

## **ECtHR - Suso Musa v. Malta, (Application no. 42337/12), 9 December 2013**

**Country of Applicant:**

Sierra Leone

**Date of Decision:**

09-12-2013

**Citation:**

Suso Musa v. Malta, (Application no. 42337/12), 9 December 2013

**Court Name:**

European Court of Human Rights Fourth Chamber

**Keywords:**[Effective remedy \(right to\)](#) [1][Refugee Status](#) [2][Material reception conditions](#) [3][Reception conditions](#) [4]

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**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 5](#) [6]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 31](#) [7]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 34](#) [8]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 35](#) [9]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 36](#) [10]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 41](#) [11]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 46](#) [12]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 53](#) [13]

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**Headnote:**

Examining the applicant's complaints of unlawful detention, absence of information on the specific reasons of his detention and lack of access to effective remedies, the Court found a violation of Article 5 para 1 and Article 5 para 4 of the Convention.

**Facts:**

The applicant is allegedly a Sierra Leone national who entered Malta in an irregular manner by boat in April 2011. Subsequently arrested by the police, he was placed in detention and presented with a document containing both a Return Decision and a Removal Order. On 14 April 2011 he applied for asylum. His application was rejected by the Office of the Refugee Commissioner and on appeal by the Refugee Appeals Board. Meanwhile, pending the above asylum proceeding, he challenged the legality of his detention before the Immigration Appeals Board (IAB). His application was rejected more than a year after.

The applicant complained before the ECtHR that the Maltese legal system had not provided him with a speedy and effective remedy, contrary to Article 5 para 4 of the Convention. Consequently, according to the applicant, his detention up to the date of determination of his asylum application was incompatible with Article 5 para 1 (f) of the Convention. Finally, he complained under Article 5 para 2 that he was not provided with information regarding the specific reasons for his detention.

**Decision & Reasoning:**

Citing *Saadi v. the United Kingdom* (no. 13229/03), the Court reiterated its interpretation of the meaning of the first limb of Article 5 para 1 (f), namely "*to prevent people effecting an unauthorized entry into the country*". It added that the question as to when the first limb of Article 5 ceases to apply, because the individual has been granted formal authorisation to enter or stay, is largely dependent on national law [97]. Turning to the case at hand, the Court noted that the applicant's detention between 8 April 2011 and 2 April 2012 had as a legal basis Article 5 in conjunction with Article 14 of the Immigration Act and therefore fell under the first limb of Article 5 para 1 (f) [99].

However, even accepting that the applicant's detention had been closely connected to the purpose of preventing his unauthorised entry to the country, the Court raised concerns about the appropriateness of the place and the conditions of detention endured. Taking cue from CPT's and ICJ's reports on the conditions in question, it reiterated that they could amount to inhuman and degrading treatment under Article 3 of the Convention.

With regards to whether the second period of the applicant's detention (2 April 2012-21 March 2013) fell under the second limb of Article 5 para 1 (f), the Court reiterated that detention under the present article could be justified only for as long as deportation proceedings were in progress. If such proceedings were not prosecuted with due diligence and in good faith, the detention would cease to be permissible under Article 5 para 1(f) [104]. The period of detention of ten months could not be considered as serving the purposes of deportation. The Court noted that the applicant remained in detention until March 2013 despite the fact that the authorities had known since 11 February 2013 that there was no prospect of deporting him. Therefore, the Court considered that the applicant's detention following the determination of his asylum claim was not compatible with Article 5 para 1 (f) [105].

Citing *Louled Massoud v. Malta*, no. 24340/08, the Court highlighted that the circumstances haven't changed since then given that the IAB system did not constitute an effective remedy

guaranteeing the detainee's right to challenge his detention speedily as required by Article 5 para 4.

Further the Court considered the applicant's complaint under Article 5 para 2 to be manifestly ill-founded and rejected it in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

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**Outcome:**

Violation of Article 5 § 1 on account of the duration of the applicant's detention coupled with the inadequate conditions at the barracks where he was held

Violation of Article 5 § 4 on account of the fact that none of the remedies available in Malta could be considered speedy for the purposes of that provision.

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**Subsequent Proceedings :**

Fulfilling its function of execution monitoring, the CoE Committee of Ministers has received and commented on several actions plans on the part of Maltese authorities against the backdrop of constructive dialog.

Most recently, on the individual level, the CM noted that the individuals have been released from detention. On the general level, it welcomed that following its recommendations the practice of systematic detention has been replaced by a case by case assessment, the speed with which asylum and expulsion procedures are carried out has been increased, and detention conditions have been enhanced. Moreover, legislative amendments are underway to limit possible detention to maximum nine months, and to ensure that challenges to detention are assessed by the Immigration Appeals Board in a Convention compatible manner.

**Case Law Cited:**

ECtHR - *Idalov v. Russia* [GC], no. 5826/03

ECtHR - *Nada v. Switzerland* [GC], Application No. 10593/08

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

ECtHR - *Ocalan v Turkey* (2005) (Application no. 46221/99)

ECtHR - *Shamayev v Georgia* (April 2005) (Application no. 36378/02)

ECtHR - *Conka v Belgium* (Application no. 51564/99)

ECtHR - *A. and Others v. the United Kingdom* [GC], Application No. 3455/05

ECtHR - *Amuur v. France*, Application No. 19776/92

ECtHR - *Abdolkhani and Karimnia v. Turkey*, Application No. 30471/08

ECtHR - *Louled Massoud v. Malta*, Application No. 24340/08

ECtHR - Scoppola v. Italy (no. 2) [GC], Application No. 10249/03

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

ECtHR - Fox, Campbell and Hartley v. the United Kingdom, Application Nos. 12244/86, 12245/86 and 12383/86

ECtHR - Kaboulov v. Ukraine, Application No. 41015/04

ECtHR - Stanev v. Bulgaria [GC], Application No. 36760/06

ECtHR - Driza v. Albania, no. 33771/02

ECtHR - Broniowski v. Poland [GC], Application No. 31443/96

ECtHR - Maestri v. Italy [GC], Application No. 39748/98

[ECtHR - R.U. v. Greece, Application No. 2237/08](#) [14]

[ECtHR - Saadi v. United Kingdom, no. 13229/03, 29 January 2008](#) [15]

ECtHR - Ahmade v. Greece, Application No 50520/09

Mente? and others v. Turkey, no. 23186/94

Varnava and others v. Turkey [GC], nos 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90

ECtHR- Scozzari and Giunta v. Italy [GC], ( Application nos. 39221/98 and 41963/98)

ECtHR- Yonkeu v. Latvia, no 57229/09

ECtHR - Kanagaratnam v. Belgium no. 15297/09

ECtHR - Bordovskiy v. Russia, no. 49491/99

ECtHR - Galliani v. Romania, no. 69273/01

ECtHR - Brum?rescu v. Romania, no. 28342/95

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

**Attachment(s):**



[CASE OF SUSO MUSA v. MALTA.pdf](#)[17]

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**Other sources cited:**

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[Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visit to Malta from 23 to 25 March 2011](#) [19], 9 June 2011

[Report to the Maltese Government on the visit to Malta carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 19 to](#)

[26 May 2008](#) [20], 17 February 2011

[UNHCR Guidelines on Applicable Criteria and Standards on the Detention of Asylum Seekers and Alternatives to Detention \(2012\)](#) [21]

[Recommendation Rec\(2003\)5 of the Committee of Ministers to member states on measures of detention of asylum seekers \(Adopted by the Committee of Ministers on 16 April 2003 at the 837th meeting of the Ministers? Deputies\)](#) [22]

Council of Europe, [Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons \(CAHAR\) ? Twenty Guidelines on forced return](#) [23], 2005

International Commission of Jurists (?ICJ?), [?Not here to stay?, Report of the international Commission of Jurists on its visit to Malta on 26-30 September 2011](#) [24], May 2012

**Authentic Language:**

English

**State Party:**

Malta

**National / Other Legislative Provisions:**

Malta - Immigration Act Chapter 217 of the Laws of Malta

Malta - Subsidiary Legislation 217.12

Common Standards and Procedures for Returning Illegally Staying Third Country Nationals Regulation

Legal Notice 81 of 2011

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**Links:**

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[2] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A192](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A192)

[3] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A2485](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2485)

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[14] <https://www.asylumlawdatabase.eu/en/content/ecthr-ru-v-greece-application-no-223708>

[15] <https://www.asylumlawdatabase.eu/en/content/ecthr-saadi-v-united-kingdom-no-1322903-29-january-2008>

[16] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>

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<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20SUSO%20MUSA%20v.%20>

[18] [http://files.amnesty.org/air12/air\\_2012\\_full\\_en.pdf](http://files.amnesty.org/air12/air_2012_full_en.pdf)

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- [24] <http://oppenheimer.mcgill.ca/Not-Here-to-Stay-Report-of-the>