

ECtHR- Aden Ahmed v. Malta, (Application no. 55352/12, 9 December 2013

Country of Applicant:

Somalia

Date of Decision:

09-12-2013

Citation:

ECtHR- Aden Ahmed v. Malta, (Application no. 55352/12, 9 December 2013)

Court Name:

European Court of Human Rights Fourth Chamber

Keywords:[Dublin Transfer](#) [1][Effective access to procedures](#) [2][Effective remedy \(right to\)](#) [3][Detention](#) [4][Family reunification](#) [5][Personal interview](#) [6][Inhuman or degrading treatment or punishment](#) [7][Refugee Status](#) [8][Material reception conditions](#) [9][Return](#) [10]

Relevant Legislative Provisions:Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 3](#) [12]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 5](#) [13]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 6](#) [14]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 34](#) [15]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 35](#) [16]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 41](#) [17]

Headnote:

The Court examined the complaints of a Somali national concerning her detention conditions in Malta (Article 3), which deteriorated her mental health and resulted in inhuman and degrading treatment. She further alleged that her detention was in breach of Article 5 § 1, 2 and 4 (Right to liberty and security).

Facts:

The applicant is a Somalian national who fled Eritrea in 2003, following her parents in 2001, where she subsequently got married and gave birth to a son in 2005. She entered Malta irregularly in 2009, was registered by the immigration authorities and was served with a Removal Order. Subsequently, she was placed in a detention centre awaiting expulsion. Allegedly, the Removal Order did not contain specific reasons for her detention.

On 18 February 2009, she registered her wish to apply for asylum by filling in a Preliminary Questionnaire with the assistance of fellow detainees, who were her only source of information about the asylum procedures in the circumstances. On their advice, she did not disclose that her and her family were refugees in Eritrea, for fear of being sent back.

On 27 March 2009 she was called by the Office of the Refugee Commissioner to complete a formal application for recognition of refugee status in Malta and to attend an interview in order to present the reasons for applying for refugee protection. In her application and interview, she repeated what she had said in her first application and did not correct the inaccurate information she had submitted earlier in the procedure. Her application for refugee status was dismissed. She escaped from detention in May 2009, without appealing against that decision. She subsequently entered Netherlands in an irregular manner and approached the authorities to ask for asylum, in order for her to go to Sweden to be reunited with her family, who had been granted refugee status in Eritrea and were awaiting resettlement in Sweden. On 11 February 2011, the applicant was returned to Malta under the Dublin II Regulation and charged with escaping from public custody and giving false information. She was found guilty and sentenced to six months' imprisonment. Following her release, she was again detained for immigration purposes. At the time of her return to Malta, she was two months pregnant. She later miscarried whilst staying in an Asylum Seekers' Unit in a Maltese hospital.

Decision & Reasoning:

Concerning the applicant's complaints about her detention conditions in Lyster Barracks Detention Centre, Hal Far (Malta) from June 2011 to August 2012, the Court found them as a whole to be in violation of Article 3 of the Convention. In particular, she complained about the overcrowded dormitories, which lacked heating and proper blankets, the absence of female staff in the centre and lack of access to the recreation yard and fresh air. The Court considered that her situation was vulnerable because of her irregular migrant status, her past and her personal emotional circumstances in combination with her fragile health [97].

Concerning the alleged violation of Article 5 para 4 on the right of the applicant to a speedy review of the lawfulness of her detention, the Court, taking cue from *Sabeur Ben Ali v. Malta* (no. 2)

(Application no. 33740/06), noted that lodging a constitutional application in Malta does not ensure a speedy review of the lawfulness of an applicant's detention. Making reference to the case of Ibrahim Suzo, where it took the Immigration Appeals Board (IAB) more than a year to determine the claim, it reiterated that proceedings before the IAB cannot be considered speedy as required by Article 5 para 4 of the Convention. Based on the above mentioned considerations, the Court concluded that the applicant did not have at her disposal an effective and speedy domestic remedy to challenge the lawfulness of her detention [123].

The Court further observed that under Article 5 para 1 (f) any deprivation of liberty would be justified only for as long as deportation or extradition proceedings were in progress [144]. In the present case, given that the domestic authorities did not take any steps to pursue removal, it cannot be said that deportation proceedings were in progress. Therefore, the applicant's detention for fourteen and half months in Lyster Barracks was in violation of Article 5 para 1 of the Convention [146].

With regards to the applicant's complaint under Article 5 para 2, the Court considered that this complaint was inadmissible for non-compliance with the six-month period rule set out in Article 35 para 1 of the Convention and was rejected pursuant to Article 35 para 4 [153].

Outcome:

Violation of Article 3 concerning detention conditions in Lyster Barracks Detention Centre, Hal Far

Violation of Article 5 para 1 (f)

Violation of Article 5 para 4 concerning speedy proceedings against her detention

Case Law Cited:

ECtHR- S.T.S. v. the Netherlands, Application No. 277/05

[ECtHR - Popov v France, Application Nos. 39472/07 and 39474/07](#) [19]

ECtHR - Ananyev et al. Russia, Application Nos. 42525/07 and 60800/08

ECtHR - Cardot v. France, Application No. 11069/84

ECtHR - Akdivar v Turkey, Application No. 21893/93

ECtHR - Musia? v. Poland [GC], Application No. 24557/94

ECtHR - Sabeur Ben Ali v. Malta, Application No. 35892/97

ECtHR - Rehbock v. Slovenia, Application No. 29462/95

ECtHR - Riad and Idiab v. Belgium, Application Nos. 29787/03 and 29810/03

ECtHR - Peers v. Greece, Application No. 28524/95

ECtHR - Dougoz v. Greece, Application No. 40907/98

ECtHR - Handyside v. the United Kingdom, Application No. 5493/72

ECtHR - E. v. Norway, Application No. 11701/85

ECtHR - Kudla v Poland [GC], Application No. 30210/96

ECtHR - McFarlane v Ireland [GC], Application No. 31333/06

ECtHR - Khudoyorov v Russia, Application No. 6847/02

ECtHR - Kadem v. Malta, Application No. 55263/00

ECtHR - Rahmani and Dineva v. Bulgaria, Application No. 20116/08

ECtHR - Tabesh v. Greece, Application No. 8256/07

ECtHR - Raza v. Bulgaria, Application No. 31465/08

ECtHR - S.D. v Greece (Application no. 53541/07)

ECtHR - Z v United Kingdom (Application no. 29392/95)

ECtHR - Alver v Estonia, Application No. 64812/01

ECtHR - Frasik v. Poland, Application No. 22933/02

ECtHR- Mamedova v. Russia, Application No. 7064/05

ECtHR- Paul and Audrey Edwards v. the United Kingdom, Application No. 46477/99

ECtHR- Stephens v. Malta (no. 2), Application No. 33740/06

ECtHR- Gubin v. Russia, Application No. 8217/04

ECtHR- Visloguzov v. Ukraine, Application No. 32362/02

ECtHR- Hazar and Others v. Turkey (dec.), Application no. 62566/00

ECtHR- G.O. v Russia, Application No. 39249/03

ECtHR- Iordache v. Romania, Application no. 6817/02

ECtHR- Zarb v. Malta, Application no. 16631/04

ECtHR- Gera de Petri Testaferrata Bonici Ghaxaq v. Malta, Application No. 26771/07

ECtHR- Ciorap v. Moldova (no. 2), Application No. 7481/06

ECtHR- Keenan v. the United Kingdom, Application No. 27229/95

[ECtHR - Louled Massoud v. Malta, Application No. 24340/08](#) [20]

ECtHR- Torreggiani and Others v. Italy, Application nos. 43517/09 35315/10 37818/10 46882/09 55400/09 57875/09 61535/09

ECtHR- Benediktov v. Russia, Application No. 106/02

ECtHR- Roman Karasev v. Russia, Application No. no. 30251/03

[Belgium - Council for Alien Law Litigation, 4 August 2015, no 150 408](#) [21]

ECtHR- Belevitskiy v. Russia, Application no 72967/01

Van Oosterwijck v Belgium (no. 7654/76)

ECtHR - Karalevičius v Lithuania, Application no. 53254/99

ECtHR - Vernillo v. France, Application No. 11889/85

ECtHR - Johnston and Others v. Ireland, Application No. 9697/82

[ECtHR - Amie and Others v. Bulgaria, Application No. 58149/08](#) [22]

Attachment(s):



[CASE OF ADEN AHMED v. MALTA.pdf](#)[23]

Other sources cited:

[European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#), [24] 9th General report on the CPT's activities covering the period 1 January to 31 December 1998m 30 August 1999

International Commission of Jurists, "[Not Here to Stay: Report of the International Commission of Jurists on Its Visit to Malta on 26-30 September 2011](#)" [25]"

[United Nations Standard Minimum Rules for the Treatment of Prisoners](#) [26], 30 August 1955

Authentic Language:

English

State Party:

Malta

National / Other Legislative Provisions:

Malta - Immigration Act Chapter 217 of the Laws of Malta

Malta- Refugees Act Chapter 420 of the Laws of Malta

Malta-Civil Code

Chapter 16 of the Laws of Malta

Malta - Subsidiary Legislation 217.12

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1213

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A11

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2482

- [6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A57
- [7] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43
- [8] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A192
- [9] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2485
- [10] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2490
- [11] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [12] https://www.asylumlawdatabase.eu/node/195#toc_12
- [13] https://www.asylumlawdatabase.eu/node/195#toc_22
- [14] https://www.asylumlawdatabase.eu/node/195#toc_34
- [15] https://www.asylumlawdatabase.eu/node/195#toc_132
- [16] https://www.asylumlawdatabase.eu/node/195#toc_135
- [17] https://www.asylumlawdatabase.eu/node/195#toc_165
- [18] https://www.asylumlawdatabase.eu/node/195#toc_173
- [19] <https://www.asylumlawdatabase.eu/en/content/ecthr-popov-v-france-application-nos-3947207-and-3947407>
- [20] <https://www.asylumlawdatabase.eu/en/content/ecthr-louled-massoud-v-malta-application-no-2434008-0>
- [21] <https://www.asylumlawdatabase.eu/en/content/belgium-council-alien-law-litigation-4-august-2015-no-150-408>
- [22] <https://www.asylumlawdatabase.eu/en/content/ecthr-amie-and-others-v-bulgaria-application-no-5814908>
- [23] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20ADEN%20AHMED%20v.%>
- [24] <http://www.cpt.coe.int/en/annual/rep-09.pdf>
- [25] <http://oppenheimer.mcgill.ca/Not-Here-to-Stay-Report-of-the>
- [26] <http://www.refworld.org/docid/3ae6b36e8.html>