Rights, regular member.

**Attachment(s):**



[Original judgment - 9551447-1.pdf](#)[11]

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**Other sources cited:**

? US Central Intelligence Agency, *CIA Factbook: Afghanistan*, 18.10.2010,

? UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 17.12.2010

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? Internal Displacement Monitoring Centre (IDMC) *Afghanistan: Need to minimize new displacement and increase protection for recently displaced in remote areas*, 11.4.2011

? Home Office, *Country of Origin Information Report: Afghanistan*, 11.10.2011

? Asylum Aid, *Women's asylum news: Issue No. 70, November/December 2007*, 7.11.2007

**National / Other Legislative Provisions:**

[Greece - 1951 Geneva Convention 1951 Legislative Decree](#) [12]

[Greece - Presidential Decree 96/2008](#) [13]

[Greece - Presidential Decree No. 114/2010 entitled 'Refugee status: single procedure for foreigners and stateless persons'](#) [14]

[Greece - Administrative Procedure Code 2690/1999](#) [15]

[Greece - Minister for Citizen Protection No. 5401/3-505553](#) [16]

[Greece - Minister for Citizen Protection No. 4000/1/70-a \(Gov. 1725/2.8.2011 B\)](#) [17]

[Greece - Law 3068/2002 - Article 15](#) [18]

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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#33>
- [4] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [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](https://www.asylumlawdatabase.eu/node/195#toc_12)
- [7] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>
- [8] [https://www.asylumlawdatabase.eu/node/195#toc\\_64](https://www.asylumlawdatabase.eu/node/195#toc_64)
- [9] <https://www.asylumlawdatabase.eu/node/353>
- [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-%209551447-1.pdf>
- [12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4374>
- [13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4376>
- [14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7973>
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- [16] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7974>
- [17] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7970>
- [18] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7975>