



Removal of persons suffering from serious mental or physical illness

Fact of the case

M.P. is a citizen of Sri Lanka, who arrived in the United Kingdom. He lodged an application for asylum on the ground that he had been detained and tortured by Sri Lankan security forces because he was member of the 'Liberation Tigers of Tamil Eelam', and that if returned to Sri Lanka, he would be at risk of further ill-treatment for the same reason.

After the competent national authority rejected his application, M.P. appealed submitting medical evidence proving that he was suffering from several psychological after-effects resulting from torture, eg severe post-traumatic stress disorder, serious depression and suicidal tendencies.

He argued that once returned in his country of origin he will not be provided with appropriate mental health care because of a general lack of psychiatrists and mental health institutions in Sri Lanka and that, for these reasons, he should be granted subsidiary protection under Articles 2 and 15 of Directive 2004/83.

The Court of Appeal stated that M.P. is not entitled to subsidiary protection under Articles 2 and 15 of Directive 2004/83 (Qualification Directive) because these provisions were not intended to cover cases within the scope of Article 3 ECHR where the risk was to health rather than a risk of persecution.

The UK Supreme Court referred the case before the CJEU.

Legal Framework

Relevant European Law

The European Convention for the Protection of Human Rights and Fundamental Freedoms – Article 3:

'No one shall be subjected to torture or to inhuman or degrading treatment or punishment.'

Relevant EU Law

Qualification Directive, Directive 2004/83

Article 2:

'For the purposes of this Directive:

...



Co-funded by the Justice Programme of the European Union



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(e) “person eligible for subsidiary protection” means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country;

...’

Article 4(4):

‘The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.’

Article 15:

‘Serious harm consists of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.’

Questions

1. Given the circumstances of the case, can the applicant be returned to his country of origin?
 - 1.1. Is the applicant eligible for subsidiary protection under Directive 2004/83?
 - 1.2. Can aggravation of the physical or psychological health of the applicant resulting from previous torture or inhuman or degrading treatment amount by itself to serious harm as described by Article 15 Qualification Directive?