



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-353/16
MP v Secretary of State for the Home Department

According to Advocate General Bot, the lack of appropriate psychological care in the country of origin of a person who was tortured there in the past is not sufficient to allow that person to claim subsidiary protection

A Member State does, however, retain its discretion to grant such a person admission to stay for humanitarian reasons

An EU directive¹ establishes the minimum standards as regards 'subsidiary protection' in order to supplement the international protection enshrined in the Geneva Convention on Refugees. Subsidiary protection is granted to persons who do not have refugee status, but who are faced with a serious threat in their country of origin, such as the death penalty, torture or inhuman or degrading treatment or punishment. Beneficiaries of subsidiary protection are granted a residence permit of limited duration. With regards to third country nationals who are not awarded subsidiary protection, a Member State may grant them leave to reside in its territory on a discretionary basis on compassionate or humanitarian grounds, it being understood that such third country nationals do not fall within the scope of that directive.

MP, a national of Sri Lanka, arrived in the UK in January 2005 as a student. In 2009 he submitted an asylum application (including, in case it was necessary, an application for subsidiary protection). In that application he argued that he had been a member of the organisation 'Liberation Tigers of Tamil Eelam' ('LTTE'), had been detained and tortured by the Sri Lankan security forces and that he ran the risk of again undergoing ill-treatment if he were returned there. The British authorities refused MP's application on the ground that it was not established that he would once again be at risk if he returned to his country of origin.

MP challenged that decision before the Upper Tribunal by providing medical evidence that he presented sequelae of acts of torture inflicted in Sri Lanka and that he was suffering from post-traumatic stress disorder and depression. The Upper Tribunal rejected his appeal in part on the ground that it was not proven that he was still threatened in his country of origin. However, that court allowed MP's appeal in so far as it was based on the provisions of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR): the Upper Tribunal found that if the appellant was returned to his country of origin he would not receive the appropriate care for treating his psychological condition.

The Supreme Court of the UK, hearing the appeal, asks the Court of Justice if a non-EU national, who is still suffering the effects of torture inflicted in his country of origin, but who is no longer likely to undergo such treatment if he returns there, may receive subsidiary protection on the grounds that his psychological conditions would not be treated adequately by the healthcare system in that third country.

In his Opinion delivered today, **Advocate General Yves Bot considers, first, that the terms of the directive allow the granting of subsidiary protection only if there is a risk of serious**

¹ 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).

harm resulting from torture or inhuman or degrading treatment of an applicant, in the future, if he were returned to his country of origin.

That interpretation means, in the present case, that MP may not claim subsidiary protection, inasmuch as it is common ground that there he no longer runs the risk of undergoing torture if he is returned to Sri Lanka, even if it is unlikely that he could receive the necessary treatment to manage the post-traumatic stress syndrome, owing to shortcomings in the health system, and is likely to commit suicide if he is returned to his country of origin.

The Advocate General also states that one of the key criteria for granting subsidiary protection is that the public authorities in the country of origin should be directly or indirectly, but always intentionally, responsible for inflicting the serious harm. In a situation such as the one at issue, **the risk of deterioration in the health of the applicant as a result of there being no appropriate treatment in his country of origin (without care being intentionally deprived) is not sufficient to warrant that person being granted subsidiary protection**, even if the condition from which the applicant suffers is a consequence of past torture in his country of origin.

In the second place, the Advocate General considers that if the Court were to read **the provisions of the directive in conjunction with the ECHR**, that would **not prevent the Member States excluding from the scope of subsidiary protection persons who are suffering the after-effects of torture undergone in the past** but are no longer at risk of being faced with such treatment if they return to their country of origin.

According to the Advocate General, **the interpretation of the directive in the light of the ECHR may lead to the grant of subsidiary protection only in very exceptional cases**. The case of MP does not appear to fall within such a category; **however this is for the Supreme Court to determine**.

The Advocate General takes the view that an interpretation of this directive, read in conjunction with the provisions of the ECHR, which would give all persons who had suffered past ill treatment the right to subsidiary protection, would considerably increase the obligations of the Member States with regard to subsidiary protection. Such an interpretation would go beyond what the EU legislature intended in adopting the directive.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 European Union 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 Opinion is published on the CURIA website on the day of delivery.

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