

## **ECtHR - Sufi and Elmi v. the United Kingdom, Application Nos. 8319/07 and 11449/07**

**Country of Applicant:**

Somalia

**Date of Decision:**

28-11-2011

**Citation:**

Application Nos. 8319/07 and 11449/07

**Court Name:**

ECtHR, Fourth Section

**Keywords:**[Actor of persecution or serious harm](#) [1][Armed conflict](#) [2][Country of origin](#) [3][Non-refoulement](#) [4][Non-state actors/agents of persecution](#) [5][Indiscriminate violence](#) [6][Individual threat](#) [7][Inhuman or degrading treatment or punishment](#) [8][Return](#) [9][Subsidiary Protection](#) [10][Serious harm](#) [11]

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**Relevant Legislative Provisions:**European Union Law

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**Headnote:**

The case concerned a complaint by two Somali nationals that they risked being ill-treated or killed if returned to Mogadishu from the UK.

**Facts:**

Mr Sufi (the first applicant) arrived in the UK in 2003 and claimed asylum on the ground that he

was a member of a minority clan which was persecuted by militia who had killed his father and sister and seriously injured him. His application was refused and his appeal dismissed on the grounds that his account was not credible. In 2008 he was diagnosed as suffering from post-traumatic stress disorder. Mr Elmi (the second applicant) is a member of the majority Isaaq clan. He arrived in the UK in 1988 and was granted leave to remain as a refugee. Following convictions for a number of serious criminal offences both applicants were issued with deportation orders. They appealed unsuccessfully. In their applications to the European Court, the applicants complained that they would be at risk of ill-treatment if they were deported to Somalia.

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### **Decision & Reasoning:**

The sole question in an expulsion case was whether, in all the circumstances of the case, substantial grounds had been shown for believing that the applicant would, if returned, face a real risk of treatment contrary to Article 3. If the existence of such a risk was established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanated from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. However, not every situation of general violence would give rise to such a risk. On the contrary, a general situation of violence would only be of sufficient intensity to create such a risk in the most extreme cases. The following criteria were relevant (but not exhaustive) for the purposes of identifying a conflict's level of intensity: whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; whether the use of such methods and/or tactics was widespread among the parties to the conflict; whether the fighting was localised or widespread; and finally, the number of civilians killed, injured and displaced as a result of the fighting.

In relation to the situation in Somalia, Mogadishu was subjected to indiscriminate bombardments and military offensives, and unpredictable and widespread violence. It had substantial numbers of civilian casualties and displaced persons. While a well-connected individual might be able to obtain protection there, only connections at the highest level would be able to assure such protection and anyone who had not been in Somalia for some time was unlikely to have such connections. In conclusion, the violence was of such a level of intensity that anyone in the city, except possibly those who were exceptionally well-connected to powerful actors, would be at real risk of proscribed treatment.

Nevertheless, Article 3 did not preclude the Contracting States from placing reliance on the internal flight alternative provided that the returnee could travel to, gain admittance to and settle in the area in question without being exposed to a real risk of ill-treatment. The Court was prepared to accept that it might be possible for returnees to travel from Mogadishu International Airport to another part of southern and central Somalia. However, returnees with no recent experience of living in Somalia would be at real risk of ill-treatment if their home area was in or if they were required to travel through an area controlled by al-Shabaab, as they would not be familiar with the strict Islamic codes imposed there and could therefore be subjected to punishments such as stoning, amputation, flogging and corporal punishment.

It was reasonably likely that returnees who either had no close family connections or could not safely travel to an area where they had such connections would have to seek refuge in an Internally Displaced Persons (IDP) or refugee camp. The Court therefore had to consider the conditions in these camps, which had been described as dire. In that connection, it indicated that where a crisis was predominantly due to the direct and indirect actions of parties to a conflict as opposed to poverty or to the State's lack of resources to deal with a naturally occurring phenomenon, such as a drought the preferred approach for assessing whether dire humanitarian conditions had reached the Article 3 threshold was that adopted in *M.S.S. v. Belgium and Greece*,

which required the Court to have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time frame. Conditions in the main centres – the Afgooye Corridor in Somalia and the Dadaab camps in Kenya – were sufficiently dire to amount to treatment reaching the Article 3 threshold. IDPs in the Afgooye Corridor had very limited access to food and water, and shelter appeared to be an emerging problem as landlords sought to exploit their predicament for profit. Although humanitarian assistance was available in the Dadaab camps, due to extreme overcrowding, access to shelter, water and sanitation facilities was extremely limited. The inhabitants of both camps were vulnerable to violent crime, exploitation, abuse and forcible recruitment and had very little prospect of their situation improving within a reasonable time frame. Moreover, the refugees living in – or, indeed, trying to get to – the Dadaab camps were also at real risk of *refoulement* by the Kenyan authorities.

As regards the applicant's personal circumstances, the first applicant would be at real risk of ill-treatment if he were to remain in Mogadishu. Since his only close family connections were in a town under the control of al-Shabaab and as he had arrived in the United Kingdom in 2003, when he was only sixteen years old, there was also a real risk of ill-treatment by al-Shabaab if he attempted to relocate there. Consequently, it was likely that he would find himself in an IDP or refugee camp where conditions were sufficiently dire to reach the Article 3 threshold and the first applicant would be particularly vulnerable on account of his psychiatric illness.

The second applicant would be at real risk of ill-treatment if he were to remain in Mogadishu. Although it was accepted that he was a member of the majority Isaaq clan, the Court did not consider this to be evidence of connections powerful enough to protect him. There was no evidence that he had any close family connections in southern and central Somalia and, in any case, he had arrived in the United Kingdom in 1988, when he was nineteen years old, and had had no experience of living under al-Shabaab's repressive regime. He would therefore be at real risk if he were to seek refuge in an area under al-Shabaab's control. Likewise, if he were to seek refuge in the IDP or refugee camps. Lastly, the fact that he had been issued with removal directions to Mogadishu rather than to Hargeisa appeared to contradict the Government's assertion that he would be admitted to Somaliland.

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**Outcome:**

A violation of Article 3 if removed to Somalia.

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**Subsequent Proceedings :**

The referral to the Grand Chamber was rejected.

**Observations/Comments:**

The Court joined the two applications pursuant to Rule 42 § 1 of the Rules of Court given their similar factual and legal background.

The indication made to the Government under Rule 39 of the Rules of Court was in force until the judgment became final.

**Case Law Cited:**

ECtHR - T. v. the United Kingdom [GC], Application No. 24724/94

[UK - Court of Appeal, 24 June 2009, QD & AH \(Iraq\) v Secretary of State for the Home Department with the United Nations High Commissioner for Refugees Intervening \[2009\] EWCA](#)

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

ECtHR - T.I. v United Kingdom (Application no. 43844/98)

UK - AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49, [2008] 4 All ER 190, [2008] 1 AC 678, [2007] 3 WLR 832

UK - HM and Others (Iraq) v. Secretary of State for the Home Department, CG [2010] UKUT 331 (IAC)

UK - NM and others (Somalia) CG [2005] UKIAT 00076

[UK - Court of Appeal, 23 April 2010, HH \(Somalia\) & Others v Secretary of State for the Home Department \[2010\] EWCA Civ 426](#) [13]

[Sweden - Migration Court of Appeal, 22 February 2011, UM 10061-09](#) [14]

ECtHR - Jabari v Turkey, 11 July 2000, (Application no. 40035/98)

[ECtHR - Salah Sheekh v The Netherlands \(Application no. 1948/04\) - resource](#) [15]

[UK - HH & others \(Somalia\) CG \[2008\] UKAIT 00022](#) [16]

[ECtHR - MSS v Belgium and Greece \(Application no. 30696/09\) - resource](#) [17]

[ECtHR - HLR v France \(Application no. 24573/94\)](#) [18]

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [19]

[UK - House of Lords, 15 February 2006, Januzi v Secretary of State for the Home Department & Ors \[2006\] UKHL 5](#) [20]

[ECtHR - Saadi v Italy, Application no. 37201/06](#) [21]

ECtHR - Mamatkulov Askarov v Turkey, Applications nos. 46827/99 and 46951/99

ECtHR - Hilal v United Kingdom, Application no. 45276/99

ECtHR - Selvanayagam v. the United Kingdom (dec.), Application No. 57981/00

ECtHR - McFeeley and others v. the United Kingdom, Application No. 8317/78

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ECtHR - N. v. Finland, Application No. 38885/02

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ECtHR - Milosevic v. the Netherlands, Application No. 77631/01

ECtHR - Kleyn and Others v. the Netherlands [GC], Application Nos. 39343/98, 39651/98, 43147/98 and 46664/99

ECtHR - Abdulaziz, Cabales and Balkandali v United Kingdom (Application no. 9214/80; 9473/81; 9474/81)

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

ECtHR - A v United Kingdom, Application No. 25599/94

ECtHR - Said v Netherlands, Application No. 2345/02

ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI

ECtHR - Üner v. the Netherlands [GC], Application No. 46410/99

[ECtHR - NA v UK, Application No. 25904/07](#) [22]

[CJEU - C-465/07 Meki Elgafaji, Noor Elgafaji v Staatssecretaris van Justitie](#) [23]

[UK - AM & AM \(Somalia\) v. Secretary of State for the Home Department, CG \[2008\] UKAIT 00091](#) [24]

**Attachment(s):**



[CASE OF SUFI AND ELMİ v. THE UNITED KINGDOM.pdf](#)[25]

**Other sources cited:**

- UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia of 5 May 2010; reports by various international organisation.
- United Kingdom Border and Immigration Agency Operational Guidance Note; various governments? and UN reports

**Authentic Language:**

English

**State Party:**

United Kingdom

**National / Other Legislative Provisions:**

UK - Nationality

Immigration and Asylum Act 2002 - Section 103A

UK - Immigration Rules - Para 353

UK - Immigration Act 1971 - Para. 8 of Sched. 2

**Links:**

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