



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

**CASE OF B.A.C. v. GREECE**

*(Application no. 11981/15)*

JUDGMENT  
(Extracts)

STRASBOURG

13 October 2016

**FINAL**

**13/01/2017**

*This judgment is final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of B.A.C. v. Greece,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mirjana Lazarova Trajkovska, *President*,

Kristina Pardalos,

Linos-Alexandre Sicilianos,

Aleš Pejchal,

Robert Spano,

Armen Harutyunyan,

Tim Eicke, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 20 September 2016,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 11981/15) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr B.A.C. (“the applicant”), on 4 March 2015. The President of the Section acceded to the applicant’s request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Ms M. Tzeferakou, a lawyer practising in Athens. The Greek Government (“the Government”) were represented by their Agent, Mrs E. Tsaousi, member of the State Legal Council, and Ms K. Nassopoulou, adviser with the State Legal Council.

3. The applicant complained, in particular, of a violation of Article 8 § 1 of the Convention read alone and in conjunction with Article 13 of the Convention, as well as of Articles 3 and 13 of the Convention taken in conjunction, on account of the failure of the Ministry of Public Order for twelve years to take any decision on his request for asylum.

4. On 8 October 2015 the application was communicated to the Government.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1977 and lives in Athens.

6. While studying in Turkey (1994-1999) the applicant had become a pro-communist and pro-Kurdish political activist. In 1997 he opened a literary café, which was frequented by individuals favourable to such a political stance. In 2000 the Turkish police arrested the applicant, and he was prosecuted for infringing State constitutional order (Article 146 of the Turkish Criminal Code). The applicant was also held in the “white (isolation) cells” in Kandra Prison. He went on hunger strike for 171 days, causing him to develop Wernicke-Korsakoff syndrome, a pathology which can cause irreversible damage to health and prove fatal. Given the threat to the applicant’s life, the Turkish authorities decided to release him.

7. In 2002 the applicant fled to Greece, where he submitted an asylum application on 15 January 2002. On 18 February 2002 the General Secretary of the Ministry of Public Order, adjudicating at first instance, rejected that application, giving summary reasons.

8. On 21 March 2002 the applicant appealed to the Ministry of Public Order against that decision. On 29 January 2003, having been summoned to attend the Advisory Board on Asylum, he presented the latter with a number of documents showing that he had suffered torture in Turkey on account of his political opinions, including a medical report drawn up by the Greek Medical Centre for the Rehabilitation of Torture Victims and an Amnesty International document. On the same day the Advisory Board on Asylum issued a favourable opinion in respect of the applicant.

9. Further to that favourable opinion, under Article 3 § 5 of Presidential Decree No. 61/1999 (on the procedure for the examination of asylum applications), the Minister for Public Order should have taken a decision within twenty-four hours on whether or not to grant the applicant international protection. However, by the date on which the application was referred to the Court, the Minister had not taken any decision and therefore had neither ratified nor rejected the Board’s opinion.

10. Between 2003 and 2015 the applicant lived in Athens and attended the police station every six months in order to renew his asylum-seeker’s card. Under domestic law that card did not constitute a residence permit and therefore did not secure all the attendant rights: it only allowed the asylum-seeker not to be expelled and to reside in the national territory with “tolerated status” while his application was being examined. More specifically, under domestic law the asylum-seeker was not entitled to engage in an occupation, undertake vocational training, marry, obtain a driving licence, hold a bank account or apply for family reunion.

11. In 2003, while he was living in Athens, the applicant was joined by his wife from Turkey. However, her presence in Greece only became lawful in 2008, when she obtained a short-term work permit. In 2010 the couple had a son. In 2011 the applicant’s wife returned to Istanbul with the child owing to health problems. The couple divorced in 2012.

12. Meanwhile, on 5 August 2005, the Turkish Interpol Office had issued an extradition request in respect of the applicant. That request had been based on accusations similar to those used in 2000 which had been assessed by the Greek authorities during the examination of his asylum application.

13. On 12 March 2013 the applicant was arrested in Patras. On 26 March 2013 the indictment division of Patras Court of Appeal examined the extradition request and unanimously decided to reject it. The division based its decision on the risk run by the applicant of suffering ill-treatment on account of his political opinions, should he be extradited. It further noted that the nature of the offences for which extradition had been requested had only been described vaguely and abstractly in the request submitted by the Turkish authorities.

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14. On 27 March 2013 the public prosecutor appealed to the Court of Cassation against the decision of the indictment division of Patras Court of Appeal.

15. On 26 April 2013 the Court of Cassation upheld the impugned decision.

16. The applicant had meanwhile been actively seeking to secure a final decision. He had written to the Ombudsman of the Republic on 21 March and 25 June 2012, and to the Minister for Public Order on 19 November 2013, 16 June 2014 and 27 February 2015.

17. Furthermore, it emerged from correspondence among a number of different authorities (between police authorities and between the police and other authorities) on 23 February 2007, 16 October 2012, 14 November 2012 and 28 January 2015, that the applicant's asylum application was still pending before the Minister for Public Order.

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## THE LAW

### I. ALLEGED VIOLATION OF ARTICLES 8, 13 AND 14 OF THE CONVENTION

22. The applicant complained of an infringement of his private life on the grounds that he had lived in Greece for twelve years in a situation of uncertainty as regards his status, despite the favourable opinion issued by the Advisory Board on Asylum. More specifically, he submitted that he had been living in a state of insecurity for a very long period, and complained of the impact which that had had on his working and family life throughout that period and the lack of adequate procedural safeguards to protect him

against arbitrary treatment by the authorities. He also alleged that he had had no effective remedy in order to complain of the aforementioned situation. He relied on Article 8 of the Convention read alone and in conjunction with Article 13.

23. Finally, under Article 8 of the Convention read in conjunction with Article 14, the applicant complained that he had suffered discrimination on grounds of his nationality.

24. Those provisions read as follows:

#### **Article 8**

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### **Article 13**

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

#### **Article 14**

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

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## **B. Merits**

### *1. The parties' submissions*

32. The applicant submitted that the uncertainty and insecurity to which he had been subjected for twelve years and the various restrictions placed on him as an asylum-seeker had affected the very fabric of his personal, social and economic relations, which he considered as part of his private and family life. He had therefore suffered interference which, moreover, had not been prescribed by law, had not pursued a legitimate aim and had not been necessary in a democratic society. In that regard he pointed out, first of all, that the authorities had given no reason for the waiting period imposed upon him, which he described as very long, and, secondly, that he had been in a situation of vulnerability and should have been granted official protection much more quickly.

33. The Government submitted that the failure to grant the applicant refugee status had had no effect on his private and family life and that he had benefited from, and was still enjoying, all the rights ordinarily granted to asylum-seekers. On that point, they added that the applicant had got married before coming to Greece, that he had lived with his wife for most of his time of residence in Athens and that their cohabitation had ended as a result of their divorce. They also pointed out that the applicant had worked and was still working unhampered in the construction industry and that he was renewing his asylum-seeker's card every six months.

34. The Government considered that the reason why the applicant had been deprived of certain rights which were granted exclusively to refugees was that he had chosen to remain in Greece to work. Consequently, any restriction on the applicant's private and family life had been due to the fact that, in the light of the circumstances of the case, he had been granted the rights traditionally afforded to asylum-seekers. Such restriction was therefore compatible with Article 8 § 2 of the Convention.

## 2. *The Court's assessment*

35. According to the established case-law of the Court, the Convention does not secure the right of an individual to enter or reside in a State of which he is not a national, or his right not to be expelled from such State, and the Contracting States have the right to control, pursuant to a well-established principle of international law, the entry, stay and removal of non-nationals. Moreover, Article 8 of the Convention does not go so far as to grant applicants the right to any particular type of residence permit (permanent, temporary, etc.), provided that the solution proposed by the authorities enables them to exercise unhindered their right to respect for private and family life (see *Aristimuño Mendizabal v. France*, no. 51431/99, §§ 65-66, 17 January 2006).

36. The Court emphasises that it has affirmed on many occasions that under Article 8 of the Convention the positive obligation of the State inherent in an effective respect for private life may involve the adoption of an effective and accessible procedure designed to secure respect for private life, and in particular the introduction of a statutory framework setting up an enforceable judicial mechanism to protect individuals' rights and, if necessary, of appropriate specific measures. Even though the boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition, the applicable principles are nonetheless similar (see *Fernández Martínez v. Spain* ([GC], no. 56030/07, § 114, ECHR 2014 [extracts]).

37. Those positive obligations also include the competent authorities' duty to examine the person's asylum request promptly, in order to ensure that his or her situation of insecurity and uncertainty is as short-lived as

possible (see *M.S.S. v. Belgium and Greece* [GC] (no. 30696/09, § 262, 21 January 2011).

38. The Court first of all draws a distinction between the present case and that of *M.E. v. Sweden* ([GC], no. 71398/12, 8 April 2015), in which the applicant complained, *inter alia*, about the anxiety, uncertainty and tension caused by the authorities' initial decision to return him to Libya. The Court struck the case out of the list (Article 37 § 1 [b] of the Convention) because the authorities had in the meantime issued him with a permanent residence permit.

39. Secondly, the Court notes that the applicant's situation is also different from one where the authorities refused to grant a residence permit to applicants who were illegally settled in the host country and were hoping to confront those authorities with family life as a *fait accompli* (see the case-law cited in the *Jeunesse v. the Netherlands* judgment [GC], no. 12738/10, § 103, 3 October 2014). In the present case, the issue at stake is the failure of the Minister for Public Order, for twelve years, to decide on the applicant's request for asylum, even though the Advisory Board on Asylum had issued a favourable opinion and the Greek judicial authorities, including the Court of Cassation, had rejected a request for extradition from the Turkish authorities. It is clear that in this situation the uncertainty experienced by the applicant as regards his status far surpassed that of an applicant awaiting the completion, within a reasonable time, of his or her asylum procedure.

40. In the instance case, the Court considers that the alleged violation of Article 8 of the Convention also originated, not in any removal or expulsion order, but in the situation of insecurity and uncertainty experienced by the applicant over a long period, that is to say from 21 March 2002 – when he lodged his appeal against the decision to reject his asylum application – to the date of delivery of the present judgment.

41. The Court further observes that the applicant worked in the construction industry without a work permit.

42. It should be noted in that connection that at the material time there were restrictive conditions on asylum-seekers *vis-à-vis* obtaining work permits. According to Article 4 of Decree No.189/1998 (abolished in April 2016), proof had to be provided, in particular, that no person already holding refugee status had expressed interest in working in the particular occupational sector. Moreover, a 19 October 2012 circular from the Labour Minister pointed out that in order to obtain a work permit an asylum-seeker had to present a certificate from a public body attesting that there had been no unemployed nationals, EU nationals or persons with refugee status wishing to work in the sector in question. In addition to this statutory obstacle, there was also a further practical difficulty bound up with the economic crisis and the large number of unemployed job-seekers.

43. Moreover, the Court notes that because of his insecure status, the applicant, who submitted that he had wished to enrol at university, had been

unable to do so and that, since he merely held an asylum-seeker's card, he had also been unable to open a bank account or obtain a tax reference number, which were preconditions for engaging in gainful employment. Nor had he even been able to secure a driving licence.

44. As regards the applicant's private life, the Court observes that his cohabitation with his wife had not become and legally or materially possible until 2008, on the basis that the latter had obtained a short-term work permit in Greece, rather than in accordance with the legal provisions on family reunion.

45. The Court finds unjustified the failure of the Minister for Public Order to decide on the applicant's asylum request, for which no reasons had been given and which had continued for more than twelve years (and is still ongoing), even though the domestic authorities had come down in favour of granting the applicant asylum and had rejected the request for extradition submitted by the Turkish authorities.

46. Accordingly, the Court holds that in the circumstances of the present case the competent authorities failed in their positive obligation under Article 8 of the Convention to establish an effective and accessible procedure to protect the right to private life by means of appropriate regulations to guarantee that the applicant's asylum request is examined within a reasonable time in order to ensure that his situation of insecurity is as short-lived as possible (see also paragraph 37 above). There has therefore been a violation of Article 8.

47. Having regard to its conclusions set out in the foregoing paragraphs, the Court finds that there has also been a violation of Article 13 of the Convention read in conjunction with Article 8.

...

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

...

2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention read in conjunction with Article 8;

...

Done in French, and notified in writing on 13 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos  
Registrar

Mirjana Lazarova Trajkovska  
President