

Slovenia, Constitutional Court, U-I-189/14, Up-663/14, Judgement of 15 October 2015

Deciding bodies and decisions

- Constitutional Court of the Republic of Slovenia (Ustavno sodišče Republike Slovenije) U-I-189/14, Up-663/14, 15. 10. 2015, Uradni list RS, št. 82/2015 US30770

Area of law

- Asylum and Immigration

Subject matter

Applicant made a request for the renewal of the subsidiary protection in Slovenia, which was denied by the Ministry of interior. In proceedings before the administrative court the action was dismissed and supreme court rejected the appeal. Applicant lodged a constitutional appeal claiming that all decision regarding his renewal of the subsidiary protection were based on the International Protection Act which was incompatible with the constitutionally protected prohibition against torture. The process for renewal of the subsidiary protection on the basis of the Article 106 of the International Protection Act was limited to assessment by the competent authority solely of the reasons put forward in the request for subsidiary protection on the basis of which the subsidiary protection was granted in the first place. Reasons stated in the request but not assessed by the component authority for granting subsidiary protection or any new reasons could not be used in the process for renewal. In the process of the renewal of subsidiary protection the applicant therefore was unable to state any new relevant circumstances which occurred after the decision that granted him or her subsidiary protection. The Constitutional court found this to be incompatible with the prohibition of torture as provided for in Article 18 of the Constitution of the Republic of Slovenia, which includes principle of non-refoulement. Article 106 of the International Protection Act was therefore found to be incompatible with Article 18 of the Constitution of the republic of Slovenia.

The applicant was granted a subsidiary protection in Slovenia. In the process of the renewal of the protection he was refused the status of subsidiary protection by the competent authority. After the appeals to the administrative and supreme court were rejected the applicant appealed to the constitutional court claiming that constitutionally protected rights on inviolability of human life, prohibition of torture equal protection of rights, right to judicial protection, right to personal dignity and safety and protection of the rights to privacy and personality rights were violated. The constitutional court reviewed the application from the point of view of the prohibition of torture,

which includes the principle of non-refoulement, and expressly referred to article 19 of the Charter providing for the protection in the event of removal, expulsion or extradition.

Summary Facts Of The Case

Applicant was granted a status of subsidiary protection in Slovenia. Applicant substantiated his claim on the basis of second and third indent of Article 28 of the International Protection Act which include torture or other inhuman or degrading treatment or punishment in the state of origin and serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. His status was granted on the basis of second indent of Article 28, therefore, assessment whether conditions from the third indent were fulfilled was not made by the competent organ. In the process for the renewal of the subsidiary protection, applicant again referred to second and third indent of Article 28 of the International Protection Act. The competent organ stated in its decision that its assessment for renewal was limited to the reasons already put forward in the request for subsidiary protection on the basis of which the subsidiary protection was granted at the first place (only second indent) and denied the renewal of the status. This decision was confirmed by administrative court and supreme court. The Constitutional court found that the process of renewal of subsidiary protection was incompatible with the prohibition of torture as provided for in Article 18 of the Constitution of the Republic of Slovenia, which includes principle of non-refoulement if there exist real danger that in case of return of this person to the country where it came from it will be subject to inhuman treatment.

The court considered whether the Article 106 of the International Protection Act which governs procedural aspects of the request for the renewal of subsidiary protection, is compatible with the constitutionally protected right of the prohibition of torture and made the following reasoning. When a final decision on a denial of subsidiary protection or its renewal is made, an individual will lost its right of residence and therefore also the legal title to stay in Republic of Slovenia on the basis of subsidiary protection. The consequence of this decision may be removal, expulsion or extradition of individual to the country of origin and could mean violation of the prohibition of torture form Article 18 of the Constitution. The Court stated that it is an essential aspect of the International Protection Act to ensure respect for the principle of non-refoulement as included in the Article 18 of the Constitution. Principle of non-refoulement guarantees a right to individual to fair and effective procedure whereby competent organ decides whether removal, expulsion or extradition of applicant for international protection could breach this principle. The Court acknowledged that legal protection in the event of removal, expulsion or extradition is also recognised in Article 19 of the Charter of Fundamental Rights of the European Union. The Court concluded that procedural aspect, including non-refoulement, also apply in cases of cessation of subsidiary protection. For express conditions and procedures for the cessation of subsidiary protection person the court referred to Directive 2011/95/EU and 2013/32/EU. On the basis of Article 45 of the directive 2013/32/EU the competent authority will have to obtain information as to the general situation prevailing in the countries of origin of the persons concerned.

In the procedure for renewal of subsidiary protection the concrete decision of a competent organ depends on the conditions put forward by the applicant in the request. If the applicant puts forward conditions that were not considered by the organ in the procedure for the granting of the status, the organ has to carry out similar assessment as the one used when granting the status of subsidiary protection. The court stressed that it follows from the principle of non-refoulement that

an individual that is in the process of subsidiary protection has to have the opportunity to state all reasons and circumstances that are relevant for the prolongation of the status of protection. Therefore, any circumstances that may affect the decision of the competent organ whether individual if returned to the country of origin will be endangered or subject to inhuman or degrading treatment or punishment is important. The applicant should therefore be able to state new circumstances which occurred after the decision that granted him or her subsidiary protection was granted.

Constitutional court concluded that Article 18 of the constitution prohibits return of the person if there exist real danger that in case of return of this person to the country of origin it will be subject to inhuman treatment. It concluded that request for renewal of the subsidiary protection must be perceived as a new request for the subsidiary protection, therefore the applicant should be able to state any circumstances and reasons relevant for his status. Prohibition of Torture as provided for in Article 18 of the Constitution of the Republic of Slovenia is an absolute right from which no derogation is possible. Article 106 of the International Protection Act was therefore found to be incompatible with the Constitution of the republic of Slovenia.

Relation to the scope of the Charter

- Article 19 - Protection in the event of removal, expulsion or extradition (principle of non-refoulement)

The Constitutional Court reasoned that the (legal) protection in cases of deportation, expulsion or surrender is guaranteed under Art. 19(2) of the EU Charter. However, the Constitutional Court does not elaborate further the impact of the Charter for the present case.

Impact on Legislation / Policy

National legislation has been amended to the extent that, according to new legislation, a competent authority shall assess the existence of all reasons for the prolongation of subsidiary protection, not only those reasons that led to the subsidiary protection, recognized by a previous decision. However, it is doubtful that the judicial dialogue has triggered the amendment.

Sources - EU and national law

EU Law:

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26; 20.12.2011, 2011/95/EU, Article 16 and 19
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, Article 44 and 45

National Law:

- Article 18 of the Constitution of the Republic of Slovenia, Prohibition of Torture
- International Protection Act, Article 106

- Act amending the International Protection Act
-