



## D v. The United Kingdom

App. No. 30240/96, 24 Eur. H.R. Rep. 423 (1997).

**Country:** United Kingdom

**Region:** Europe

**Year:** 1997

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

**Health Topics:** Health care and health services, Health systems and financing, HIV/AIDS, Infectious diseases, Medicines

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

### Facts

The applicant, an individual suffering HIV/AIDS, brought action under Article 3 (freedom from torture or inhuman or degrading treatment or punishment) of the European Convention on Human Rights when he was threatened with expulsion from UK to St Kitts where he would not have access to necessary medical treatment and no family home or close family. Thus, the applicant maintained that his removal to St Kitts would expose him to inhuman and degrading treatment in breach of Article 3 of the Convention.

Immediately prior to his release from prison in the U. K. applicant was threatened with removal from the United Kingdom to the island of St Kitts. Applicant requested to remain in the U. K. on compassionate grounds since his removal to St. Kitts would shorten his life expectancy. His application was refused by the authorities. Meanwhile there was evidence that medical facilities in St. Kitts did not have the capacity to provide the medical treatment that applicant would require, there was no available treatment for AIDS.

The applicant claimed his removal from the United Kingdom would constitute a breach of Articles 2 (right to life), 3 (freedom from inhuman and degrading treatment) and 8 (right to respect for privacy and family life) of the ECHR and that he had no effective remedy in respect of those complaints in breach of Article 13.

Regarding Article 2, the applicant claimed there would be causal link between his expulsion and his accelerated death in violation of his right to life. He submitted that Article 2 imposed a positive obligation to safeguard life requiring the Government not to take steps that would further reduce his life expectancy.

Regarding Article 8, the applicant claimed his expulsion would amount to a disproportionate interference with his right to respect for his private life, particularly respect for his physical integrity citing the harmful impacts his expulsion would entail for he, a terminally ill person, with no moral or social support and no adequate medical treatment. The Government contested this claim asserting the majority of the applicant's private life was constituted in the receiving country and the links he had established to the UK had arose as a result of the offense he had committed.

### Decision and Reasoning

The Court held that applicant's expulsion would be a violation of Article 3. The Court pointed out that his expulsion would result in the abrupt withdrawal of the treatment he was currently undergoing and that there had been no evidence presented that the applicant would receive any form of moral or social support or effective medical or palliative treatment for his illness in St Kitts. The applicant's removal would consequently expose him to the risk of dying under the most distressing circumstances and amount to inhuman treatment by the respondent State in violation of Article 3.

Having regard to its finding that the expulsion of the applicant to St Kitts would violate Article 3, the Court considered any finding regarding Article 2 indissociable from the substance of the complaint under Article 3 and thereby considered it unnecessary to examine it.

Likewise, having regard to its finding under Article 3, the Court found the complaint under Article 8 raised no separate issue.

### Decision Excerpts

"53. In view of these exceptional circumstances and bearing in mind the critical stage now reached in the applicant's fatal illness, the implementation of the decision to remove him to St Kitts would amount to inhuman treatment by the respondent State in violation of Article 3 (art. 3).

The Court also notes in this respect that the respondent State has assumed responsibility for treating the applicant's condition since August 1994. He has become reliant on the medical and palliative care which he is at present receiving and is no doubt psychologically prepared for death in an environment which is both familiar and compassionate. Although it cannot be said that the conditions which would confront him in the receiving country are themselves a breach of the standards of Article 3 (art. 3), his removal would expose him to a real risk of dying under most distressing circumstances and would thus amount to inhuman treatment."

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