



Gelfmann v. France

App. No. 25875/03, Eur. Ct. H.R. 679 (2008).

Country: France

Region: Europe

Year: 2004

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

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

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

Facts

The applicant, a prisoner, alleged violation of Article 3 of the European Convention on Human Rights when his application for pardon on medical grounds was refused. Applicant contracted HIV nine years prior to being sentenced to 20 years of imprisonment. Because applicant refused to undergo a medical exam or release access to his medical records, his initial application for a pardon on medical grounds was refused. On his second attempt, the expert witness opined that his prognosis would be brighter if he were admitted to and treated at a hospital.

Decision and Reasoning

The Court held this case was admissible under Article 3 of the Convention, but decided Article 3 had not been violated. The Court concluded that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat.

Furthermore, the applicant did not at any point contest the quality of care he received both in prison and the various hospitals to which he had been admitted, and therefore there was no violation of Article 3.

Decision Excerpts

"50. Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a civil hospital, even if he is suffering from an illness that is particularly difficult to treat (see *Mouisel*, judgment cited above, ¶ 40). However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance (see *KudÅa*, judgment cited above, ¶ 94; and *Mouisel*, judgment cited above, ¶ 40)."

"51. As the Court noted in the aforementioned cases of *Mouisel* and *Matencio* (at ¶¶ 44 and 80 respectively), the procedural arrangements introduced by the Acts of 15 June 2000 and 4 March 2002, which supplement the right to seek a Presidential pardon on health grounds by enabling prisoners whose health has deteriorated significantly to apply for release at short notice, may provide sufficient guarantees to ensure the protection of prisoners' health and well-being which States must reconcile with the legitimate requirements of a custodial sentence."