



Somali man would not be at risk due to current security situation in Mogadishu if deported from Sweden

In today's Chamber judgment in the case of [K.A.B. v. Sweden](#) (application no. 886/11), which is not final¹, the European Court of Human Rights held, by five votes to two, that there would be:

no violation of Article 2 (right to life) or Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if the applicant were returned to Somalia.

The case addresses the prevailing security situation in Mogadishu (Somalia). It concerned a Somali national, originally from Mogadishu, who alleged that his deportation from Sweden to Somalia would put him at real risk of being killed or subjected to ill-treatment.

The Court found that the applicant would not be at risk as a result of the current security situation in Mogadishu, the general level of violence in the city having decreased since 2011 or beginning of 2012. Also assessing the applicant's personal situation, the Court concluded that he had failed to make out a plausible case that he would face a real risk of being killed or subjected to ill-treatment on return. Notably, he does not belong to any group that is at risk of being targeted by an Islamist group (al-Shabaab) and he allegedly has a home in Mogadishu, where his wife lives.

Continuation of interim measures

The Court also decided to continue its indication to the Swedish Government, made under Rule 39 of the Rules of Court, that the applicant should not be removed until the judgment became final or until further decision.

Principal facts

The applicant is a Somali national who was born in 1960 and originates from Mogadishu.

He entered Sweden and requested asylum in April 2009, claiming that he had fled Somalia due to persecution by the Islamic courts and al-Shabaab, an Islamist group, as he had worked from 1992 to 2005 for the American Friends Service Community. He had notably received threatening telephone calls telling him to stop spreading Christianity.

He was heard by both the Swedish Migration Board, which interviewed him on five occasions, and the Swedish Migration Court, which held an oral hearing on his case. He was assisted by legal counsel and given the opportunity to submit written observations.

Both these authorities rejected his asylum request, concluding that he had failed to substantiate a well-founded fear of persecution. They notably found that his submissions concerning his work for the American Friends Service Community as well as the alleged threats from the Islamic courts and al-Shabaab were too vague. They also considered that there were a number of credibility issues with

¹ 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

his submissions. In particular, he had failed to prove that he had lived in Mogadishu in the years prior to leaving Somalia in 2009 (when he had supposedly been threatened) and there were discrepancies between information provided by the applicant and his relatives as to his habitual place of residence.

In July 2010 the Migration Court refused the applicant leave to appeal.

Subsequent requests for his application for a residence permit to be examined anew were ultimately rejected in July 2011.

In the meantime, in January 2011, the European Court of Human Rights applied an interim measure in the applicant's case, requesting the Swedish Government not to deport him to Somalia until further notice.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) and Article 3 (prohibition of torture and of inhuman or degrading treatment), the applicant complained that his removal from Sweden to Somalia would expose him to a real risk of being killed or seriously assaulted by al-Shabaab.

The application was lodged with the European Court of Human Rights on 29 December 2010.

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

Mark Villiger (Liechtenstein), *President*,
 Angelika Nußberger (Germany),
 Boštjan M. Zupančič (Slovenia),
 Ann Power-Forde (Ireland),
 Ganna Yudkivska (Ukraine),
 Helena Jäderblom (Sweden),
 Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Articles 2 and 3 (risk of applicant being killed and/or ill-treated)

While the Swedish authorities intend to deport the applicant to Somaliland, the Court accepted that there was a real risk that he would have no alternative but to go to other areas of Somalia, such as Mogadishu, his city of origin where he has a home and where his wife lives. To be admitted to and settle in Somaliland, it is necessary to have a stronger affiliation, such as belonging to Somaliland's Isaaq clan, than that held by the applicant, who originates from Mogadishu and belongs to the Sheikal clan.

Just over two years ago the Court had found in the case of [Sufi and Elmi v. the United Kingdom](#) (nos. 8319/07 and 11449/07, 28 June 2011) that the level of violence in Mogadishu was of such intensity that anyone in the city would be at a real risk of treatment contrary to Article 3 of the European Convention.

However, having regard to the most recent country information, the Court concluded in this case that the security situation in Mogadishu had improved since 2011 or since the beginning of 2012 and that the general level of violence in the city had decreased. Notably, al-Shabaab was no longer in power in the city, there was no longer any front-line fighting or shelling and the number of civilian casualties had gone down.

The human rights and security situation continued to be serious and fragile and was in many ways unpredictable, but it was not, at present, of such a nature as to place everyone present in Mogadishu at a real risk of being killed or ill-treated.

Finally, assessing the applicant's personal situation, the Court noted that his claims had been carefully examined by the Swedish migration authorities, which then gave extensive reasons for their conclusions. The Court agreed with the Swedish authorities that there were credibility issues with a number of the applicant's submissions, notably whether he had lived in Mogadishu prior to leaving in 2009 which was when he alleged the threats against him had taken place. Indeed, the Court found it surprising that al-Shabaab would start to threaten the applicant four years after he had stopped working for the American Friends Service Community. Moreover, his submissions about his work for that organisation were vague. Nor does he belong to any group that is at risk of being targeted by al-Shabaab and he allegedly has a home in Mogadishu (where his wife lives).

The Court concluded that the applicant had failed to make out a plausible case that he would face a real risk of being killed or subjected to ill-treatment upon return. On that account Sweden would not be in breach of Article 3 in the event of his removal to Mogadishu.

Separate opinions

Judges Zupančič and Power Forde expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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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 Convention on Human Rights.