



Arcila Henao v. Netherlands

Application No. 13669/03

Country: Netherlands

Region: Europe

Year: 2001

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

Health Topics: Health care and health services, HIV/AIDS, Infectious diseases, Medicines, Poverty

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

Facts

The applicant was a Columbian national residing in the Netherlands. He complained that his expulsion to Columbia would violate Article 3 of the European Convention on Human Rights (the "Convention") which prohibits torture and inhuman or degrading punishment, as he would be unable to continue treatment for his HIV and Hepatitis B and would therefore suffer from a reduced life expectancy.

The applicant was convicted by the Haarlem Regional Court of carrying drugs when he tried to enter the Netherlands in 1997 and was sentenced to fifteen months imprisonment. During his imprisonment, the State Secretary of Justice declared the applicant an undesirable alien and issued an exclusion order lasting ten years. As a result, at the end of his imprisonment, the applicant was expelled to Columbia. Less than one year after his expulsion, the applicant re-entered the Netherlands and was again arrested for carrying drugs. In March of 1999, the Hague Regional Court convicted the applicant of crimes under the Opium Act with a term of imprisonment of two years. While serving this sentence, the applicant was diagnosed with HIV and received antiretroviral treatment.

As the end of the two year imprisonment drew near, the applicant requested that the Minister of Justice lift the earlier decision declaring him an undesirable alien. The request was based on the claim that the applicant would be unable to continue proper treatment in Columbia as it was prohibitively expensive. The applicant also applied for a residence permit for the purpose of medical treatment. This request was rejected by the State Secretary of Justice as the applicant was classified as an undesirable alien, but the applicant was granted a stay of expulsion while his request to the Minister of Justice regarding his undesirable status was pending.

In October of 2000, a report from the Medical Advice Bureau of the Ministry of Justice diagnosed the applicant with Hepatitis B in addition to HIV. The report explained that the discontinuation of treatment would be harmful to the applicant. Ultimately, the State Secretary rejected the request to lift the decision declaring the applicant an undesirable alien as it determined that "treatment was available in Columbia" so there was no "life-threatening situation outweighing the public interests of the Netherlands in protecting public order." While treatment may have been expensive and the public health system may have been inefficient in Columbia, the applicant had family ties to Columbia for support and was theoretically able to receive treatment.

The applicant appealed both the decision to deny reconsideration of the classification as an undesirable alien and the denial of a residence permit to the Hague Regional Court, but the Hague Regional Court rejected the appeals and said that Article 3 of the Convention was not applicable in this situation. The applicant brought his complaint before the European Court of Human Rights claiming that his expulsion violated Article 3 of the Convention.

Decision and Reasoning

The Court held that the expulsion of the applicant to Columbia did not violate Article 3 of the Convention. The Court noted that generally States party to the Convention had the ability to control the entry, residence and expulsion of aliens. While this control was subject to their obligations under the Convention, removal of an alien would only be considered to violate Article 3 in "exceptional circumstances." The Court found that the most recent evidence showed that the applicant's health was in reasonable condition and that he was able to work. There was also no evidence that the applicant would be unable to continue his treatment in Columbia. Moreover, the Court determined that "the fact that the applicant's circumstances in Columbia would be less favourable than those he enjoys in the Netherlands cannot be regarded as decisive." Therefore, the Court

held that the expulsion of the applicant did not amount to the kind of exceptional circumstances that would violate Article 3.

Decision Excerpts

“Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the Convention, to control the entry, residence and expulsion of aliens. However, in exercising their right to expel such aliens, Contracting Parties must have regard to Article 3 of the Convention.” Page 7.

“According to established case-law aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social, or other forms of assistance provided by the expelling State. However, in exceptional circumstances an implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a violation of Article 3.” Page 8.

“[I]t does not appear that the applicant’s illness has attained an advanced or terminal stage, or that he has no prospect of medical care or family support in his country of origin. The fact that the applicant’s circumstances in Columbia would be less favorable than those he enjoys in the Netherlands cannot be regarded as decisive from the point of view of Article 3 of the Convention.” Page 8.