

## JUDGMENT OF THE COURT (Grand Chamber)

24 April 2018 (\*)

(Reference for a preliminary ruling — Asylum policy — Charter of Fundamental Rights of the European Union — Article 4 — Directive 2004/83/EC — Article 2(e) — Eligibility for subsidiary protection — Article 15(b) — Risk of serious harm to the psychological health of the applicant if returned to the country of origin — Person who has been tortured in the country of origin)

In Case C-353/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court of the United Kingdom, made by decision of 22 June 2016, received at the Court on 27 June 2016, in the proceedings

**MP**

v

**Secretary of State for the Home Department,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, T. von Danwitz, J.L. da Cruz Vilaça, E. Levits and C. Vajda, Presidents of Chambers, E. Juhász, A. Borg Barthet, M. Berger, K. Jürimäe, C. Lycourgos (Rapporteur) and M. Vilaras, Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 September 2017,

after considering the observations submitted on behalf of:

- MP, by A. Mackenzie and T. Tridimas, Barristers, A. Gananathan, Solicitor, and R. Husain QC,
- the United Kingdom Government, by S. Brandon, acting as Agent, and B. Lask, Barrister,
- the European Commission, by M. Condou-Durande and M. Wilderspin, acting as Agents.

after hearing the Opinion of the Advocate General at the sitting on 24 October 2017,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 2(e) and 15(b) of 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).

- 2 The request has been made in proceedings between MP and the Secretary of State for the Home Department concerning the rejection of MP's asylum application.

## **Legal context**

### ***International law***

#### *The European Convention for the Protection of Human Rights and Fundamental Freedoms*

- 3 Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), provides:

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

#### *The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

- 4 According to its sixth recital, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concluded in New York on 10 December 1984 ('the Convention against Torture'), aims 'to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world'.

- 5 Article 2(1) and (2) of that convention provides:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.'

- 6 Article 3 of that convention states:

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.'

- 7 Article 14(1) of that convention is worded as follows:

'Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.'

### ***EU law***

#### *Directive 2004/83*

- 8 Recitals 6 and 25 of Directive 2004/83 state as follows:

‘(6) The main objective of this Directive is, on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for those persons in all Member States.

...

(25) It is necessary to introduce criteria on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection. Those criteria should be drawn from international obligations under human rights instruments and practices existing in Member States.’

9 Article 2 of that directive provides:

‘For the purposes of this Directive:

...

(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;

...’

10 Under Article 4(4) of that directive:

‘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.’

11 Article 6 of the directive provides:

‘Actors of persecution or serious harm include:

- (a) the State;
- (b) parties or organisations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.’

12 Article 15 of Directive 2004/83 states:

‘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.'

13 Pursuant to Article 16 of the directive:

'1. A third country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.

2. In applying paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.'

14 Article 18 of that directive states:

'Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.'

*Directive 2008/115*

15 Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in member states for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98) provides:

'When implementing this Directive, Member States shall take due account of:

- (a) the best interests of the child;
- (b) family life;
- (c) the state of health of the third-country national concerned,

and respect the principle of non-refoulement.'

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

16 MP is a national of Sri Lanka who arrived in the United Kingdom in January 2005 and was given leave to remain as a student until 30 September 2008.

17 On 5 January 2009, MP lodged an application for asylum on the ground, in essence, that he had been detained and tortured by the Sri Lankan security forces because he had been a member of the 'Liberation Tigers of Tamil Eelam', and, that if he returned to Sri Lanka, he would be at risk of further ill-treatment for the same reason.

18 By decision of 23 February 2009, that application was rejected by the competent national authority, which did not accept that MP would be still of interest to the Sri Lankan authorities or at risk of further ill-treatment if he returned to his country.

19 MP brought an action against that decision before the Upper Tribunal (Immigration and Asylum Chamber). Medical evidence was submitted to that court that the applicant was suffering the after-effects of torture, severe post-traumatic stress disorder and serious depression, showed marked suicidal tendencies, and appeared to be particularly determined to kill himself if he had to return to Sri Lanka.