

Mental Health Law Briefing

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Refusal of Care to Illegal Immigrants: A Breach of Human Rights?

The United Kingdom recently faced a case before the European Court of Human Rights¹ in which it was alleged that the refusal to provide care to an illegal immigrant amounted to a breach of her rights under Article 3² and Article 8³.

Background

The applicant was a Ugandan national suffering from AIDS. She alleged that her return to Uganda would cause her suffering and an early death because of her illness. She had claimed asylum in the UK but this was refused on the basis that her assertions that her life and safety were in danger were not credible. She alleged that to return her to Uganda would be a breach of Article 3 as the healthcare was less good there than in the UK and thus this would also be a breach of Article 8.

Court Decision

The Court reiterated the basic principle that aliens subject to expulsion could not claim to stay in a convention state in order to benefit from medical assistance. The fact that an alien's life expectancy would be reduced if she left a convention state was not sufficient to give rise to a breach of Article 3 except, "in a very exceptional case, where the humanitarian grounds against the removal were

compelling". Advances in medical science may mean that there was a vast difference between the level of medical care in a Convention country and a country to which an alien was to be returned but Article 3 did not place an obligation on convention states to alleviate such disparities by the provision of free and unlimited healthcare.

The Court accepted that the applicant's life expectancy would be affected if she were returned to Uganda. However she was not currently critically ill and the risk of future deterioration was subject to a certain degree of speculation.

In the circumstances the Court did not feel it was necessary to review the Article 8 allegations.

Treatment for Mental Health

Although this case involved an AIDS related condition, the Court commented that the same principles would apply to the expulsion of a person suffering from any naturally occurring physical or mental illness which required specialised medical treatment that might not be so readily available in the applicant's country of origin,

¹ N v. UK (Application Number 26565/05).

² Prohibition of inhuman or degrading treatment.

³ The right to respect for private and family life.

or which might be available only at a substantial cost.
The same approach to the provision of treatment for mental health is therefore likely to apply if a breach of Article 3 is alleged

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