



## Removal of persons suffering from serious mental or physical illness

### *Findings of the Court of Justice of the European Union*

In the case *M.P. v SSHD*, the CJEU was asked to answer the following question:

*‘Does Article 2(e), read with Article 15(b), of Directive 2004/83 cover a real risk of serious harm to the physical or psychological health of the applicant if returned to the country of origin, resulting from previous torture or inhuman or degrading treatment for which the country of origin was responsible?’*

At the outset, the CJEU noted that the present case concerns a third country national who was tortured by the authorities of his country of origin and who, according to duly substantiated medical evidence, continues, as a result of those acts, to suffer from post-traumatic after-effects that are likely to be significantly and permanently exacerbated, to the point of endangering his life, if he is returned to that country. This is relevant because Article 4(4) Qualification Directive provides that ‘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’.

Secondly, the CJEU also clarified that the serious mental or physical illness due to acts of torture inflicted by the authorities of his country of origin in the past; and the risk of severe deterioration of the mental health disorders if returned to his country of origin are relevant factors to be taken into account when interpreting Article 15(b) of Directive 2004/83.

In principle, however, the CJEU found that a substantial aggravation of the applicant state of health “cannot, in itself, be regarded as inhuman or degrading treatment inflicted on that third country national in his country of origin, within the meaning of Article 15(b) of that directive”. (§ 49) Nevertheless, the CJEU also clarified that in certain cases a substantial aggravation of the state of health could indeed mount to real risk of serious harm under Article 2 and 15 Qualification Directive read in light of Article 4 CFR. In doing so, the CJEU referred to the following factors:

1. There is a serious deterioration of the physical or psychological health of the person
2. The applicant is intentionally deprived of appropriate health care in his/her country of origin

When interpreting the terms “intentionally deprived of appropriate care” (§ 57), the CJEU conceded that the following situations may amount to risk of serious harm under Article 2 and 15 Qualification Directive:

1. There is risk of committing suicide because of the trauma resulting from the torture he was subjected to by the authorities of his country of origin, and it is clear that those authorities, notwithstanding their obligation under Article 14 of the Convention against Torture, are not prepared to provide for his rehabilitation.
2. If it is apparent that the authorities of that country have adopted a discriminatory policy as regards access to health care, thus making it more difficult for certain ethnic groups



# JUDGING THE CHARTER

# TRAINING MATERIALS

or certain groups of individuals, of which MP forms part, to obtain access to appropriate care for the physical and mental after-effects of the torture perpetrated by those authorities.

The CJEU also clarified that it is a matter for national courts to determine whether each concrete situation fall within the scope of Articles 2 and 15 Qualification Directive.

See: *M.P. v Secretary of State for the Home Department*, Case C-353/16, Judgment of 24 April 2018