



Aswat v. United Kingdom

Application No. 17299/12

Country: United Kingdom

Region: Europe

Year: 2013

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Health care and health services, Mental health, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment

Facts

The applicant was a man suffering from severe paranoid schizophrenia. He was indicted in the United States as a co-conspirator in an effort to establish a jihad training camp in Oregon. At the time of trial, the applicant was detained in a hospital in the UK and was subject to an extradition request made by the United States. The applicant had originally been detained at HMP Long Lartin but was transferred to Broadmoor Hospital in March 2008 because he met the criteria for detention there under the United Kingdom's mental health legislation. In November 2011, a mental health tribunal concluded that the applicant should continue to be detained in a medical hospital for his own health and safety due to the fact that he was a paranoid schizophrenic.

With regards to the extradition request, the applicant argued that the uprooting of extradition to a placement as yet unknown and unidentified, of which no detail had been provided to the Court, with risk of placement in conditions of isolation, would not be compatible with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"). In particular, the applicant contended that, if extradited, he could remain in pre-trial detention for a number of years, and no information had been submitted by the U.S. government concerning the conditions of that detention. The applicant also submitted that there was evidence to suggest that mentally ill patients have been detained at ADX Florence and that it would be likely that, if convicted, he would be housed there in a single cell, where he would likely spend a significant part of each day alone. He submitted that this would likely exacerbate his pre-existing mental illness and that, therefore, his continued detention in Broadmoor Hospital was essential for his personal safety and treatment. He particularly relied on the decision of the mental health tribunal

Decision and Reasoning

The Court held that there would be a violation of Article 3 of the Convention, which prohibits torture or inhuman and degrading treatment or punishment, in the event of the applicant's extradition based on his mental condition because there was uncertainty surrounding the types of conditions in which the applicant would be housed. The Court found that there would be a violation even though it accepted that if convicted the applicant would have access to medical facilities and mental health services.

The Court held that States must have regard to Article 3 of the Convention in exercising their right to control the entry, residence, and expulsion of aliens. The Court noted that the detention of a person with mental illness may raise issues under Article 3 and that lack of appropriate medical care may amount to inhuman and degrading treatment. The Court held that attention must be paid to the vulnerability and ability of persons to complain coherently or at all about how they are being affected by any particular treatment when deciding such cases. The Court considered three factors: (1) the medical condition of the prisoner, (2) the adequacy of the medical assistance and care provided in detention, and (3) the advisability of maintaining the detention measure in view of the state of health of an applicant.

The Court was also swayed by the fact that it was reasonable to assume that the length of pre-trial detention would be prolonged if the applicant requested a competency assessment or any subsequent appeals relating to the assessment of his mental health in the U.S.

Decision Excerpts

In particular, the assessment of whether the particular conditions of detention are incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and

their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment. The feeling of inferiority and powerlessness which is typical of persons who suffer from a mental disorder calls for increased vigilance in reviewing whether the Convention has (or will be) complied with.â€• Para. 50

â€œThere are three particular elements to be considered in relation to the compatibility of an applicantâ€™s health with his stay in detention: (a) the medical condition of the prisoner, (b) the adequacy of the medical assistance and care provided in detention, and (c) the advisability of maintaining the detention measure in view of the state of health of an applicant (ibid. and Dybeku v. Albania, no. 41153/06, Â§ 41, 18 December 2007).â€• Para. 50

â€œWhile the Court in Babar Ahmad did not accept that the conditions in ADX Florence would reach the Article 3 threshold for persons in good health or with less serious mental health problems, the applicantâ€™s case can be distinguished on account of the severity of his mental condition. The applicantâ€™s case can also be distinguished from that of Bensaid v. the United Kingdom, no. 44599/98, (ECHR 2001-I) as he is facing not expulsion but extradition to a country where he has no ties, where he will be detained and where he will not have the support of family and friends. Therefore, in light of the current medical evidence, the Court finds that there is a real risk that the applicantâ€™s extradition to a different country and to a different, and potentially more hostile, prison environment would result in a significant deterioration in his mental and physical health and that such a deterioration would be capable of reaching the Article 3 threshold (see Bensaid v. the United Kingdom, cited above, Â§ 37).â€• Para. 57

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