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Greece - Special Appeal Committee, 20 June 2012, H.K. v. the General Secretary of the (former) Ministry of Public Order, Application No. 95/48882

Country of Decision:

Greece

Country of Applicant:

Iran

Date of Decision:

20-06-2012

Citation:

Application No. 95/48882

Court Name:

3rd Special Appeal Committee, Ministry for Citizen Protection

Keywords:

Actor of persecution or serious harm

Credibility assessment

Death penalty / Execution

Discrimination

Duty of applicant

Persecution Grounds/Reasons

Real risk

Refugee sur place

Religion

Serious harm

Torture

Well-founded fear

Relevant Legislative Provisions:

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

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

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

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 15](#) [9]

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

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

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

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

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

[UNHCR Handbook](#) [10] > Para 96

Headnote:

This case involved recognition of refugee status under Article 1A(2) of the 1951 Convention on grounds of religious beliefs.

More specifically, it was held that the arrest and torture the Applicant suffered at the hands of his father and the State authorities because of his Christian faith, the risk of being executed for apostasy because he was baptised in Greece, and the risk of being arrested and maltreated again should he return to Iran, constituted persecution under Article 1A(2) of the 1951 Convention, the actor of persecution being the State. Furthermore, being forced to conceal one's religious beliefs and/or proclaim belief in another religion in order to avoid persecution and/or deprivation of basic rights constitutes a breach of religious freedom under Article 9 of the ECHR and also the related case law of the ECtHR.

Facts:

The Applicant was an Iranian citizen. Before fleeing the country, and while he was studying at the University of Tehran, he worked for the Ministry of Intelligence and Security. His father was working for the same Ministry, specifically for the Military Corps of the Revolutionary Guards (Sepah). The Applicant converted to Christianity with fellow students in Iran, a fact which was first noticed by his family, with the result that he suffered cruel and degrading treatment by his father and brother which reached the point of becoming life-threatening ? beatings and being burned with a hot iron, hot water and cigarettes ? whilst being imprisoned in the basement of their home. His family disowned him and handed him over to the authorities in Iran; he was then held in the Ministry of Justice's detention centre where he suffered further torture for 20 days before being handed over to his father, a member of the Revolutionary Guards, and imprisoned in the basement of their home. He managed to escape with the help of his sister, who knew that his parents were planning to kill him, and then fled the country with the help of a Christian priest. He submitted an application for asylum in Greece and was baptised as a Christian in 2003. In 2005, the Applicant illegally left Greece and went to England because he was afraid of his brother who had come to Greece to look for him. On his return to Greece, he became involved in drug use, and in 2012 he entered a drug rehabilitation programme. The application for asylum was rejected by the General Secretary of the Ministry of Public Order's decision 95/48882 of 18.7.2004, an appeal was lodged against this and it was heard on 5.3.2012.

Decision & Reasoning:

The Committee recognised the Applicant's refugee status under Article 1A(2) of the 1951 Convention on the grounds of religious beliefs.

Assessing the Applicant's credibility, the Committee held that the claims were highly likely to be true. It believed that the Applicant's conversion to Christianity was sincere and that his claims about his arrest and torture because of his religious beliefs were true.

The claim that his brother had come to Greece to look for him was also considered to be probably true, given that there were references in reliable sources about members of the Iranian diaspora being intimidated by the Iranian authorities.

As for legally establishing a fear of persecution, the Committee held that the subjective element of the fear of persecution had been met because the Applicant had expressed his reluctance to be re-subjected to his country's protection, and that the objective element had also been met by assessing the Applicant's claims in conjunction with the situation in his country.

Regarding the justification of a fear of persecution, the Committee referred to the facts which it deemed to be true, and specifically:

? the fact that his father was a member of the Iranian Ministry for Intelligence's Revolutionary Guard.

? the torture the Applicant had suffered at the hands of his father and by the State authorities which had been confirmed by a medical report.

? the Applicant's open change of religion in Greece, confirmed by a baptism certificate which the Committee assessed separately.

The Committee believed that there was a reasonable probability that the Applicant's views were known to the Iranian authorities, given his father's status and his previous arrest.

For those reasons the Committee considered that the Applicant would not be able to conceal his religious beliefs should he return to his country.

Reference was made to the death penalty for apostasy and/or atheism in Iran, as well as the serious discrimination and restrictions suffered by non-Muslim minorities.

This created a reasonable belief that, should he return to Iran, the Applicant would suffer persecution because of changing his religion and that he could even be at risk of being executed.

Even if the death penalty were not imposed, he would be at risk of arrest and other forms of maltreatment by either his father or the Iranian authorities which would constitute persecution within the meaning of Article 1A(2) ; and, in any case, not declaring faith in one of the recognised religions in Iran would lead to him having no recognised social status.

The Committee held that being forced to conceal his religious beliefs or to proclaim faith in another religion in order to avoid discrimination and/or punishment would, under the ECHR, constitute a violation of his freedom of religion.

Those forms of potential harm constituted persecution for reasons of religious belief within the meaning of Article 1A(2) of the 1951 Convention. The actor of persecution was the State; and not only did the State not offer the Applicant adequate protection, but it was considered certain that

the State would persecute him to the point of death.

Based on the above, the Committee accepted that the Applicant's fear was truly well-founded within the meaning of Article 1A(2) of the 1951 Convention and, specifically, it accepted that his religious conversion while still in his own country, his persecution and torture, and the Christian beliefs that both his family and the Iranian authorities attributed to him, constituted reasons for potential persecution and clearly fell within the definition of persecution as a reason to recognise refugee status.

Outcome:

The Committee recognised the Applicant's refugee status under Article 1A(2) of the 1951 Convention on the grounds of religious beliefs.

Observations/Comments:

Committee composed of:

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

B.A., UNHCR representative, additional member,

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

Other sources cited:

? UN High Commissioner for Refugees, Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 28 April 2004, HCR/GIP/04/06

? Home Office, *Country of Origin Information Report: Iran, October 2004*

? Home Office, *Country of Origin Information Report: Iran, August 2010*

? Home Office, *Country of Origin Information Report: Iran, 28.6.2011*

? Immigration and Refugee Board Of Canada, Iran, Treatment by Iranian authorities of relatives and persons who have left Iran and claimed refugee status, January 2010

? United States Commission on International Religious Freedom, USCIRF Annual Report 2010-Countries of Particular Concern: Iran, 29 April 2010

? Norwegian Country of Origin Information Centre (Land info), ?Christians and converts in Iran? 10.6.2009

? Human Rights Watch, ?Evangelical Christians targets of serious persecution? 30.9.2011

National / Other Legislative Provisions:

[Greece - ???????? ??? ???????? 1951 ?????????? ???????? 3989/1959 \(Geneva Convention 1951 Legislative Decree\) \[11\]](#)

[Greece - ?????????? ?????????? 96/2008 \(Presidential Decree\) \[12\]](#)

[Greece - Presidential Decree No. 114/2010 entitled 'Refugee status: single procedure for foreigners and stateless persons' \[13\]](#)

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

[14]
[Greece - Minister for Citizen Protection No. 5401/3-359096 \(Gov. 285/13.6.2012 vol. YODD\)](#) [15]

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_64
- [10] <http://www.asylumlawdatabase.eu/en/content/unhcr-handbook-procedures-and-criteria-determining-refugee-status>
- [11] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4374>
- [12] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4376>
- [13] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7973>
- [14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4378>
- [15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7972>