N (FC) v. Secretary of State for the Home Department

[2005] UKHL 31

Country: United Kingdom
Region: Europe
Year: 2005
Court: House of Lords
Health Topics: Health care and health services, HIV/AIDS, Infectious diseases, Medicines
Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Right to health

Facts

N, a Ugandan woman, came to London in Mach 1998 seeking asylum. Her application for asylum was rejected and the Secretary of State proposed to expel her. N was suffering from advanced HIV/AIDS, but had achieved a stable condition due to the extensive medical treatment and medication she had been receiving in the UK. If she continued to receive such treatment she was expected to remain well for decades, but if not she would suffer ill-health, pain and ultimately death within two years.Â If she was returned to Uganda it would be difficult and costly to obtain the necessary drugs and facilities.

N appealed against the Secretary of State's asylum decision on the ground that to return her to Uganda would be a breach of her right not to be subjected to cruel, inhuman or degrading treatment under Article 3 of the European Convention of Human Rights. The Adjudicator dismissed Nâ€™s appeal against the asylum decision but allowed it on the ground that to return her to Uganda would breach her Article 3 right since on the evidence her case for protection was overwhelming. The Immigration Appeal Tribunal allowed the Secretary of Stateâ€™s appeal and the Court of Appeal dismissed Nâ€™s appeal holding that although the Tribunal conclusion was flawed for want of legally sufficient reasons Nâ€™s evidence did not bring her case within the â€˜extremeâ€™ class of case to which it had to belong to ground an Article 3 claim. N appealed to the House of Lords.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

In dismissing the appeal, it was held that:

(1) The appeal raised a question of profound importance about the human rights obligations of this country in respect of the expulsion of people with HIV/AIDS. So long as N remained in the country there was no breach of Article 3 since she would continue to receive the medical treatment on which her health and life are dependent. The cruel reality was that if N returns to Uganda her ability to obtain the necessary medication would be problematic. If she could not do so it would be equivalent to having a life-support machine switched off.

(2) However, the function of a judge in a case of this kind was not to issue decisions based on sympathy. Just as juries in criminal trials are directed that they must not allow their decisions to be influenced by feelings of revulsion or sympathy, judges must examine the law in a way that suppresses emotion of all kinds. Whilst the Convention was a living instrument, any enlargement of its scope in relation to one contracting state would be an enlargement for them all. The process of implying terms into the Convention must be carried out with caution if the risk was to be averted that the contracting parties may, by judicial interpretation, become bound by obligations which they did not expressly accept and might not have been willing so to do (dicta of Lord Bingham in Brown v Stott [2003] 1 AC 681 at 703 applied)

(3) If N were a special case undoubtedly pressing humanitarian considerations would prevail. However, in principle, the law should treat like cases alike and, sadly, hers was not a special case. The prevalence of AIDS, especially in Southern Africa, was a present-day human tragedy on an immense scale. Whilst each case will differ in detail and degree a common feature in all immigration cases of this type was that the would-

be immigrant faced a significantly-shortened expectation of life if deported. No one can fail to be touched by the plight of N and of others in a similar position.

(4) Although Article 3 protection had been extended by the European Court of Human Rights to prevent the deportation of somebody with AIDS to a place lacking appropriate medical facilities, that was a very exceptional case concerning someone who was in the final stages of a terminal illness, AIDS, and who had no prospect of medical care or family support on expulsion to St Kitts. In that case, unlike the case of N, the applicant was dying. This prompted a question: why was it unacceptable to expel a person whose illness was irreversible and whose death was near, but acceptable to expel a person whose illness was under control but whose death would occur once treatment ceased? A supposed difference of degree in humanitarian appeal with emphasis on a claimantâ€™s current state of health was not a satisfactory basis for distinguishing between the case of a dying person and others.

(5) Rather the essential distinction lay in recognizing that Article 3 did not require contracting states to undertake the obligations of providing aliens indefinitely with medical treatment lacking in their home countries. In principle aliens subject to expulsion orders cannot claim any entitlement to remain in the territory of a state in order to continue to benefit from medical, social and other forms of assistance provided by the expelling state. This was the case even where in the absence of medical treatment, the life of the would-be immigrant will be significantly shortened. However, exceptions could be made where the claimant is dying and beyond the reach of medical treatment (D v UK (1997) 24 EHRR 425 distinguished).

(6) This was borne out by subsequent Strasbourg authorities which elucidated two basic principles. Firstly, the fundamental nature of the Article 3 guarantees applied irrespective of the reprehensible conduct of the applicant. It made no difference however criminal his acts may have been or however great a risk he may have presented to the public if he were to remain in the expelling stateâ€™s territory. On the other hand, aliens who were subject to expulsion cannot 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 (BB v France (9 March 1998) RJD 1998-VI p 2596; Karara v Finland, Appln No 40900/98, 29 May 1998; MM v Switzerland, Appln No 43348/98, 14 September 1998; Tatete v Switzerland, Appln 41874/98, 18 November 1998; SCC v Sweden Appln No 46553/99, 15 February 2000; Bensaid v UK (2001) 33 EHRR 205; Henao v The Netherlands, Appln No 13669/03; Ndangoya v Sweden, Appln No 17868/03, 22 June 2004 and Amegnigan v The Netherlands, Appln No 25629/04, 25 November 2004 considered).

(7) In so doing it might be argued that the European Court of Human Rights had not really faced up to the consequences of the developments of medical techniques since its original decision. The position today was the HIV infections can be controlled effectively and indefinitely by the administration of antiretroviral drugs. In almost all cases where this treatment was being delivered successfully it will be found that the patient is in good health. Â Stopping treatment would lead in a very short time to a revival of the symptoms and an early death. However, it also illustrated that it was determined to adhere to the principle that aliens subject to expulsion are not entitled to such treatment. The fact that such treatment may be beyond the reach of the applicant in the receiving state was not to be treated as an exceptional circumstance. It might be different if there were a complete absence of such treatment but this was increasingly unlikely in view of the amount of medical aid reaching Sub-Saharan Africa and other developing countries.

(8) It would be strange if the humane treatment of a would-be immigrant while his immigration application was being considered were to place him in a better position for the purposes of Article 3 than person who had never reached this country at all. True it was that a person who came to the United Kingdom and received treatment while his application was being considered would have his hopes raised. However, it was difficult to see why this should subject this country to a greater obligation than it would to someone who was turned away at the port of entry and never received any treatment.

Per Baroness Hale of Richmond concurring :

There may, of course, have been other exceptional cases, with other extreme facts, where the humanitarian considerations were equally compelling. The law must be sufficiently flexible to accommodate them.

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Decision Excerpts