

Poland ? Polish Refugee Board, 31 January 2013, RdU-315-3/S/12

Country of Decision:

Poland

Country of Applicant:

Afghanistan

Russia

Date of Decision:

31-01-2013

Citation:

RdU-315-3/S/12

Court Name:

Polish Refugee Board

Keywords:

Accelerated procedure

Country of origin information

Individual assessment

Membership of a particular social group

Procedural guarantees

Relevant Facts

Relevant Legislative Provisions:

European Union Law

Headnote:

This was a decision of the Polish Refugee Board of 31 January 2013 to uphold that part of the decision of the Head of the Polish Office for Foreigners which concerned refusal to accord refugee status and to overturn the remainder of the decision as well as to grant subsidiary protection.

In the course of criminal proceedings conducted against a foreigner in Poland it was revealed to Iranian consular officials that the foreigner concerned was being held at the Centre for Foreigners seeking refugee status in D?bak. This could have been tantamount to disclosing

that the foreigner was applying for refugee status in Poland. Although it is not known whether the foreigner would have suffered repression from the authorities upon returning to Iran, such a possibility cannot be excluded. This circumstance does not fall within the concept of particular social group. However, considering the scale of human rights abuses in Iran and the unpredictability of the regime, there exists a real threat of torture or of inhuman or degrading treatment.

Facts:

The Iranian citizen submitted an application for refugee status in Poland, which he justified on the grounds of political persecution. He explained his dislike of the authorities in his country of origin by reference to a 20-year dispute over land, which had culminated in his family being evicted. In 2009, the foreigner had taken part in street protests following the announcement of President Ahmadinejad's election victory; the protests were brutally suppressed. The foreigner testified that on two occasions he had been detained and beaten up. He left for Germany, but was detained in Poland on false papers. In connection with the criminal proceedings in this case, the embassy of the foreigner's country of origin was informed of his whereabouts (the Centre for Foreigners seeking refugee status in Dabak), which could have been tantamount to disclosing that the foreigner was applying for refugee status in Poland. The Head of the Polish Office for Foreigners found that this fact would not have been relevant to the Iranian authorities. The Polish Office for Foreigners refused the foreigner all forms of protection and decided to deport him from Poland. Following an appeal, the Polish Refugee Board overturned part of the decision and granted the foreigner subsidiary protection.

Decision & Reasoning:

Refugee status is not a 'remedy' for persecution suffered in the past. What is assessed is the current state of affairs – threats that are real on the day a decision is issued.

Potential disclosure of the fact that refugee status had been applied for is relevant to the proceedings. One must consider whether this circumstance falls within the concept of particular social group. Iranians who unsuccessfully apply for refugee status and who are returned to their country of origin do not, however, constitute an homogenous group. One cannot say that such people have a separate identity or are somehow different from Iranian society. Nor can one say that they have shared characteristics or beliefs (they seek protection on various grounds). The only common factor is a greater risk of being verified by the authorities after returning to Iran. However, this does not render such people refugees.

As regards the granting of subsidiary protection, the case is determined by the disclosure of the fact that the foreigner had applied for refugee status in Poland. A study by the Australian Refugee Review Tribunal published on 19 August 2010 (available at www.unhcr.org/refworld/ [1]) shows that the Iranian authorities actively gather information about applications for refugee status made by Iranian citizens abroad. There have been cases of torture and of inhuman or degrading treatment, particularly in regard to people involved in the protests of 2009.

To summarise: although it is not known whether the foreigner would have suffered repression from the authorities upon returning to Iran, such a possibility cannot be excluded. Considering the scale of human rights abuses in Iran and the unpredictability of the regime, there is a real threat of torture or of inhuman or degrading treatment.

Outcome:

Subsidiary protection granted.

Observations/Comments:

The decision to grant subsidiary protection to the citizen of Iran is entirely based on the circumstance that the authorities in the country of origin could have been made aware that the foreigner was seeking international protection in Poland.

Attachment(s):

[RdU_315_3_S_12.pdf](#)[2]

Other sources cited:

Australian Refugee Review Tribunal, information request from 19 August 2010

National / Other Legislative Provisions:

[Poland - Ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej \(Act on granting protection to foreigners in the territory of the Republic of Poland\) - Art 13](#) [3]

[Poland - Ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej \(Act on granting protection to foreigners in the territory of the Republic of Poland\) - Art 14 § 1\(5\)](#) [4]

[Poland - Ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej \(Act on granting protection to foreigners in the territory of the Republic of Poland\) - Art 15](#) [5]

Links:

[1] <http://www.unhcr.org/refworld/>

[2] https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/RdU_315_3_S_12.pdf

[3] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7398>

[4] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7394>

[5] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7390>