

ECtHR - D. v. The United Kingdom, Application No. 30240/96, 2 May 1997

Date of Decision:

02-05-1997

Court Name:

European Court of Human Rights

Keywords:[Effective remedy \(right to\)](#) [1][Country of origin](#) [2][Humanitarian considerations](#) [3][Family unity \(right to\)](#) [4][Health \(right to\)](#) [5][Personal circumstances of applicant](#) [6][Real risk](#) [7][Inhuman or degrading treatment or punishment](#) [8]**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 2](#) [10]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 3](#) [11]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 8](#) [12]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 13](#) [13]**Headnote:**

The case involved the proposed removal of a convicted alien drug courier dying of AIDS to his country of origin, St Kitts, where he had no access to proper medical treatment, nor accommodation, family, moral or financial support. The Court found that his deportation would amount to a breach of Art. 3 obligations by the UK.

Facts:

The case originated with an application lodged against the UK in 1996 by the applicant, identified

only as 'D'? The applicant was born in St Kitts and lived there most of his life. His family moved to the United States beginning in the 1970s and he visited the country to try to join them in 1989. In 1991 he was arrested for possession of cocaine and sentenced to prison in the US; after one year he was paroled for good behaviour and deported on 8 January 1993 to St Kitts. On 21 January 1993 he arrived in London and sought leave to enter the UK for two weeks as a visitor; at the airport he was found to be in possession of a substantial quantity of cocaine. On 10 May 1993 he was sentenced to 6 years imprisonment by the Croydon Crown Court. He behaved well in prison and was released on licence on 24 January 1996 and placed in immigration detention pending his removal to St Kitts. However, in August 1994, while serving his prison sentence, the applicant suffered an attack of PCP and was diagnosed as HIV-positive and as suffering from AIDS. The infection appears to have occurred before his arrival in the UK.

On 23 January 1996, the applicant's solicitors requested that he be granted leave to remain in the UK on compassionate grounds since his removal to St Kitts would entail the loss of the medical treatment which he was receiving, thereby shortening his life expectancy. The request was refused, his leave to apply for judicial review to the High Court was refused, and the Court of Appeal dismissed his renewed application. According to the applicant's medical reports, his prognosis was very poor and limited to eight to twelve months. If he were to be removed to St Kitts, which did not have the proper medical care for his condition available, it was estimated the prognosis would be reduced to less than half. Furthermore the applicant had no family home or close family in St Kitts to care for him there, only one cousin. He would have no financial resources, accommodation, or any access to social support in St Kitts. By February 1997 at the hearing before the Court, the applicant's condition was causing concern and according to his counsel; it appeared that his life was drawing to a close.

The applicant alleged that his proposed removal to St Kitts would be in violation of Art. 2, 3, and 8 ECHR and that he had been denied an effective remedy to challenge the removal order in breach of Art. 13.

Decision & Reasoning:

1. Alleged Breach of Article 3

The Court recalled that Contracting States have the right to control the entry, residence, and expulsion of aliens. It also noted the gravity of the offence which was committed by the applicant and stated that the administration of severe sanctions to persons involved in drug trafficking, including the expulsion of alien drug couriers like the applicant, was a justified response. However, a Contracting State must have regard to Art. 3, which prohibits in absolute terms inhuman or degrading treatment. The applicant maintained that his removal would condemn him to spend his remaining days in pain and suffering in conditions of isolation and without proper medical care, thus not only accelerating his death but also creating inhuman and degrading conditions for the end of his life. The Court stated that it was for the respondent State to secure to the applicant the rights guaranteed under Art. 3 irrespective of the gravity of his offence. This principle is not limited to risks which emanate from intentionally inflicted acts of the public authorities in the receiving country or from those of non-State bodies when the country's authorities are unable to afford an individual the appropriate protection. The Court is not limited from scrutinising a claim under Art. 3 where the source of the risk of the proscribed treatment stems from factors which cannot engage either directly or indirectly the responsibility of the public authorities of that country, or which taken alone, do not in themselves infringe the standards of Art. 3, as such a limitation would undermine the absolute character of Art. 3's protection.

The Court then assessed whether the applicant's removal would present a real risk of treatment

contrary to Art. 3 in view of his present medical condition and in light of the material before it at the time of its consideration of the case. It determined that his abrupt withdrawal from the facilities and separation from his carers in the UK would hasten his death and that there was a serious danger of conditions of adversity in St Kitts which would subject him to acute and mental physical suffering. In view of his exceptional circumstances and bearing in mind the critical stage of his fatal illness, it found that implementation of his removal would amount to inhuman treatment in violation of Art. 3. It emphasized that aliens who have served their prison sentences and are subject to expulsion cannot, in principle, claim any entitlement to remain in the Contracting State territory, and stressed the very exceptional circumstances and compelling humanitarian considerations at stake in this case.

2. Alleged Breach of Article 2

The Court considered the applicant's allegation that the implementation of his removal to St Kitts by the UK would amount to a breach of Art. 2 as there would be, he claimed, a direct causal link between his expulsion and his accelerated death as to violate his right to life. The Court found, in agreement with the Commission, that the complaints raised under Art. 2 were indissociable from the substance of the complaint under Art. 3. Having already found that his removal to St Kitts would give rise to a violation of Art. 3, it found it unnecessary to examine the complaint under Art. 2.

3. Alleged Breach of Article 8

The Court considered the applicant's allegation that his proposed removal would violate his right to respect for his private life, as guaranteed by Art. 8. Having regard to its finding under Art. 3., the Court concluded that the applicant's complaints under Art. 8 raised no separate issue.

4. Alleged Breach of Article 13

The Court considered the applicant's complaint that he had no effective remedy in English law in respect of his complaints under Art. 2, 3, and 8, giving rise to a breach of Art. 13. The Court observed that the effect of Art. 13 is to require the provision of a domestic remedy allowing the competent national authority to both deal with the substance with the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision.

The Court found that while the source of the risk of the prohibited treatment was different from that of *Soering* and *Vilvarajah*, in which the Court considered judicial review proceedings in the UK to be an effective remedy in relation to the complaints raised under Art. 3, there was no reason to depart from the conclusion reached in those cases. The substance of the applicant's complaint had been examined by the Court of Appeal; it had power to afford him the relief he sought and the fact that it did not do so was not a material consideration since the effectiveness of a remedy does not depend on the certainty of a favourable outcome for an applicant. Because the applicant thus had an effective remedy in relation to his complaints under Art. 2, 3, and 8, there was no breach of Art. 13 found.

5. Application of Article 50

The applicant did not seek damages but only claimed reimbursement for costs and expenses in respect of the proceedings brought before the Convention institutions, which was granted, albeit at a reduced amount after the Court made an assessment on an equitable basis.

Outcome:

Application granted.

Observations/Comments:

This case established that a deportation could lead to a breach of Art. 3 obligations even when the source of risk was not directly or indirectly inflicted by the public authorities of the receiving State or when, taken alone, would not otherwise give rise to a breach. It further cemented the absolute nature of Art. 3 protection, such that not even a drug trafficking conviction was deemed material to the consideration of the risk of treatment contrary to the provision.

Case Law Cited:

UK - Court of Appeal, R. v. Secretary of State for the Home Department, ex parte D., judgment of 15 February 1996

[ECtHR - Vilvarajah and others v. The United Kingdom, Application Nos. 13163/87, 13164/87, 13165/87, 13447/87, 13448/87, 30 October 1991 \[14\]](#)

[ECtHR - Soering v. The United Kingdom, Application No. 14038/88, 7 July 1989 \[15\]](#)

ECtHR - Ahmed v Austria, Application No. 25964/94 (UP)

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\) \[16\]](#)

Attachment(s):

[D V UK.docx\[17\]](#)

Other sources cited:

United Nations Commission on Human Rights, resolution of 9 March 1993 on the protection of human rights in the context of human immunodeficiency virus or acquired immunodeficiency syndrome

Summit of Heads of Government or Representatives of forty-two States, declaration of 1 December 1994

WHO report on "Health conditions in the Americas", 1994, Volume II, concerning St Kitts and Nevis

Terrence Higgins Trust, "Treatment issues - a basic guide to medical treatment options for people with HIV and AIDS", April 1996

Authentic Language:

English

State Party:

United Kingdom

National / Other Legislative Provisions:

UK - Immigration Act 1971

UK - Immigration and Nationality Department of the Home Office

Links:

- [1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30
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- [13] https://www.asylumlawdatabase.eu/node/195#toc_60
- [14] <https://www.asylumlawdatabase.eu/en/content/ecthr-vilvarajah-and-others-v-united-kingdom-application-nos-1316387-1316487-1316587-1344787>
- [15] <https://www.asylumlawdatabase.eu/en/content/ecthr-soering-v-united-kingdom-application-no-1403888-7-july-1989>
- [16] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>
- [17] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/D%20V%20UK.docx>