

## **Greece - Special Appeal Committee, 28 September 2012, Application No. 95/48884**

**Country of Decision:**

Greece

**Country of Applicant:**

Iran

**Date of Decision:**

28-09-2012

**Citation:**

Application No. 95/48884

**Court Name:**

3rd Special Appeal Committee

**Keywords:**

Burden of proof  
Credibility assessment  
Inhuman or degrading treatment or punishment  
Internal protection  
Political Opinion  
Previous persecution  
Religion  
Torture  
Vulnerable person

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**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 1EInternational Law > [1951 Refugee Convention](#) [1] > [Art 1F](#) [4]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5]

Council of Europe Instruments

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [6]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 3](#) [7]

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

[UNHCR Handbook](#) [9] > Para 38

[UNHCR Handbook](#) [9] > Para 39

[UNHCR Handbook](#) [9] > Para 42

[UNHCR Handbook](#) [9] > Para 208

[UNHCR Handbook](#) [9] > Para 209

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### **Headnote:**

The Applicant left his country of origin (Iran) in 2003 having been arrested, illegally detained and tortured because of his participation in demonstrations against the regime in 1999. He told the Committee that he had occasionally participated in the anti-regime activities of Iranians in Greece, and that he did not wish to return to Iran because he feared that he would be imprisoned again and would be subjected to torture. Concerning his religious beliefs, he stated that he was an atheist. The Committee accepted that the torture suffered by the Applicant in his country of origin constituted previous persecution. However, the Committee believed that there was no a well-founded fear of persecution now or in the future because of his prior actions, nor because of his prior actions in conjunction with circumstances which occurred in Greece (participation in Iranian movements), nor even because of the Applicant's atheism and, therefore, that the fear of persecution was not well-founded. Nevertheless, the Committee acknowledged that there may have been situations in which the Applicant was persecuted in the country of origin, but he has no present or future fear of persecution there. However, it is appropriate to recognise him as a refugee because of the compelling reasons arising from previous persecution, especially when the persecution he suffered was particularly atrocious; and it unanimously recognised the Applicant's refugee status because it held that the Applicant had suffered terrible persecution in the past because of his anti-regime activities (political opinion) without the situation in his country of origin having since improved, and because the Applicant continued to suffer the consequences of his psychological harm, meaning that his return to Iran and his life there would be intolerable.

### **Facts:**

This was an appeal against the rejection of an application for asylum before the Appeal Committees formed pursuant to Articles 26 and 32 of Presidential Decree 114/2010; and against the Minister for Citizen Protection's decisions 5401/3-498356 dated 11.2.2011 and 4000/1/67-f dated 18.5.2011.

The Applicant, who stated that he was an Iranian citizen, submitted an application for asylum at the T.A.A. on 27.11.2003. During the oral asylum seeker interview on 27.11.2003, which was conducted in Farsi via an interpreter, the Applicant stated that he was born on 21.11.1973 in Tehran, that he was a Muslim, a secondary-school leaver, unmarried, unemployed, and that he had been living in Tehran prior to leaving Iran. He had not completed his military service. He also stated that he left his country on 16.5.2003 and entered Turkey without legal formalities. He entered Greece across the Evros river on 30.5.2003, again without legal documentation. Concerning his reasons for leaving his country, the Applicant stated that after the demonstration which took place in 1999 he was arrested and was detained for 3 months, during which time he was tortured. He left Iran because his life was in danger. On 19.8.2004 the Applicant was subjected to a supplementary interview, during which he stated that the authorities had held him without trial, that he was tortured, that he was released having paid a guarantee, and that he left the country when he learned that he was going to be tried. The Applicant also stated that he was

suffering from psychological problems because of the torture he suffered, and that he was under medical supervision and was receiving treatment in a psychosocial rehabilitation unit. In June 2004, the Applicant had been examined at the Medical Rehabilitation Centre for Torture Victims (M.R.C.T.V.). Finally, the Applicant claimed that he did not wish to return to Iran because he would be imprisoned and would be tortured for a second time. Decision no. 95/48884 dated 3.11.2004 by the General Secretary of the Ministry for Public Order rejected the Applicant's application for international protection and to be recognised as a refugee, stating that neither the subjective nor the objective elements of a well-founded fear of persecution, which are required in order to give such recognition under Article 1A of the 1951 Convention, had been satisfied. In particular, there was no evidence to show that he was subjected to individual persecution by the authorities in his country because of his race, religion, nationality, social group or political opinion. Furthermore, according to the contested decision it was clear that he left his country in order to seek employment and improve his standard of living. The Applicant lodged an appeal against the above decision on 29.11.2004 in which he sought re-examination of his application to be granted political asylum and have his refugee status recognised because of a well-founded fear of persecution in his country of origin.

Before the Committee, during oral examination of the Applicant which was carried out through an interpreter in Farsi ? the Applicant's mother tongue ? the latter stated that his name was (surname) ... (name) ... and he requested that his father's name be corrected from ... to ... and that his mother's name be changed from ... to ... The Applicant stated that he was an Iranian citizen, had been born and had lived in Tehran, that his ethnic origin was Persian, that he was an atheist, that he had completed secondary school, was unmarried, and that he had worked as a carrier in his country. His parents and sister lived in Tehran. Their financial position was good and the family owned property in a village near the town of Qasvin. The Applicant stated that he had problems of a psychological nature which would be proved by documents he would submit. Concerning his reasons for leaving Iran, the Applicant stated the following: In July 1999 he participated in student demonstrations against the regime. Approximately ten days after the start of the demonstrations he was arrested on the street and taken to an unknown location where he was held without trial for about 5-6 months. He was subjected to systematic torture throughout his detention. He was released, probably after intervention by his family whose financial situation was good. The torture left the Applicant in a bad mental and physical state, and he had to rely on care from his family for about a year. After recovering for a year the Applicant, in a state of fear, travelled around other areas of Iran in order to avoid the risk of being arrested again. He stayed in Iran until 2003, when he left the country with his father's assistance.

Whilst staying in Greece the Applicant had spent almost two years in a psychosocial rehabilitation unit because of the problems he had faced since his detention and torture. Since 2005 he had been working on an indefinite-term contract in a job which he still held, and he was renting a home in his own name. He can speak Greek and is in a relationship with a Greek citizen. During his stay in Greece, the Applicant ? who stated that he had liberal, pro-royalist political opinions ? had occasionally participated in Iranian movements against the regime and he had, because of that activity, received threatening phone-calls 3-4 times. The Applicant also stated that he was an atheist, but that he respected other people and other religions.

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### **Decision & Reasoning:**

The Committee formally accepted the appeal and unanimously decided that the Applicant should be recognised as a refugee in accordance with Article 1(A) of the 1951 Convention and the 1967 Protocol.

Concerning the credibility of the Applicant's claims, the Committee took into consideration the

comments by the UN High Commission for Refugees with reference to the assessment of mentally disturbed persons (see Handbook paragraphs 206-212) according to which it is necessary, in such circumstances, to somewhat lighten the burden of proof incumbent upon the Applicant. The Committee held that the crucial claims were coherent internally and externally.

Concerning refugee status (Article 1A(2) of the 1951 Convention), the Committee accepted that in this case the subjective element of fear was satisfied, since the Applicant explicitly expressed fear and reluctance to return to his country of origin.

To examine the 'objective element' of fear it is necessary to assess the Applicant's claims. However, those claims should not be evaluated in an abstract way, but must be viewed in the wider context of the relevant situation (see UNHCR Handbook par. 42). In order to assess the situation the Applicant would personally find himself in should he return to his country of origin, the Committee took into consideration the Applicant's personal opinion as well as all the factors which contributed to a deep understanding of his personal background, his profile and experience, the experiences of other people with a comparable profile, and also information regarding standard practices within the country of origin.

As for the fear being well-founded, the Committee 'having taken into consideration and assessed all available evidence' held that the case was sufficiently clear as to the existence of prior persecution by government agencies in the country of origin. Ascertaining that there had been torture, as evidenced by the documents from the Medical Rehabilitation Centre for Torture Victims, led to a finding that there had been previous persecution.

However, based on the background information, the Committee found that there was no reasonable likelihood of the Applicant being persecuted now and/or in the future because of his previous activities (i.e. thirteen years earlier), partly because of the passage of a long period of time since his participation in the demonstrations in 1999 and partly because none of the claims or other evidence indicated that the Applicant was criminally prosecuted during the period in question or that there were any outstanding convictions against him. In this case, it was not possible to establish a future risk based on prior circumstances. Therefore, the objective element of fear was not satisfied and the fear of persecution was not well-founded.

Accordingly, it was not accepted that the Applicant would, should he return, reasonably anticipate a risk of persecution because of his previous persecution in conjunction with the new circumstances which came about during his stay in Greece (i.e. participation in Iranian anti-regime movements in the country of asylum). From the facts on file, and according to the claims by the Applicant himself, there was no evidence that the Applicant had a significant leadership role or was a high profile activist in the said activities, and there was no indication of particularly notable activist behaviour which would significantly distinguish him from other ordinary participants in activities of that type. In this case, the objective element of fear was not satisfied. Therefore, the fear of persecution because of that activity in conjunction with the prior persecution was not well-founded.

Finally, despite the fact that the Applicant did not explicitly express a fear because of his religious beliefs, nor was anything like that presented as a main claim during the interview before the Committee, the Committee assessed this claim. However, there was no evidence on which to establish a risk of persecution because of apostasy. It was not clear that the Applicant's views on religion were known to the Iranian authorities, nor was there any evidence that the Applicant, when living in Iran, had adopted a way of life which was substantially different from other citizens. Furthermore, considering the Applicant's profile and that he did not explicitly express a fear because of his atheism, it appeared that there was no reasonable likelihood that the Iranian

authorities would become aware of his atheist views upon his return to Iran. The Committee held that a risk of persecution because of apostasy upon the Applicant's return to Iran could not be established. A fear or persecution for this reason was not well-founded.

However, the Committee took the following elements into consideration cumulatively:

a) Characteristics of the Applicant's profile which were revealed during the personal interview and became apparent during the narration of his personal history i.e. his strong and extrovert character, and also the severe psychological trauma he continued to experience because of the torture he suffered in the past, as confirmed by the medical reports and as became obvious during the hearing before the Committee.

b) The UNHCR Criteria for Determining Refugee Status (see Handbook) and specifically paragraph 42 which stipulates that "the Applicant's fear should be considered well-founded, if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there?" (see also UNHCR *Interpreting Article 1 of the 1951 Convention Relating to the Status of Refugees*, April 2001, par. 11 at <http://www.refworld.org/docid/3b20a3914.html> [10])

c) That there may have been situations in which the Applicant was persecuted in the country of origin, but he had no present or future fear of persecution there. However, it was appropriate to recognise him as a refugee because of the compelling reasons arising from previous persecution, especially when the persecution he suffered was particularly atrocious and because the Applicant continued to suffer the consequences of his psychological harm, meaning that his return to Iran and his life there would be intolerable (see UNHCR *Refugee Status Determination*, 1 September 2005, para. 2.2.2.2 at

<http://www.refworld.org/docid/43141f5d4.html> [11])

In view of the above, taking the criteria and factors into consideration together, the Committee held that it should recognise the Applicant's refugee status because he had suffered atrocious persecution and degrading torture in the past because of his anti-regime activities (*political opinion*) without the social and political situation in his country having since changed for the better and because the Applicant continued to suffer severe psychological harm, meaning that his return to his country of origin would make his life intolerable.

The Committee held that it would not be possible for him to be relocated to another area of the country of origin in a way which would satisfy the need for protection, especially because, as previously mentioned, the agent of persecution was the State and its power was nationwide, so it considered that one could expect the Applicant's life to be intolerable regardless of what part of the country of origin he returned to.

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#### **Outcome:**

The Committee unanimously upheld the Appeal.

It agreed to correct the names of the Applicant's father and mother.

The Committee unanimously decided that the Applicant should be recognised as a refugee under Article 1(A) of the 1951 Convention and the 1967 Protocol.

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

This decision, despite the fact that it accepted that the Applicant would not face a current or future fear of persecution in his country of origin, either because of his political activities in the past or in the asylum country or because of changing his religious beliefs, eventually recognised refugee status because it accepted that ? due to previous atrocious persecution (torture) suffered by the Applicant ? there were compelling reasons which made recognition unavoidable.

It is an example of the 1951 Convention being applied in light of the UNHCR guidelines, resulting in the recognition of refugee status in certain circumstances (compelling reasons) despite finding that there was no present or future fear of persecution; this is especially significant taking into consideration how structurally dysfunctional the Greek system for examining asylum applications is and the severe delays in completing the process. In this case the asylum application was examined on appeal eight years after the application was initially examined and rejected. It is noteworthy that despite the relevant medical notes which the Applicant had submitted as early as the initial examination, which were directly connected to his alleged persecution, the competent authority at that time claimed that ?there was no evidence to show that he was subjected to individual persecution by the authorities in his country.?

Finally, it should be noted that invoking 'compelling reasons' concerning the provision of refugee protection is not an exclusively interpretive construction. The text of the 1951 Convention itself sets out a 'humanitarian clause' (Article 1C (5) and (6)) which limits the scope of the Convention's so-called 'cessation clauses', under which 'this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality.?' Although this exception was established for 'statutory' refugees, it ?reflects a general humanitarian principle which can, and should, also be applied to other refugees. The exception essentially recognises that some forms and experiences of persecution are so atrocious, and have such devastating psychological effects, that individuals should not be forced to return against their will.?' ( *UN High Commissioner for Refugees, 'Interpreting Article 1 of the 1951 Convention relating to the Status of Refugees', 2001, paragraph 56*)

Committee composed of: Aikaterini Plaka, representative of the Ministry of the Interior; Roumana Erasmia, 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 - 95.48884.pdf\[12\]](#)

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#### **National / Other Legislative Provisions:**

[Greece - ???????? ??? ???????? 1951 ?????????? ???????? 3989/1959 \(Geneva Convention 1951 Legislative Decree\)](#) [13]

[Greece - ?????????????? ?????? 389/1968 \(????? ?????????????? ?????????????? 125 ?????? ?\)](#) (Emergency Act) [14]

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

[Greece - Presidential Decree No. 114/2010 entitled 'Refugee status: single procedure for foreigners and stateless persons' - Art 195](#) [16]

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

[Greece - Minister for Citizen Protection No. 5401/3-505533 \(Gov. 385/8.11.2011 vol. YODD\)](#) [18]

[Greece - Minister for Citizen Protection No. 5401/3-359096 \(Gov. 285/13.6.2012 vol. YODD\)](#) [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#1d>

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

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

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

[7] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

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

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

[10] <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4ba896842>

[11] <http://www.unhcr.gr/fileadmin/Greece/General/publications/protection/newwebkathestosprosfyga.pdf>

[12] <https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/Original%20judgment%20-%2095.48884.pdf>

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

- [14] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7333>
- [15] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7850>
- [16] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7969>
- [17] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7970>
- [18] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7971>
- [19] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7972>