

Greece - Council of State, case no. 3328/2011

The case concerned the refusal to grant international protection to the applicant who had produced evidence that he was going to lose his nationality due to pending criminal proceedings against him in his country of nationality.

Case name (in original language) : Συμβούλιο της Επικρατείας 3328/2011

Case status: Decided

Case number: 3328/2011

Citation: Council of State Section (Section D) 3328/2011

Date of decision: 25/10/2011

State: Greece

Court / UN Treaty Body: Council of State

Language(s) the decision is available in: Greek

Applicant's country of birth: Turkey

Applicant's country of residence: Greece

Legal instruments: European Convention on Human Rights (ECHR), Other international law

Key aspects: Deportation and removal, Refugee status determination, Stateless status and documentation

Relevant Legislative Provisions:

Arts. 1A par. 2, 1F and 33 of the Refugee Convention, Arts. 25 par. 4 of Law 1975/1991, Arts. 2, 3 and 5 of Presidential Decree 61/1999 (A' 63), Art 3 of the ECHR, Art. 3 of the UN Torture Convention, Art. 20 par. 2 of the Greek Constitution, Arts. 16 par. 1, 6 of the Code of Administrative Procedure, Art. 49 and 50 of Law 3900/2010, Art. 41 par. 1 of Law 1968/1991, Arts. 564 and 565 of Code of Criminal Procedure, Art. 12 of Directive 2004/83/EC, Arts. 12 and 14 of Presidential Decree 96/2008.

Facts

The applicant is a Turkish national who entered Greece illegally in 1983 and lodged an application for refugee status determination on the grounds that he feared persecution due to his membership in an anti-establishment organisation in Turkey. The competent administrative authority rejected his application as his fear of persecution had not been well founded and he was excluded from refugee status as he had committed a serious crime out of Greece. The domestic authorities ordered his deportation. However, he obtained consecutive residence permits and continued to live in Greece. Turkey withdrew his nationality in 1987. In 1991 he was convicted of drug related crimes to life in prison. In 2007 he was released from prison but kept in detention until his deportation. After his release, he lodged a second application for refugee status determination which was again rejected. The applicant then filed an application for subsidiary protection which was also rejected.

Legal arguments by the applicant

The applicant produced copies of the Turkish Governmental Gazette proving that his Turkish nationality had been withdrawn. He argued that Turkey threatened to denationalise him in a vengeful manner and as a means to put pressure on him. His denationalisation constituted new information that should have been taken into consideration by the Greek authorities when examining his second application for international protection. He also claimed he was never heard with respect to his application for international protection and that the decision was never notified to him.

Decision & Reasoning

The Council of State held that the applicant did not enjoy a right to a hearing before the administrative authorities as the relevant decision had been taken after his request. In addition, the Council of State considered that notification of the decision is only relevant with respect to the time-limit within which the applicant can lawfully have recourse to a judicial remedy and has no effect on the validity of the decision. The Council of State accepted that the applicant's denationalisation constitutes new information and had taken place after the issuance of the first decision. Moreover, the applicant's denationalisation may constitute persecution for the purposes of refugee status determination if combined with one of the relevant grounds stipulated by the Refugee Convention. The Council of State concluded that the domestic authorities had not provided reasons for doubting the veracity of the copy of the Turkish Governmental Gazette, for not taking into account the

denationalisation of the applicant and for rejecting the applicant's request for subsidiary protection solely on the basis that it had been lodged after the rejection of his application for refugee status determination. The Council of State further remanded the applicant's request for international protection to the competent authorities while noting that the latter should also examine whether the applicant can be excluded from refugee status taking into consideration that the anti-establishment organisation he was a member of in Turkey had been classified as a terrorist organisation in 2008 by the Greek police and whether his refugee status can be revoked due to the fact that he has been convicted by a final Greek judgment of a particularly serious crime and may constitute a danger to the community.

Decision documents

[Greek Council of State Section \(Section D\) 3328/2011](#)

Outcome

The court concluded that the applicant's second request for refugee status should be reconsidered by the competent authorities as his denationalisation constituted new information that had to be taken into consideration.

Caselaw cited

Greek Council of State 1524/1999, Greek Council of State 1467/2011, Greek Council of State 1149/2009, Greek Council of State 867/2010, Greek Council of State 1482/2011, Greek Council of State 867/2010, Germany – Federal Administrative Court Decision of 26 February 2009 BVerwG 10 C 50.07, UK – Court of Appeal of England and Wales Decision of 2 April 2009 MA (Ethiopia) v Secretary of State for the Home Department [2009] EWCA Civ 289 and Court of Appeal Decision of 31 July 2007 EB (Ethiopia) v Secretary of State for the Home Department [2009] EWCA Civ 809, US Court of Appeal – Decision of 6 January 2010 Haile v. Holder, 591 F.3d 572 [7th Cir. 2010] and Decision of 20 May 2011 Stserba v. Holder No. 09-4312 [6th Cir. 2011], CJEU – Decision of 9 November 2010 C-57/09 and C-101/09 Bundesrepublik Deutschland v B and D.