



MP v Secretary of State for the Home Department

(2018) C-353/16

Country: Sri Lanka, United Kingdom

Region:

Year: 2018

Court: Court of Justice of the European Union

Facts

The appellant, MP, was detained and tortured by the Sri Lankan security forces because he was a member of the Liberation Tigers of Tamil Eelam. MP subsequently moved to the United Kingdom in 2005, where he sought asylum, in 2009, on the basis that he would be at further risk of ill-treatment if he returned to Sri Lanka. The appellant suffered from severe post-traumatic stress disorder and depression and showed strong signs of committing suicide if he were to return to Sri Lanka.

The appellant claimed asylum under Article 2(e) of EU Directive 2004/83 (hereinafter the Directive), which states that a person who does not qualify as a refugee is eligible for subsidiary protection if it has been shown that the person is at a "real risk of suffering serious harm" if returned to their country. As per Article 15(b) of the Directive, "serious harm" consists of "torture or inhuman or degrading treatment or punishment" of an applicant in the country of origin.

After the appellant's asylum application was rejected, he appealed against the decision to the Upper Tribunal (Immigration and Asylum Chamber). The Upper Tribunal rejected the appellant's action under the Directive on the ground that he was not at risk of further torture. The Upper Tribunal allowed the action to the extent it constituted a breach of Article 3 of the European Convention for the Protection of Human Rights (ECHR), on the ground that he would be unable to access the care he needs to treat his severe mental health concerns in Sri Lanka. The Tribunal observed that there were only 25 practicing psychiatrists in the whole of Sri Lanka and that the large mental health institutions were inaccessible and did not provide appropriate care for mentally ill people.

This decision was upheld by the Court of Appeal, which found that the Directive was not intended to cover cases within the scope of Article 3 where the risk was to health or suicide rather than persecution. The appellant appealed against this decision to the Supreme Court of the United Kingdom, which stayed the proceedings and referred the matter to the Court of Justice of the European Union.

The legal issue before the Court of Justice was whether Article 2(e) read with Article 15(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin of the Directive covered a real risk of serious harm to the physical or psychological health of the applicant if returned to the country of origin, if it resulted from previous torture or inhuman or degrading treatment for which the country of origin was responsible.

Decision and Reasoning

The Court held that, read in light of Article 4 of the Charter, a person was eligible for subsidiary protection under Article 2(e) and 15(b) of the Directive if there was a real risk of them being intentionally deprived of appropriate care for their physical and mental health issues, which are a result of torture previously committed by the country of origin. This protection was extended even if the individual no longer faced a risk of torture, but where their physical and psychological health could seriously deteriorate up to the point of suicide on account of the trauma resulting from the torture.

The Court held that deterioration of the individual's health due to general shortcomings of the health system in the country of origin was insufficient to constitute "serious harm" within the meaning of Article 15(b). There must be an intentional deprivation of health care for that person to warrant subsidiary protection.

The Court further held that the determination of a risk of intentional deprivation was an issue for national courts to decide. Such a risk existed in cases where the authorities in the country of origin were not prepared to provide for the rehabilitation for an individual at risk of committing suicide due to torture-related trauma. Risk of intentional deprivation can also exist when the country has a discriminatory policy that prevents certain ethnic or minority groups, like the appellant, from accessing health care for the after-effects of trauma.

Decision Excerpts

â€œIn that regard, it should be recalled that Article 15(b) of Directive 2004/83 must be interpreted and applied in a manner that is consistent with the rights guaranteed by Article 4 of the Charter of Fundamental Rights of the European Union (â€˜the Charterâ€™), which enshrines one of the fundamental values of the Union and its Member States and is absolute in that that value is closely linked to respect for human dignity, the subject of Article 1 of the Charterâ€™ (para 36)

â€œSimilarly, Article 4 of the Charter must be interpreted as meaning that the removal of a third-country national with a particularly serious mental or physical illness constitutes inhuman and degrading treatment, within the meaning of that article, where such removal would result in a real and demonstrable risk of significant and permanent deterioration in the state of health of the person concernedâ€™ (para 41)

â€œIn that regard, the Court has held that, particularly in the case of a serious psychiatric illness, it is not sufficient to consider only the consequences of physically transporting the person concerned from a Member State to a third country; rather, it is necessary to consider all the significant and permanent consequences that might arise from the removalâ€. Moreover, given the fundamental importance of the prohibition of torture and inhuman or degrading treatment laid down in Article 4 of the Charter, particular attention must be paid to the specific vulnerabilities of persons whose psychological suffering, which is likely to be exacerbated in the event of their removal, is a consequence of torture or inhuman or degrading treatment in their country of origin.â€™ (para 42)

â€œIt follows that Article 4 and Article 19(2) of the Charter, as interpreted in the light of Article 3 of the ECHR, preclude a Member State from expelling a third country national where such expulsion would, in essence, result in significant and permanent deterioration of that personâ€™s mental health disorders, particularly where, as in the present case, such deterioration would endanger his life.â€™ (para 43)

â€œIn that respect, it should be recalled that the Court has held that the serious harm referred to in Article 15(b) of Directive 2004/83 cannot simply be the result of general shortcomings in the health system of the country of origin. The risk of deterioration in the health of a third-country national who is suffering from a serious illness, as a result of there being no appropriate treatment in his country of origin, is not sufficient unless that third-country national is intentionally deprived of health care, to warrant that person being granted subsidiary protectionâ€™ (para 51)