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Inhuman or degrading treatment or punishment

The distinction between torture and inhuman or degrading treatment or punishment is more a difference of degree than of nature.

They cover a wide range of forms of ill treatment that reach a certain level of severity.

Inhuman refers to treatment or punishment which deliberately causes intense mental or physical suffering (which does not reach the threshold of torture).

Degrading refers to treatment or punishment which arouses in the victim feelings of fear, anguish and inferiority capable of humiliating or debasing them.

It should be stressed that a specific purpose is not required. The assessment of whether a treatment or punishment is inhuman or degrading also implies a subjective consideration by the person who suffers such treatment/punishment.

Specific considerations

Unavailability of appropriate healthcare. Torture or inhuman or degrading treatment or punishment need to be inflicted deliberately. Consequently, the potential harm which an applicant suffering from a serious illness may experience if returned to his or her country of origin would not fall under Article 15(b) QD, unless such an applicant were intentionally deprived of healthcare. Thus, while the unavailability of appropriate healthcare is an important consideration in the context of non-refoulement under Article 3 ECHR, it does not fall within the scope of the inhuman or degrading treatment addressed under Article 15(b) QD. The qualification for international protection under the QD requires the existence of an actor of serious harm.

Prosecution and punishment for ordinary crimes. Prosecution and punishment for ordinary crimes would not be characterised as inhuman or degrading treatment or punishment unless there were special aggravating circumstances supporting the assumption that the prosecution or punishment were grossly unfair or disproportionate. The assessment should also take into account whether the right to a fair trial has been observed.

It is worth noting that inhuman or degrading treatment or punishment can be established even in the case of wrongdoing by the applicant. If a protection need is established in such a case, exclusion considerations may still be relevant. See EASO Practical Guide: Exclusion.

Deprivation of liberty. The state must ensure that a detained person is accommodated under conditions which are compatible with respect for human dignity. The manner and methods of the implementation of such a measure must not subject the person to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent to deprivation of liberty.

When assessing the conditions of detention, the following elements can, for example, be taken into consideration (cumulatively): number of detained persons in a limited space, adequacy of sanitation facilities, heating, lighting, sleeping arrangements, food, recreation or contact with the outside world.

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