



The United Kingdom would violate human rights of two Somali nationals if it returned them to Mogadishu

In today's Chamber judgment in the lead¹ case [Sufi and Elmi v. the United Kingdom](#) (application nos. 8319/07 and 11449/07), which is not final², the European Court of Human Rights held, unanimously, that:

There would be a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if the applicants were sent back to Mogadishu.

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

There are currently 214 applications about returns to Somalia pending against the United Kingdom before the European Court of Human Rights.

Principal facts

The applicants, Abdisamad Adow Sufi and Abdiaziz Ibrahim Elmi, are Somali nationals who were born in 1987 and 1969 respectively. They are both currently detained in immigration detention centres in the United Kingdom.

Mr Sufi arrived in the United Kingdom 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 considered credible.

Mr Elmi was born in Hargeisa, which is now the capital of the self-declared State of Somaliland. He arrived in the United Kingdom in 1988 and in 1989 was granted leave to remain as a refugee. In 1993 he was granted indefinite leave to remain.

Following convictions for a number of serious criminal offences – including burglary and threats to kill in Mr Sufi's case and robbery and supplying class A drugs (cocaine and heroine) in Mr Elmi's case – both men were issued with deportation orders. They appealed unsuccessfully.

The European Court of Human Rights granted interim measures, under Rule 39 of the Rules of Court, to Mr Sufi and Mr Elmi on 27 February and 14 March 2007 respectively, to prevent their removal to Mogadishu prior to the Court's consideration of their applications.

¹ A lead case establishes the principles which will be applied to all similar pending cases.

² Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life) and 3 of the Convention, the applicants complained that their removal to Somalia would place their lives at risk and/or expose them to a real risk of ill-treatment. They also relied on Article 8 (right to respect for family and private life).

The applications were lodged with the European Court of Human Rights on 21 February 2007 and 14 March 2007 respectively.

Judgment was given by a Chamber of seven, composed as follows:

Lech **Garlicki** (Poland), *President*,
Nicolas **Bratza** (the United Kingdom),
Ljiljana **Mijović** (Bosnia and Herzegovina),
Sverre Erik **Jebens** (Norway),
Päivi **Hirvelä** (Finland),
Ledi **Bianku** (Albania),
Vincent A. **de Gaetano** (Malta), *Judges*,

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of inhuman or degrading treatment\)](#)

The Court considered the applicants' complaints under Articles 2 and 8 in the context of its examination of the related complaint under Article 3.

The Court reiterated that the prohibition of torture and of inhuman or degrading treatment or punishment was absolute, irrespective of the victims' conduct. Consequently, the applicants' behaviour, however undesirable or dangerous, could not be taken into account.

In view of the findings of the United Kingdom Asylum and Immigration Tribunal in *AM (Somalia)*, it was not in dispute that toward the end of 2008 Mogadishu was not a safe place to live for the majority of its citizens³.

According to recent country reports⁴, the situation in Mogadishu deteriorated further in 2010 and 2011, resulting in thousands of civilian casualties and the displacement of hundreds of thousands of people from the city.

³ In its most recent country guidelines, the UK Asylum and Immigration Tribunal (now the Upper Tribunal (Immigration and Asylum Chamber)) found that a situation of internal armed conflict existed throughout southern and central Somalia, in which all significant parties were engaging in indiscriminate attacks. The Tribunal considered that Mogadishu was no longer safe for the majority of its citizens. However, it did not rule out the possibility that individuals with connections to powerful people in Mogadishu might be able to live safely there. Anyone else being returned would face a real risk of persecution or serious harm. Nevertheless, those whose home area was in any part of southern and central Somalia might be able to relocate in safety and without undue hardship. In various cases, the United Kingdom Court of Appeal considered that following the country guidelines, most potential returnees to Mogadishu would be entitled to protection as only those Somalis who could find a place of safety without undue risk or who had access to protection from the endemic dangers could properly be returned.

⁴ Human Rights Watch described the situation as "one of the world's worst human rights catastrophes". In particular, the reports - including that of the United Kingdom Border Agency Fact-Finding Mission - suggested that all parties to the conflict continued to engage in

The Court therefore held that the level of violence in Mogadishu was of sufficient intensity to pose a real risk of treatment in breach of Article 3 to anyone in the capital. It did not exclude the possibility – found by the Asylum and Immigration Tribunal in *AM (Somalia)* – that a well-connected individual might be able to obtain protection in Mogadishu, but it considered that only connections at the highest level would be able to assure such protection, and that anyone who had not been in Somalia for some time was unlikely to have such connections.

With regard to internal relocation, the Court did not consider that a returnee could find refuge or support in an area where s/he had no close family connections. If s/he had such connections a decision-maker would have to decide if s/he could reach the area safely. The Court accepted that it might be possible for a returnee to travel from Mogadishu International Airport to another part of southern and central Somalia without being exposed to a real risk of treatment proscribed by Article 3. However, a returnee with no recent experience of living in Somalia would be at real risk of ill-treatment if his home area was in – or if he was required to travel through – an area controlled by al-Shabaab, as he would not be familiar with the strict Islamic codes imposed there and could therefore be subjected to punishments such as beating, flogging, stoning or amputation.

If a returnee had no family connections, or could not travel safely to an area where he had such connections, the Court considered it likely that he would find himself in an IDP or refugee camp. The Court considered that conditions in both the Afgooye Corridor and the Dadaab camps were sufficiently dire to amount to treatment reaching the Article 3 threshold and any returnee forced to seek refuge there would be at real risk of being exposed to treatment in breach of Article 3.

As Mr Sufi's only family connections were in Qoryoley, an area under the control of al-Shabaab, the Court considered that, if returned, it was likely that he would end up in an IDP or refugee camp. Consequently, it considered that his removal would violate his rights under Article 3.

Although Mr Elmi was born in Hargeisa, the Court considered that the fact he had been issued with removal directions to Mogadishu appeared to contradict the Government's assertion that he could gain access to Somaliland. In the past, people from Somaliland had been returned directly to Hargeisa. In the absence of any evidence of close family connections elsewhere in southern or central Somalia, the Court considered it likely that Mr Elmi would also end up in an IDP or refugee camp, where there would be a real risk of ill-treatment in violation of Article 3.

indiscriminate violence, conducting mortar attacks and firing indiscriminately in densely populated areas of Mogadishu. As many as 20-50 civilians were dying in the city every week and hospitals were swamped. Outside Mogadishu, the conflict was described as sporadic and localised around key strategic towns. The lowest levels of violence were reported to be in the areas controlled by al-Shabaab, an armed Islamic faction with suspected links to al-Qaeda. However, in those areas al-Shabaab were enforcing a particularly draconian version of Sharia law, regulating every detail of daily life from dress codes, and the length of men's beards to music being listened to and the choice of mobile phone ring tone. There were reports of Somalis being beaten and/or flogged for minor infringements, such as playing scrabble, watching World Cup matches, and dressing inappropriately. There were also reports of forced recruitment of adults and children by al-Shabaab in the areas under their control.

1.3 million Somalis had been displaced on account of the conflict and half the population was dependent on food aid. Aid agencies had virtually no access to the Afgooye Corridor and both adults and children living there were extremely vulnerable to exploitation, sexual violence and forced recruitment. Refugees in the Dadaab camps were living in severely overcrowded conditions (nearly 300,000 refugees were living in camps intended to hold a maximum of 90,000), such that many refugees had limited access to water and shelter. Refugees living in those camps were also vulnerable to theft, sexual violence, and exploitation by the Kenyan authorities.

Article 41 (just satisfaction)

The Court held that the United Kingdom was to pay Mr Sufi 14,500 euros (EUR) and Mr Elmi EUR 7,500 for costs and expenses. The applicants made no claim – and no award was made – in respect of pecuniary or non-pecuniary damage.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Frédéric Dolt (tel: + 33 3 90 21 53 39)

Nina Salomon (tel: + 33 3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European