



Press and Information

Court of Justice of the European Union

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Judgment in Case C-353/16

MP v Secretary of State for the Home Department (subsidiary protection of a person previously a victim of torture)

**A person who has in the past been tortured in his country of origin is eligible for 'subsidiary protection' if he faces a real risk of being intentionally deprived, in that country, of appropriate physical and psychological health care**

*Returning such a person to his country of origin may also breach the European Convention on Human Rights*

MP is a national of Sri Lanka who arrived in the UK in January 2005 and was given leave to remain as a student. In 2009, MP lodged an application for asylum on the basis that he had been a member of the 'Liberation Tigers of Tamil Eelam' (LTTE), had been detained and tortured by the Sri Lankan security forces and, if he returned to Sri Lanka, would be at risk of further ill-treatment. The UK authorities rejected that application and decided not to grant him subsidiary protection on the ground that it had not been established that MP would be at risk of further ill-treatment if he returned to his country.

An EU directive<sup>1</sup> sets minimum standards for the grant of 'subsidiary protection' with a view to supplementing the international protection afforded by the Geneva Convention on Refugees. A person who does not qualify as a refugee but who, if returned to his country of origin, faces a risk of serious harm such as the death penalty, torture or inhuman or degrading treatment or punishment, is eligible for subsidiary protection. A person granted subsidiary protection is issued with a residence permit of limited duration. Member States may allow non-EU nationals who are not eligible for subsidiary protection to reside in their territory on a discretionary basis on compassionate or humanitarian grounds, such persons falling outside the scope of that directive.

MP brought an action against the decision of the UK authorities before the Upper Tribunal and submitted medical evidence that he was suffering after-effects of the torture he had been subjected to in Sri Lanka, in addition to suffering from post-traumatic stress disorder and depression. The Upper Tribunal upheld the decision not to grant MP subsidiary protection on the ground that it had not been established that MP would still be at risk if he returned to his home country. Nevertheless, that court held that returning MP to Sri Lanka would be in breach of the European Convention on Human Rights (ECHR) since, in that country, he would not receive appropriate care for his mental illness.

The Supreme Court of the United Kingdom, which is hearing the case on appeal, asks the Court of Justice whether a non-EU national who is suffering from the after-effects of torture he was subjected to in his country of origin but who would no longer be at risk of such ill treatment if he returned to that country, is eligible for subsidiary protection on the ground that the health services of that country could not provide appropriate care for his mental illness.

In today's judgment, the Court of Justice finds, first, that, under EU law, the fact that a person has in the past been tortured by the authorities of his country of origin but would no longer be at risk of such treatment if he returned to that country is not in itself sufficient justification for that person to be eligible for subsidiary protection. The subsidiary protection regime aims to protect the individual

<sup>1</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).

against a real risk of serious harm if returned to his country of origin, which implies that substantial grounds must be shown for believing that the person concerned, if returned to that country, would face such a risk. This is not the case where there are good reasons for believing that the serious harm previously suffered will not be repeated or continues.

Nevertheless, the Court notes that the case at issue concerns a non-EU national who has not only been tortured by the authorities of his country of origin in the past, but who, in addition – even though there is no longer any risk of him being tortured again if returned to that country – continues to suffer severe psychological after-effects resulting from the torture; according to duly substantiated medical evidence, those after-effects would be substantially aggravated and lead to a serious risk of him committing suicide if he were returned to his country of origin.

The Court points out that the subsidiary protection regime must be interpreted and applied in observance of the rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter'). That Charter expressly provides that where the rights it guarantees correspond to those guaranteed by the ECHR, the meaning and scope of those rights are the same.

In line with the recent case law of the European Court of Human Rights, the Court of Justice considers that the Charter must be interpreted as meaning that the removal of a non-EU national with a particularly serious mental or physical illness constitutes inhuman and degrading treatment where such removal would entail a real and demonstrable risk of significant and permanent deterioration in the state of health of the person concerned.

The Court therefore finds that the Charter precludes a Member State from expelling a non-EU national where such expulsion would, in essence, result in significant and permanent deterioration of that person's mental health disorders, particularly if, as in the present case, such deterioration would endanger his life.

Nevertheless, given that the relevant national courts have held that the ECHR precludes MP being returned to Sri Lanka, the question referred for a preliminary ruling does not concern protection against removal, but whether, under the directive at issue, the host Member State is required to grant subsidiary protection status to a non-EU national who has been tortured by the authorities of his country of origin and suffers severe psychological after-effects which, in the event of him being returned to that country, could be substantially aggravated, with a serious risk of him committing suicide.

The Court observes that the fact that the ECHR precludes the removal of a non-EU national in exceptional cases where there is a risk of harm on account of no appropriate treatment being available in the country of origin does not mean that that person should be granted leave to reside in a Member State by way of subsidiary protection.

The Court concludes that, although the cause of the current state of health of a non-EU national – namely acts of torture inflicted by the authorities of his country of origin in the past – is a relevant factor, substantial aggravation of his health cannot, in itself, be regarded as inhuman or degrading treatment inflicted on that non-EU national in his country of origin.

In that regard, the Court refers to its case-law and finds that **a risk of deterioration in the health of a non-EU national is not sufficient to warrant that person being granted subsidiary protection, unless that third country national would face a real risk of being intentionally deprived of health care.**

Therefore, it is for **the Supreme Court to assess, in the light of all current and relevant information (in particular reports by international organisations and non-governmental human rights organisations) whether, in the present case, MP is likely, if returned to his country of origin, to face a risk of being intentionally deprived of appropriate care for the physical and mental after-effects resulting from the torture he was subjected to in the past by the authorities of that country.**

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher 📞 (+352) 4303 3355