

Slovenia - Supreme Court of the Republic of Slovenia, 24 July 2013, I Up 253/2013

Country of Decision:

Slovenia

Country of Applicant:

Bosnia and Herzegovina

Date of Decision:

24-07-2013

Citation:

I Up 253/2013

Court Name:

Supreme Court of the Republic of Slovenia

Keywords:

Country of origin information
Discrimination
Family unity (right to)
Health (right to)
Inhuman or degrading treatment or punishment
Medical Reports/Medico-legal Reports
Personal circumstances of applicant
Serious harm
Subsidiary Protection
Vulnerable person

Relevant Legislative Provisions:European Union Law

Headnote:

In the case of the first Applicant, the exceptional personal circumstances dictate round the clock highly qualified medical care, which is provided by health care institutions in Slovenia, while home care is provided by the second Applicant. If such a sick person were forced to leave the stable conditions in Slovenia and start living in a collective centre in BiH, the first Applicant could suffer inhuman or degrading treatment due to inappropriate health care, which would

represent serious harm, which in turn justifies subsidiary protection in Slovenia.

In the event that the second Applicant was returned to the country of origin, she would be separated from the first Applicant (i.e. her family) contrary to the fundamental principle of family unity. Apart from this, in the event of returning to BiH or to a collective centre in BiH, it would be reasonable to believe that, as a young Roma female without a family and means for survival, she would also be subjected to inhuman and degrading treatment due to the discrimination against the Roma population.

Facts:

The Administrative Court ruled in favour of the Applicants, annulled the decision of the Ministry of Interior (MI) by which the applications for international protection had been rejected and granted the Applicants subsidiary protection.

The Applicants are members of the Roma population. The first Applicant is seriously ill, suffering from kidney failure and psychiatric disorders, and has been looked after by her granddaughter ? the second Applicant ? since the latter was young. The second Applicant lost her parents, has no other relatives in BiH, and she has lived in Slovenia for more than half of her life. According to the information obtained from authorities (report by Thomas Hammarberg ? the Commissioner for Human Rights at the European Council, Human Rights Watch, UNHCR, European Council, European Court of Human Rights), the conditions in the BiH collective centres for internally displaced persons or returned individuals is critical and the Roma population is still discriminated against in BiH, which is especially noticeable in rejecting access to health care. Thus, the Applicants are especially vulnerable individuals and the risk of not receiving health care due to direct or indirect discrimination is far too great. According to judgment by the court of first instance, the Respondent would have to prove that once the Applicants returned to BiH they would not be subjected to serious harm in the sense of the provisions stipulated in Article 28 of the ZMZ, which is something the Respondent failed to prove. Thus, it was decided that they are entitled to subsidiary protection in the Republic of Slovenia.

The MI appealed against the judgment of the Administrative Court. It believed that the personal circumstances of the Applicants as stated by the Court cannot represent inhuman treatment in themselves, and do not have a connection to the conditions in the collective centres in BiH. The MI believed that individuals in collective centres for internally displaced individuals and returnees to BiH are well looked after and that the health care system in BiH and Republika Srpska functions well and is provided to all people living in the territory. The Respondent believed that the Applicants would not face any danger of serious harm upon their return to BiH.

Decision & Reasoning:

The Supreme Court agreed with the decision of the court of first instance as regards granting subsidiary protection for the two Applicants.

Serious harm also includes inhuman or degrading treatment, which, according to the Supreme Court, does not exclude the health of an individual if he has limited access to health care in the country of origin. However, this cannot be the sole and decisive element for granting international protection (Supreme Court judgment I Up 245/2011). Thus, it was necessary to assess whether the court of first instance took into account the personal circumstances of the Applicants and whether the conditions in the country of origin can represent inhuman or degrading treatment for the Applicants, which could mean a serious threat for the Applicants upon their eventual return to

BiH.

Due to the obvious health problems of the first Applicant, combined with the fact that she had lost all her possessions in the country of origin and no longer had any relatives living there, which meant she would have to stay in a collective centre upon her return to BiH, and taking into account the credible reports which state that the collective centres in BiH do not ensure basics such as drinking water or regular disposal of sewage waters, that the Roma people are indirectly or directly discriminated against, also in health care, the Supreme Court held that the legal conditions for the first Applicant to be granted subsidiary protection were fulfilled. If such an ill person was sent from the relatively stable conditions in Slovenia to a collective centre in BiH, the first Applicant could ? due to the lack of health care ? suffer inhuman or degrading treatment, which represents serious harm that justifies subsidiary protection in Slovenia.

The second Applicant arrived in Slovenia at the age of ten. She arrived with her grandmother due to the same reasons ? she no longer had her parents or any other relatives in BiH; the house in which they lived was burnt during the war, and she escaped together with the first Applicant and her sister from BiH because she was, as a member of the Roma population, harassed and discriminated against by representatives of all nations that were involved in the war. She and her grandmother have been living with her uncle in Slovenia for nine years, and she has been taking care of her grandmother all this time (?as a nurse?). There is a bond between a grandmother and a granddaughter. It is true that the war in BiH has ended. However, according to the reports by trustworthy organisations, the conditions have not returned to normal, which holds especially true for collective centres, health care, etc. In the event that the second Applicant were returned to the country of origin, she would be separated from the first Applicant (i.e. her family) contrary to the fundamental principle of family unity. If she was returned to BiH or a collective centre, there would be a well-founded fear that she would be subjected to inhuman or degrading treatment as a young Roma girl with no family and means for survival.

Outcome:

The Supreme Court rejected the appeal of the Ministry and confirmed the contested judgment of the court of first instance.

Attachment(s):

 [253 2013.pdf](#)[1]

National / Other Legislative Provisions:

[Slovenia - Zakon o mednarodni zaš?iti \(ZMZ\) \(International Protection Act\)](#) [2]

Links:

[1] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/253%202013.pdf>

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