

Recht auf Zugang zu Hilfen in der WLH, unabhängig des Aufenthaltsstatus

Die Verweigerung des Zugangs zu Angeboten der WLH / Notschlafstelle etc., wie in einigen Bundesländern Österreichs praktiziert, stellt eine unmenschliche / entwürdigende Behandlung oder Bestrafung dar und verstößt gegen § 3 der Europäischen Menschenrechtskonvention (**Folterverbot**).

Kurze Zusammenfassung:

Der Europäische Gerichtshof betrachtet es als Verstoß gegen Artikel 3 der Europäischen Menschenrechtskonvention, wenn einem Asylsuchenden der Zugang zu Wohnungslosenhilfe-Einrichtungen und –diensten verwehrt wird, weil sich dieser in einer Notlage befindet, aus der er sich selbst wegen der zahlreichen Arbeits- und Erwerbsverbote der Asylgesetze nicht befreien kann. Die Verweigerung kommt einer unmenschlichen und erniedrigenden Behandlung gleich.

Das einschlägige Urteil findet sich im Verfahren: Adam etc. versus Secretary for the Home Department [2005]; (UK / House of Lords; Download unter:

<http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd051103/adam-1.htm>)

Im Einzelnen (Auszug):

5. Thus 55(5)(a) authorised the Secretary of State to provide or arrange for the provision of support to a late applicant for asylum to the extent necessary for the purpose of avoiding a breach of that person's Convention rights. But the Secretary of State's freedom of action is closely confined. He may only exercise his power to provide or arrange support where it is necessary to do so to avoid a breach and to the extent necessary for that purpose. [...] Where [...] that exercise of the power is necessary, the Secretary of State is subject to a duty, and has no choice, since it is unlawful for him under section 6 of the 1998 Act to act incompatibly with a Convention right. [...] **Thus the Secretary of State [...] must make a judgment on the situation of the individual applicant matched against what the Convention requires or proscribes [...].**

6. **Article 3 of the European Convention** prohibits member states from subjecting persons within their jurisdiction to **torture or inhuman or degrading treatment or punishment.** [...]

Section 55(1) prohibits the Secretary of State from providing or arranging for the provision of accommodation and even the barest necessities of life for such an applicant. But the applicant may not work to earn the wherewithal to support himself, since section 8 of the Asylum and

Immigration Act 1996, the Immigration (Restrictions on Employment) Order 1996 (SI 1996/3225) and standard conditions included in the applicant's notice of temporary admission (breach of which may lead to his detention or prosecution) combine to prevent his undertaking any work, paid or unpaid, without permission, which is not given unless his application has been the subject of consideration for 12 months or more.

7. May such treatment be inhuman or degrading?

[...] the European Court [...] took the opportunity [...] to describe the general nature of treatment falling, otherwise than as torture or punishment, within article 3. That description is in close accord with the meaning one would naturally ascribe to the expression. Treatment is inhuman or degrading if, to a seriously detrimental extent, it denies the most basic needs of any human being. As in all article 3 cases, the treatment, to be proscribed, must achieve a minimum standard of severity, and I would accept that in a context such as this, not involving the deliberate infliction of pain or suffering, the threshold is a high one. A general public duty to house the homeless or provide for the destitute cannot be spelled out of article 3. But I have no doubt that the threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life.[...]

8. When does the Secretary of State's duty under section 55(5)(a) arise? The answer must in my opinion be: when it appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life. Many factors may affect that judgment, including age, gender, mental and physical health and condition, any facilities or sources of support available to the applicant, the weather and time of year and the period for which the applicant has already suffered or is likely to continue to [...]

Lord Bingham of Cornhill; Session 2005 – 06; House of Lords