



DD v. Secretary of State for Home Department

[2014] EWHC 3820 (Admin)

Country: United Kingdom

Region: Europe

Year: 2014

Court: Royal Courts of London

Health Topics: Mental health, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to liberty and security of person

Facts

The claimant, DD, a Somali man, was granted asylum and indefinite leave to remain shortly after his arrival in the UK in 2003. Due to his involvement in fundraising for Al-Shabaab, a Terrorism Prevention and Investigation Measure (TPIM) was imposed in 2012. He was charged with breaching the TPIM, remanded into custody, and was sentenced to 9 months imprisonment in 2013. After his release, there was a continued pattern of release, revived TPIM, breach, prison and release.

DD appealed against the revival of the TPIM, claiming that the imposition of a TPIM on him was a breach of his rights under Article 3 of the European Convention on Human Rights (ECHR), which prohibits torture and inhuman or degrading treatment.

DD found four conditions particularly stressful. First, he alleged that the restriction on the use or possession of electronic communication devices was stressful due to its impact on his children. Second, he found the requirement to make a daily report to the police station extremely aversive. Third, he found it problematic to be excluded from going to defined areas and a range of places without specific Home Office permission. Lastly, DD was troubled by the electronic GPS tag fitted to his ankle.

DD claimed that the revival of the TPIM was adversely affecting his mental state. A psychiatrist diagnosed DD as suffering from PTSD and schizophrenia.

Decision and Reasoning

The Court concluded that the TPIM restrictions did not amount to a violation of Article 3 of the ECHR (prohibition on torture or inhuman or degrading treatment or punishment). The Court accepted that the TPIM had exacerbated the symptoms of DD's mental illness, and the longer the TPIM remained in force, the worse the eventual recovery would be. However, it reasoned that the judgment as to whether Article 3 had been breached should be determined not just against the impact on the individual, but against the necessity and proportionality to that need of the measure. The Court assumed that national security concerns justified the imposition a TPIM on DD.

With regards to the four TPIM restrictions, the Court concluded that all of the restrictions, including the effect of the tag, did not amount to a violation of Article 3. The Court reasoned that the treatment was legitimate according to the risk that he posed to the nation. First, the Court noted that it was his family's decision to change computers and that his children could have taken other steps to use a different computer, especially one available at school. Therefore, the restriction on the use of computers and other electronic devices was not as detrimental as DD argued. Next, the Court noted that other restrictions were alleviated. For instance, although DD found the daily reporting to be very intrusive, there had been a modest reduction in the frequency of reporting. The psychiatrist also pointed out that DD was starting to cope with the new restrictions. Finally, the Court noted that the effects of the TPIM in general did not cross the high threshold so as to amount to a breach of Article 3.

Decision Excerpts

"I have to conclude that the TPIM restrictions, including the effect of the tag, do not amount to a violation of Article 3, provided that the requisite measures for the care of DD, including those measures which arise from the imposition of the TPIM, are met. Those requisite measures cannot include quashing the TPIM since the

TPIM is, by necessary assumption, a legitimate measure necessary and proportionate to the risk. Nor can they include quashing the TPIM with a view to its re-imposition, minus the tag requirement, for the same reason; that measure is legitimate, necessary and proportionate to the risk.” Para 126.

“Currently, the effects of the TPIM in general, whatever the particular effects of certain restrictions, and the effects of the three most contentious conditions apart from the tag, plainly do not cross that high threshold so as to breach of Article 3. I reach that conclusion recognising that the maintenance of the TPIM and those conditions is significantly worse for DD than for a person who is in normal mental health, and that particular care is required in judging whether a mentally ill and vulnerable person is being treated with proper respect for the fact that he is a human being.” Para. 136.

Copyright © 2015 www.GlobalHealthRights.org