



## R v. Secretary of State for the Home Department, ex parte Razgar

[2004] UKHL 27

**Country:** United Kingdom

**Region:** Europe

**Year:** 2004

**Court:** House of Lords

**Health Topics:** Health care and health services, HIV/AIDS, Infectious diseases, Mental health

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

### Facts

The Secretary of State sought to appeal a decision which held that removing Mr. Razgar from the United Kingdom would be a violation of his rights under the European Convention on Human Rights (ECHR).

Mr. Razgar was an asylum seeker from Iraq who initially sought asylum in Germany, where he claimed to have been detained, subjected to racist abuse, and told that he would be returned to Iraq. He subsequently sought asylum in the United Kingdom, but Germany claimed responsibility for processing his asylum claim under the Dublin Convention. In the United Kingdom he began treatment with a consultant psychiatrist for severe depression and post-traumatic stress disorder. The psychiatrist testified; “Given Mr. Razgar’s subjective fear of ill-treatment in Germany, I feel that he would not make any progress there in rehabilitating from Post Traumatic Stress Disorder, or indeed from his depression.” Mr. Razgar also claimed he would commit suicide if he were returned to Germany.

The Secretary of State made a decision to remove him to Germany. Mr. Razgar resisted the removal on the grounds that it would violate his right to respect for his private and family life, his home and his correspondence under article 8 of the ECHR. The Secretary of State disputed this claim.

### Decision and Reasoning

The Court held that because of Mr. Razgar’s risk of suicide, the right to respect for private and family life contained in article 8 of the ECHR prevented Mr. Razgar from being removed from the United Kingdom to Germany. It considered that the protection of private life in article 8 included protection against foreseeable consequences for Mr. Razgar’s health. In doing so, it relied on *Bensaid v United Kingdom* (2001) 33 EHRR 205, which held that mental health was an integral part of private life.

The Court concluded that to establish a breach of article 8, the following questions would need to be considered:

(1) Would the proposed removal be an interference by a public authority with the exercise of the Applicant’s right to respect for his private or family life?

(2) If so, would the interference have consequences of such gravity as to potentially engage the operation of article 8?

(3) If so, would such interference be in accordance with the law?

(4) If so, would such interference be necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, would such interference be proportionate to the legitimate public end sought to be achieved? (para. 17)

Case law on the subject did not exclude that treatment which does not reach the severity of article 3

treatment may nonetheless breach article 8 in its private life aspect where there are sufficiently adverse effects upon physical and moral integrity. As such, it was not necessary for the Applicant to demonstrate an interference amounting to torture or cruel, inhuman or degrading treatment or punishment. The question was instead whether removal to the foreign country would have a sufficiently adverse effect upon the Applicant to enliven article 8.

The Court held that in the United Kingdom Mr. Razgar was able, with psychiatric help, to enjoy a measure of freedom, independence and autonomy which, arguably, he could not enjoy in Germany. In Germany, Mr. Razgar would know no one, might not be able to receive needed medical help and might be accommodated in a remote refugee center. The decision to remove Mr. Razgar might lead to him taking his own life. This could scarcely be dismissed as being of insufficient gravity to prevent removal. The Court dismissed the appeal of the Secretary of State.

### Decision Excerpts

I would answer the question of principle in paragraph 1 above by holding that the rights protected by article 8 can be engaged by the foreseeable consequences for health of removal from the United Kingdom pursuant to an immigration decision, even where such removal does not violate article 3, if the facts relied on by the applicant are sufficiently strong. In so answering I make no reference to "welfare", a matter to which no argument was directed. It would seem plain that, as with medical treatment so with welfare, an applicant could never hope to resist an expulsion decision without showing something very much more extreme than relative disadvantage as compared with the expelling state. Para. 10.

There is no general human right to good physical and mental health any more than there is a human right to expect (rather than to pursue) happiness. Para. 34 (dissent).

Although the possibility cannot be excluded, it is not easy to think of a foreign health care case which would fail under article 3 but succeed under article 8. There clearly must be a strong case before the article is even engaged and then a fair balance must be struck under article 8(2). In striking that balance, only the most compelling humanitarian considerations are likely to prevail over the legitimate aims of immigration control or public safety. The expelling state is required to assess the strength of the threat and strike that balance. It is not required to compare the adequacy of the health care available in the two countries. The question is whether removal to the foreign country will have a sufficiently adverse effect upon the applicant. Nor can the expelling state be required to assume a more favourable status in its own territory than the applicant is currently entitled to. The applicant remains to be treated as someone who is liable to expulsion, not as someone who is entitled to remain. Para. 59 (dissent).