



Press and Information

Court of Justice of the European Union

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Judgment in Case C-369/17

Shajin Ahmed v Bevándorlási és Menekültügyi Hivatal

**A person cannot be excluded from eligibility for subsidiary protection if he is deemed to have ‘committed a serious crime’ on the basis of the sole criterion of the penalty provided for under the law of the Member State concerned**

*The authority or national court ruling on the application for subsidiary protection must assess the seriousness of the crime by carrying out a full investigation into the circumstances of the individual case in question*

In 2000, Mr Shajin Ahmed, an Afghan national, obtained refugee status in Hungary on account of the risk of persecution that he faced in his country of origin. In the course of criminal proceedings subsequently brought against him in Hungary, Mr Ahmed requested that the consulate of Afghanistan be fully informed of the outcome. Taking the view that it could be inferred from the request for protection which Mr Ahmed had voluntarily sent to his country of origin that the risk of persecution had ceased to exist, the Hungarian authorities withdrew his refugee status in 2014.

In 2016, in the course of a new administrative procedure,<sup>1</sup> the Hungarian authorities dismissed Mr Ahmed’s application, both for refugee status and for subsidiary protection status, while noting that there was an obstacle to refoulement. In particular, subsidiary protection could not be granted to Mr Ahmed due to the existence of a ground for exclusion within the meaning of the Hungarian law on the right to asylum, which transposes the EU directive on refugees,<sup>2</sup> namely the commission of a ‘serious crime’ for which Hungarian law provides a custodial sentence of five years or more.

Mr Ahmed contested the dismissal decision before the Hungarian courts, submitting that the national legislation removes all discretion from the administrative bodies responsible for applying that law and from the courts responsible for reviewing the legality of administrative decisions, whereas the expression ‘has committed a serious crime’ used in the directive<sup>3</sup> implies the obligation to assess all the circumstances of the individual case concerned.

The Fővárosi Közigazgatási és Munkaügyi Bíróság (Budapest Administrative and Labour Court, Hungary), before which the dispute has been brought, requests the Court of Justice to interpret that expression as a ground for exclusion from eligibility for subsidiary protection. That court is, more specifically, uncertain whether the seriousness of the crime may be determined on the basis of the sole criterion of the penalty provided for a specific crime under the law of the Member State concerned.

By today’s judgment, the Court states first of all that it is apparent from the directive that the EU legislature intended to establish a uniform status for all beneficiaries of international protection and that, as regards the grounds for exclusion, the EU legislature drew inspiration from the rules

<sup>1</sup> Following the withdrawal of his refugee status, Mr Ahmed filed a new application for refugee status and subsidiary protection status. He then brought an action against the decision dismissing that application before the Hungarian courts, which upheld that action and ordered the competent national authorities to initiate a new administrative procedure.

<sup>2</sup> 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 (OJ 2011 L 337, p. 9).

<sup>3</sup> Article 17(1)(b) of the directive (grounds for exclusion from subsidiary protection status).

applicable to refugees in order to extend them, so far as possible, to beneficiaries of subsidiary protection status.

The Court then sets out its case-law<sup>4</sup> according to which any decision to exclude a person from refugee status must be preceded by a full investigation into all the circumstances of his individual case and cannot be taken automatically. Such a requirement must be transposed to decisions to exclude a person from subsidiary protection.

In those circumstances, the Court takes the view that, even though the criterion of the penalty imposed under national criminal legislation is of particular importance for the purpose of assessing the seriousness of the crime justifying exclusion from subsidiary protection, the competent authority of the Member State concerned may apply the ground for exclusion only after undertaking, for each individual case, an assessment of the specific facts brought to its attention with a view to determining whether there are serious grounds for taking the view that the acts committed by the person in question, who otherwise satisfies the qualifying conditions for the status applied for, come within the scope of that ground for exclusion.

In those circumstances, the Court concludes that **EU law precludes legislation of a Member State pursuant to which an applicant for subsidiary protection is deemed to have ‘committed a serious crime’, which may exclude him from that protection, on the basis of the sole criterion of the penalty provided for a specific crime under national law.** It is for the authority or competent national court ruling on the application for subsidiary protection to **assess the seriousness of the crime at issue, by carrying out a full investigation into all the circumstances of the individual case concerned.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>4</sup> Joined Cases [C-57/09](#) and [C-101/09](#) B and D, see also Press Release [No 111/10](#)).