



Secretary of State for the Home Department v. Wayoka Limbuela and Ors.

[2004] EWCA Civ 540

Country: United Kingdom

Region: Europe

Year: 2004

Court: Court of Appeal, Civil Division

Health Topics: Health care and health services, Health systems and financing, Poverty

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to housing, Right to social security

Facts

This case concerned what level of destitute asylum seekers must have reached before their condition signified a violation of Article 3 of the European Convention on Human Rights and Fundamental Freedoms (â€œConventionâ€•), which prohibits torture and cruel or inhuman or degrading treatment. A violation of Article 3 required the Secretary of State for the Home Department (â€œSecretaryâ€•) to provide them with aid under Section 55(5) of the Nationality, Immigration and Asylum Act of 2002 (â€œActâ€•). The Act, in Section 95, allowed the Secretary to provide support for asylum seekers who appeared to be destitute or to be likely to become destitute without the support.

Section 55(1) of the Act allowed the Secretary to not provide support to asylum seekers if they did not apply for asylum within a reasonable time upon arrival in the United Kingdom. The three respondents were all asylum seekers that the Secretary found did not apply for asylum within a reasonable time upon arrival. The Secretary also found that withholding support would not violate Article 3 of the Convention for the respondents, and that they therefore did not qualify to receive support.

The first respondent, Mr. WayokaLimbuela, a national of Angola, slept on the streets without food, money, or washing facilities for two days after the Secretary denied his support. Mr. Limbuela stayed in a shelter for four days, and he received an injunction requiring the Secretary to provide support pending judicial review, and so Mr. Limbuela had had access to food and shelter since then. Mr. Limbuela had not complained of any medical problems when he received the interim support, but he had medical problems that were being treated while the Administrative Court was reviewing his case.

The second respondent, Mr. Binyam Tefera Tesema, was in good general health but had complained of pain in his ears, back, and feet that he later stated were related to a beating he received.

The third respondent, Mr. Yusif Adam, a national of Sudan, spent over three weeks living on the streets from the time the Secretary denied him support until the Administrative Judge granted an injunction requiring the Secretary to provide support. Mr. Adam was in good health before he slept on the streets, but after three weeks he suffered from hemorrhoids, back pain, gastritis, depression, insomnia, and nightmares. He had not received full treatment for his ailments because he did not know his prescriptions were free.

Asylum seekers living on the streets in London had a limited number shelter options. In addition to the three respondents, there were 666 asylum seekers that were not granted support by the Secretary but who were granted interim support by the Administrative Court.

The Secretary appealed the decisions requiring him to provide support to all three respondents.

Decision and Reasoning

A majority held that the Secretary was required to continue to provide support for the three respondents under Section 55(5) of the Act. The Court reasoned that removing support from them would reduce them to a level of destitute that would breach Article 3. The Courtâ€™s standard was whether the asylum seeker would be reduced to or would be verging on a level of destitute that included actual bodily injury or intense physical or mental suffering.

Lord Justice Carnworth further held that it was not necessary for the respondents to show they had actual illnesses or were suffering, but it was enough that the respondents had demonstrated that they could not have supported themselves and that there was no charitable support available to them. Therefore, without the Secretary's support, they would verge on the level of suffering required in *Pretty*, a previous case.

Both Majority Justices held that if support was removed from the three respondents, it would then be removed from the majority of the 666 other asylum applicants whose cases were pending. The current charities would not have been able to provide support for the majority of those asylum seekers, and the majority of the asylum seekers would therefore fall to the severity threshold of destitute to signify a breach of their Article 3 rights.

The minority Justice, Lord Justice Laws, would have allowed the Secretary's appeals to interim support because none of the respondents' conditions exhibited exceptional features to require the Secretary to act under Section 55(5) of the Act; their situations were not severe enough to indicate that Article 3 of ECHR had been breached. He held that the mere fact of living on the streets did not reduce an asylum seeker to a level of destitute that breached Article 3 because the asylum seeker could fend for himself or could receive support from friends or charities.

Decision Excerpts

As regards the types of "treatment" which fall within the scope of article 3 of the Convention, the court's law refers to "ill-treatment" that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering. Where treatment humiliates or debases an individual showing a lack of respect for or diminishing, his or her human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterized as degrading and also fall within the prohibition of article 3. The suffering which flows from naturally occurring illness, physical or mental, may be covered by article 3, where it is, or risks being exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible. Para. 42.

Even if there were a precise criterion for defining the Article 3 threshold, the factual circumstances are so varied and so variable, as to make it practically meaningless to attempt to assess them by reference to a single test at a single point in time. They include the physical and mental resistance of the particular individual; the season of the year and the state of the weather; the incidence of any epidemics or illnesses affecting the area; the availability of medical help and drugs; the extent if any of the help available from other sources, such as charities, community support groups or passers-by; and (if one is considering humiliation) the degree of toleration or lack of it shown by other parties or the public at large. Para 89.