

Slovenia - Supreme Court of the Republic of Slovenia, 21 November 2012, I Up 509/2012

Country of Decision:

Slovenia

Country of Applicant:

Serbia

Date of Decision:

21-11-2012

Citation:

I Up 509/2012

Court Name:

Supreme Court of the Republic of Slovenia

Keywords:

Accelerated procedure

Discrimination

Inhuman or degrading treatment or punishment

Membership of a particular social group

Relevant Legislative Provisions:

International Law

International Law > [1951 Refugee Convention](#) [1]International Law > [1951 Refugee Convention](#) [1] > [Art 33](#) [2]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3]

Council of Europe Instruments

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [4]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [5]

Headnote:

The Applicants are not members of a particular social group as defined by the Convention relating to the Status of Refugees, as neither their statements, nor the generally available information would indicate that Serbia considers their citizens originating from Kosovo as a

particular group with specific characteristics.

Relying upon the jurisprudence of the ECtHR in relation to ECHR, Article 3 and the decision of the Constitutional Court Up-96/09, as referred to by the court of first instance, the Supreme Court ruled that minimal social and economic protection for an individual who is dependent on state aid does not represent a violation of dignity and therefore does not provide sufficient grounds for subsidiary protection. Poor socio-economic conditions, in which the majority of inhabitants of an individual country have found themselves, do not represent sufficient grounds for subsidiary protection.

Facts:

The Applicants (mother and son), Serbian citizens, applied for international protection in the Republic of Slovenia. In their application they stated the war as the main reason for their departure from Kosovo. They also stated that they were forced to live in miserable living conditions in refugee camps and other makeshift accommodations in Serbia, where they were often victims of discrimination due to the fact that they arrived from Kosovo. The Ministry of Interior (MI) rejected their application in an accelerated procedure.

The court of first instance was of the view that the assessment of the MI, which stated that the Applicants do not fulfil the conditions to be given refugee status, was sufficient, but that the decision to reject the application for subsidiary protection was wrongful, as the MI should have dealt with this in a regular and not in an accelerated procedure. This was not »a manifestly unfounded application«, as the MI should, in accordance with the judicial practice of the Constitutional Court of the Republic of Slovenia and the ECtHR, have ascertained the conditions in the collective centres for internally displaced persons in Serbia, and considered if the Applicants could return safely in terms of Article 3 of the ECHR.

The MI appealed against the judgment of the court of first instance.

Decision & Reasoning:

According to the Supreme Court, the appeal was justified. The Supreme Court also found that the Applicants' application could have been dealt with in an accelerated procedure on the basis of the information and statements submitted as applicants' for international protection.

According to the Supreme Court, the reason for leaving Serbia does not lie in the fact that the Applicants originate from Kosovo but they left the country from economic reasons. The Applicants are not members of a particular social group in the sense of the Convention relating to the Status of Refugees, as neither their statements nor the generally available information indicate that Serbia considers its citizens originating from Kosovo as a particular group with specific characteristics. As the UNHCR handbook, Geneva 1992 (Paragraph 79), states that membership of a particular social group in itself does not justify an application for a refugee status, for this needs to be accompanied by special circumstances, in which this membership represents a ground for persecution.

According to the Supreme Court, the MI's opinion that it was obvious that the Applicants failed to fulfil the conditions for subsidiary protection was also correct. The circumstances for recognising subsidiary protection do not emerge from the generally available information on Serbia, nor from the Applicants' statements. The Republic of Serbia is one of the most immigrant (from former Yugoslavia) burdened European countries. However the generally available information does not

indicate that the immigrants are discriminated against, or that they live in degrading conditions, which would represent a violation of Article 3 of the ECHR. As stated in the UNHCR handbook (Paragraphs 62, 63 and 64), the economic conditions in an individual country, which are faced by most of the inhabitants of the said country, cannot represent a reason for recognising refugee status.

Relying upon the jurisprudence of the ECtHR in relation to ECHR, Article 3 and the decision of the Constitutional Court Up-96/09, as referred to by the court of first instance, the Supreme Court ruled that minimal socio-economic protection for an individual who is dependent on state aid does not represent a violation of dignity and therefore does not provide sufficient grounds for subsidiary protection. The jurisprudence of the Constitutional Court of the RS and the ECtHR also does not provide grounds for concluding that poor socio-economic conditions in which the majority population of an individual country have found themselves, represent a reason for granting subsidiary protection.

Outcome:

The Supreme Court ruled in favour of the appeal, changed the contested judgment and dismissed the case.

Attachment(s):

[509 2012.pdf](#)[6]

National / Other Legislative Provisions:

[Slovenia - Zakon o mednarodni zaš?iti \(ZMZ\) \(International Protection Act\) - Art 55](#) [7]

[Slovenia - Zakon o mednarodni zaš?iti \(ZMZ\) \(International Protection Act\)](#) [8]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>

[3] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[4] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[5] <https://www.asylumlawdatabase.eu/node/453>

[6] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/509%202012.pdf>

[7] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4419>

[8] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4417>