

Subsidiary Protection

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1

or third country nationals, stateless persons and those persons who otherwise need international protection

What serious harm does Subsidiary Protection cover?

- A person in need of international protection due to a real risk of serious harm *meaning*:
- Death penalty or execution
- Torture or inhuman or degrading treatment
- Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict

A Protection Applicant

An application for international protection is made by a person who is either:

Making an application for Refugee Status

OR

A person making an application for Subsidiary Protection who is *not* a national of a EU Member State *and* who does not qualify as a refugee

EC (Eligibility for Protection) Regulations 2006

- The new regulations of 10th October 2006 providing for Subsidiary Protection will eventually be replaced by the Immigration and Residence Act.
- An application for Leave to Remain can still be made.

If Subsidiary Protection is granted:

- Granted for a period of 3 years
- Renewable
- Family Reunification
- Employment
- Health and Social Welfare
- Trade and Education
- Travel

International Human Rights Obligations

- The Regulations give effect to Ireland's international obligations to protect an applicant from death, torture inhuman or degrading treatment:
- Articles 2, 3 (absolute no derogation) and 8 (qualified)ECHR
- UN Convention Against Torture

Highlights of SP

- No need for link to one or more of the five Refugee Convention grounds
- Serious harm can come from the State, and non-State actors
- Examples of persecution given in the Regulation by list but not exhaustive
- Limited to non-EU nationals
- Assessment includes considering whether protection available from an international organisation controlling part of a State/territory

More Highlights

- Recognition of the specific situation of vulnerable applicants
- Prosecution/punishment = persecution if disproportionate or discriminatory

Refugee Status v's Subsidiary Protection

- Refugee status should be primary aim as derives from an international instrument and is not limited by nationality
- Requirement to renew subsidiary protection – could be temporary given changes in country of origin?
- Travel Document for subsidiary protection likely to require visas for travel to other EU countries

Exclusion from Subsidiary Protection

Serious reasons for considering that he or she has committed/instigated or otherwise participated in a:

- Crime against peace, war crime, or crime against humanity
- A serious crime
- Guilty of acts contrary to the purposes and principles of the United Nations
- Constitutes a danger to the community or to the security of the state

But if deportation gives rise to risk of torture or inhuman or degrading treatment or punishment there is an absolute ban on return

Interpreting Subsidiary Protection

- Domestic law
- International Law
- European Court of Justice – the highest court in a EC Member State must refer a question of interpretation of the EC Directive unless where:
 - ECJ already passed judgement
 - There can be no reasonable doubt
 - The Issue is not relevant for the matter at hand

Next Steps

- Remember primacy of the Refugee Convention
- Serious harm linked to a Refugee Convention ground is stronger to argue but in the alternative may argue stand alone risk.
- Gather all possible evidence to support risk of serious harm
- Encourage all applicants to seek legal advice especially prior to completing questionnaire in order that subsidiary protection grounds might be addressed from the earliest opportunity