

Greece, Administrative Court of First Instance of Thessaloniki, Case no. 1817/2015, Judgement of 8 September 2015

Deciding bodies and decisions

- Administrative Court of First Instance of Thessaloniki (?????????? ???? ??????????)

Area of law

Immigration Law

Subject matter

Respect of private and family life - Article 8 ECHR - third country national - renewal of residence permit - application rejected

The applicant is an Albanian national, seeking to renew her residence permit as a family member of a third country citizen. After seeing her application, as well as her recourse to the Secretary General of the Decentralized Administration of Macedonia-Thrace, rejected, she appealed Administrative Court of First Instance of Thessaloniki, claiming, among other, a violation of family life. Her claim was based directly on alleged violation of Article 8 ECHR.

Summary Facts Of The Case

The applicant was residing lawfully in the country since 2002 as a family member of a third country citizen. She lodged an application requesting the renewal of her residence permit for family members of third-country citizens and she produced a copy of her insurance booklet valid from 03/01/2011 to 29/02/2012. The competent authority requested the applicant to provide an attestation that she has applied to her insurance agency for coverage of hospital expenses and medical care or to provide a certified copy of her health booklet with a visa valid at the time of the submission of the application. The applicant submitted an additional application and she produced a copy of her family health booklet, valid for the period from 01.12.2012 till 31.12.2012.

Subsequently, the Secretary General of the Decentralized Administration of Macedonia-Thrace rejected the application on the grounds that there were no legitimate prerequisites, since a valid health booklet was not submitted at the date of the application (20-7-2012) and therefore the documentary evidence were not all in force at the time of filing the application as required under the document no. 4983 / 09.05.2013 of the Ministry of Interior. A return decision was integrated under the provisions of L. 3907 / 2011, with voluntary departure from the country, initially within 30 days from 08.09.2014, which was extended ultimately until 8- 11-2014. The applicant filled a recourse against this decision claiming that she has developed strong ties in the country and she submitted a birth certificate of her minor children, schooling certificates to Greek school, residence permits of all her family members and a family health booklet stamped on the intervals from

03/01/2009 to 29/02/2012, 12/01/2012 to 21/12/2012 and 01/03/2013 to 28-2-2014. Her recourse was rejected on the same grounds.

The Court notes that the administration had not duly taken into account, before imposing the measure of return, the applicant's complaints concerning her family situation, in particular, the links with the country of her minor children. And although it has been addressed by the Court of Justice (see. CJEU Hassen El Dridi, C-61/2011, Alexandre Achughbabian, C-329/2011, Khaled Boudjlida, C-249/2013, sk.45,46), in the light of the purpose of the Directive 2008/115 / EC, which is the effective procedure for returning illegally staying in a Member State third country nationals in their country of origin, that once the illegality of the stay is established, the competent national authorities are required under Article 6, paragraph 1 of the Directive 2008/115, and subject to the exceptions provided for in Article 6 paragraphs 2-5, of this Directive to issue a return decision (see. already Article 24 paragraph 2 of L.4251 / 2014), but, at this stage, under express, indeed, provision of Article 20 of L.3907 / 2011 which is the transposition of the above directive into national law, reasons relating to the bonds that have been developed in the country for the protection of family life and the best interests of the minor children, as the allegations in the present case of the applicant, are heard. In this case, the applicant, because of the many years of uninterrupted lawful residence in the country, along with her family, whose members also reside legally on the territory (her husband since 1998, and the children since 2004 and 2005 respectively), has created strong social and biotic ties, which were not properly evaluated by the administration. Specifically the administration did not assess whether the links of the applicant to Greece could possibly establish those circumstances which in the light of Article 8 of the ECHR would make the applicants removal to be in violation of article 8 of the ECHR and therefore the decision has to be annulled as inadequately reasoned.

Relation to the scope of the Charter

The Court did not mention the Charter, nevertheless Article 7 of the Charter that enshrines the right to respect for private and family life is applicable to the case, as the act of the Member State falls under the scope of EU law, in the sense of Article 51(1) therein.

Sources - EU and national law

EU law

- Directive 2008/115/EC (implemented by Law 348/98/24.12.2008)

National law

- Law 4251/2014
- Joint Ministerial Decision No 30825/2014
- Law 3907/2011

Sources - ECHR

- Article 8 - Right to respect for private and family life
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Sources - CJEU Case Law

- CJEU, C-61/2011 Hassen El Dridi
 - CJEU, C-329/2011 Alexandre Achughbabian
 - CJEU, C-249/2013 Khaled Boudjlida
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Sources - ECtHR Case Law

- ECtHR, Jeunesse vs Holland, Application no. 12738/2010
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