



## Failure by the authorities to deal with an application by an asylum-seeker in an uncertain situation and at risk of deportation breached the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [B.A.C. v. Greece](#) (application no. 11981/15) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights,**

**a violation of Article 8 in conjunction with Article 13 (right to an effective remedy) of the Convention,**

and that there would be:

**a violation of Article 3 (prohibition of inhuman or degrading treatment) in conjunction with Article 13 (right to an effective remedy) if Mr B.A.C. were returned to Turkey.**

The case concerned an asylum-seeker waiting for a decision from the authorities since 2002.

The Court found in particular that the failure by the authorities to determine the applicant's asylum application for a period of more than 14 years without any justification had breached the positive obligations inherent in his right to respect for his private life. Furthermore, while waiting for a decision on his asylum application, the applicant's legal status remained uncertain, thus putting him in danger of being returned to Turkey, where there was a substantial risk that he might be subjected to treatment breaching Article 3 of the Convention.

### Principal facts

The applicant, Mr B.A.C., is a Turkish national who was born in 1977 and lives in Athens (Greece).

While studying in Turkey (1994-1999), Mr B.A.C. became a political activist supporting pro-Communist and pro-Kurdish causes. In 2000 the Turkish authorities arrested him and charged him with undermining the constitutional order of the State.

He was held in solitary confinement and went on hunger strike for 171 days. The Turkish authorities agreed to release him in view of the deterioration in his health.

In 2002 Mr B.A.C. fled the country and sought asylum in Greece. The secretary-general of the Ministry of Public Order summarily rejected his application. However, Mr B.A.C. subsequently applied to the Consultative Asylum Committee, which expressed a favourable opinion. As a result, the Minister for Public Order was required to decide within 90 days whether or not to grant the applicant international protection. However, by the date of the application to the Court, the Minister had not taken any decision and thus had neither endorsed nor rejected the Committee's opinion.

Between 2003 and 2015 the applicant lived in Athens and reported to the police every six months to renew his asylum-seeker's card. The card was not a residence permit and thus did not confer all the rights associated with such a permit; it simply guaranteed that the asylum-seeker would not be

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

deported and could remain in the country with “tolerated status” pending the determination of the asylum application.

In 2005 the Interpol bureau for Turkey submitted a request for the extradition of Mr B.A.C. on the basis of similar accusations to the charges brought against him in 2000. The Indictment Division of the Patras Court of Appeal unanimously rejected the request. It based its decision on the risk that in the event of his extradition the applicant might be subjected to ill-treatment on account of his political views. It also observed that the nature of the offences for which the extradition had been sought was set out in a vague and abstract manner in the Turkish authorities’ request. On 26 April 2013 the Court of Cassation upheld that decision.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), read separately and in conjunction with Article 13 (right to an effective remedy), the applicant complained of an interference with his private life in that he had lived in Greece for 12 years with an uncertain status, despite the favourable opinion expressed by the Consultative Asylum Committee. He also alleged that he did not have an effective remedy by which to complain about that state of affairs.

Relying on Article 8 in conjunction with Article 14 (prohibition of discrimination), the applicant complained that he had been discriminated against on the grounds of his nationality.

Relying on Article 3 in conjunction with Article 13, the applicant complained that he faced a real risk of being subjected to ill-treatment in the event of being returned to Turkey, since the Minister for Public Order could decide at any moment to reject his application for asylum.

The application was lodged with the European Court of Human Rights on 4 March 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”), *President*,  
Kristina **Pardalos** (San Marino),  
Linos-Alexandre **Sicilianos** (Greece),  
Aleš **Pejchal** (the Czech Republic),  
Robert **Spano** (Iceland),  
Armen **Harutyunyan** (Armenia),  
Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### [Article 8 read separately and in conjunction with Article 13](#)

The Court observed that the alleged violation of Article 8 of the Convention did not stem from any removal or deportation orders but from the insecure and uncertain situation which the applicant had faced for a lengthy period, from 21 March 2002 – the date of his appeal against the rejection of his asylum application – until the delivery of the judgment in the present case.

The Court also observed that the applicant had worked in the construction sector without a work permit, because of the restrictive conditions imposed on asylum-seekers wishing to obtain one.

The Court noted that because of his uncertain status, the applicant had been unable to enrol at university as he had hoped to do, and that as the mere holder of an asylum-seeker’s card, he had also been unable to open a bank account, receive a tax identification number in order to carry out a professional activity, or even obtain a driving licence.

As regards the failure by the Minister for Public Order to give a decision on the applicant's application for asylum, the Court noted that there was no justification for that ongoing state of affairs, which had lasted for more than 14 years despite the fact that the national authorities had ruled that it was necessary to grant him asylum and had rejected the request by the Turkish authorities for his extradition.

The Court therefore found that in the circumstances of the case, the competent authorities had failed to comply with their positive obligation under Article 8 of the Convention to provide an effective and accessible means of protecting the right to respect for private life through appropriate regulations ensuring that the applicant's asylum application was examined within a reasonable time in order to keep his state of uncertainty to a minimum.

Bearing in mind those conclusions, the Court held that there had also been a violation of Article 13 of the Convention in conjunction with Article 8.

Lastly, in view of its conclusion under Article 8 of the Convention, the Court found it unnecessary to carry out a separate examination under Article 14.

### [Article 3 in conjunction with Article 13](#)

The Court attached importance to the fact that Turkey, the country to which the applicant would be returned, was a State Party to the Convention and as such had undertaken to observe the right to life and the prohibition of inhuman and degrading treatment. However, the Court could not base its assessment on that fact alone.

The Court took into account the concrete information available to it, namely that the applicant, a pro-Kurdish left-wing militant, was accused of being part of an armed terrorist organisation and murdering the founder of another terrorist organisation.

Examining the material before it, the Court noted that in its report of 25 July 2002 the Greek Medical Rehabilitation Centre for Torture Victims had confirmed that the applicant had been tortured while imprisoned in Turkey. In addition, he had been arrested six times between 1992 and 1996 and had also been tortured on those occasions.

The Court therefore considered that the applicant had submitted conclusive evidence in support of his application for asylum in Greece, on the basis of his past treatment in Turkey, where he had been subjected to acts held to be contrary to Article 3 of the Convention, a finding confirmed by two courts and the Consultative Asylum Committee.

Since the applicant's asylum application had yet to be determined, his legal status remained uncertain, thus putting him at risk of sudden removal to Turkey without the possibility of an effective examination of his asylum claim, even though there appeared on the face of it to be a substantial risk that he might be subjected to treatment breaching Article 3 of the Convention in that country.

Accordingly, the Court concluded that there would be a violation of Article 3 of the Convention in conjunction with Article 13 if the applicant were returned to Turkey in the absence of an assessment by the Greek authorities of his prospective personal circumstances.

### [Just satisfaction \(Article 41\)](#)

The Court held that Greece was to pay the applicant 4,000 euros in respect of non-pecuniary damage.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.