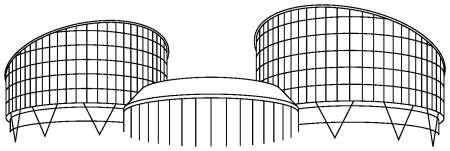

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF A.A. AND OTHERS v. SWEDEN

(Application no. 34098/11)

JUDGMENT

STRASBOURG

24 July 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.A. and Others v. Sweden,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
André Potocki,
Helena Jäderblom, *judges,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 8 July 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34098/11) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Somali nationals, A.A. and his three children ("the applicants"), on 1 June 2011. The President of the Section acceded to the applicants' request not to have their names disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicants were represented by Ms Maria Guzman, a lawyer practising in Askim. The Swedish Government ("the Government") were represented by their Agent, Mrs Hanna Kristiansson, of the Ministry for Foreign Affairs.

3. The applicants alleged, in particular, that the implementation of the deportation order to return them to Somaliland would be in violation of Article 3 of the Convention.

4. On 12 July 2011 the President of the Fifth Section decided to apply Rule 39, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings that the applicants should not be deported to Somalia until further notice.

5. On 8 November 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1964, 1990, 1994 and 1997 respectively and live in Gothenburg.

7. They entered Sweden on 1 June 2009, when they were respectively forty-five, nineteen, fifteen and twelve years old, and applied for asylum and residence permits the following day.

8. The first and second applicants were heard by the Migration Board (*Migrationsverket*) on 5 and 16 June and 26 August 2009. A language test was carried out by an analyst, who had been born and raised in Mogadishu and came to Sweden in 2003. After the initial interview, legal counsel was appointed to represent the applicants.

9. The first applicant submitted, among other things, that they were members of the Sheikal clan and that the family had lived together in a village called Hosingo in southern Somalia since 1999. The first applicant had a university degree from Saudi Arabia. On 16 June 2009, he explained to the Board that he had not visited Saudi Arabia since 1999. On 26 August 2009 he was confronted with the fact that his passport had been stamped on two occations, in 2000 and 2005 in Djibouti, situated northwest of Somalia, whereupon he explained that he had travelled via Djibouti to Saudi Arabia and that those trips must have been after 1999. Once he had visited his brother's daughter in Saudi Arabia. He did not recall the other visit. There were also stamps in his passport up to 2005 from Lowyacado, Borama and Berbera, in Somaliland, but the first applicant maintained that he and his family had remained in Hosingo throughout that period.

10. Al Shabaab took over Hosingo when the Ethiopian army withdrew in the middle of 2008. On 5 June 2009, the first applicant explained to the Board that he had participated in a demonstration to protest against Al Shabaab taking over their village, and that therefore he was on their list of persons to kill. On 16 June 2009 he explained that the elders of the village decided that they would try to negotiate with Al Shabaab. The negotiation ended in disagreement and the spiritual leader of the village was killed immediately after the meeting by two masked men. The first applicant was listed as a person to be killed and shortly thereafter two armed and masked men came to his house and asked for him. On 26 August 2009 he explained that the leader of the village had been killed six days after the meeting with Al Shabaab. The applicants would not be able to move elsewhere in Somalia since their clan was not domiciled anywhere else in the country and Al Shabaab was present everywhere.

11. The second applicant stated initially that her mother and husband remained in Hosingo. Later she explained that her husband had left the

village. She did not know where he was. She still had six siblings left in Hosingo, plus some uncles and cousins. In 2006 the family had problems with Al Shabaab, which burned down their house. The second applicant had burn scars on her upper body from that incident. In 2008 one of the village leaders was killed and her father and husband had to flee. She was afraid of being raped by Al Shabaab upon return.

12. On 11 September 2009 the Migration Board rejected the applicants' request for asylum. It noted at the outset that it was difficult for Somali citizens to prove their identity since there was no authority that could issue passports or other acceptable identity documents. Accordingly, the applicants' stories were decisive for determining their origin. The Board found that the first applicant had provided detailed information about Hosingo village, situated in southern Somalia. However, his pronunciation of some words was typical of that in northern Somalia. In addition he had stamps in his passport, dated 2000 to 2005, from airports in Somaliland. There were no entry or departure stamps from trips to or from southern Somalia. Finally, he had provided contradictory statements about the crucial event in 2008, notably whether the leader was killed immediately or six days after the negotiation with Al Shabaab, and why he was being sought by them, and he had been vague about the situation in south and central Somalia. The language analysis of the second applicant indicated that she originated from Somaliland. Moreover, she had not been able to give any detailed information about the village or her clan, which could be verified. In conclusion, the Migration Board did not find it credible that the applicants had been living in Hosingo until their departure from Somalia. It found it much more likely that the applicants' most recent home had been in northern Somalia.

13. The applicants appealed against the decision to the Migration Court (*Migrationsdomstolen*), before which an oral hearing was held on 12 May 2010. The Migration Court refused to hear two witnesses on the applicants' behalf, who allegedly could have certified that they were from Hosingo. However, their written testimony was allowed.

14. By a judgment of 2 June 2010 the Migration Court upheld the Migration Board's decision. The Migration Court did not question that the first applicant originated from Hosingo in southern Somalia. Like the Migration Board, however, it found that the language analysis of the first and the second applicants, and their various explanations, did not support their contention that they had had their latest domicile in southern Somalia or that they should be considered refugees or otherwise in need of protection.

15. On 3 September 2010 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused leave to appeal. Hence the deportation order became enforceable.

16. In autumn 2010 the applicants claimed that there were impediments to the enforcement of their deportation orders. On 19 October 2010 the Migration Board decided not to reconsider the case, finding that the applicants had failed to present new circumstances which could justify reconsideration of the case.

17. At the beginning of 2011, the applicants again requested a re-examination of their cases, which was refused by the Migration Board on 31 March 2011. The applicants appealed against this decision to the Migration Court, which rejected the appeal on 6 May 2011.

18. On 16 January 2012 the third applicant claimed that there were impediments to the enforcement of his deportation order. On 9 February 2012 the Migration Board decided not to reconsider the case, finding that no new circumstances justifying reconsideration had been presented.

19. Likewise, in March 2012 the first and the fourth applicants claimed that there were impediments to the enforcement of the deportation orders against them, claims which were rejected by the Migration Board on 29 March 2012.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The basic provisions applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the 2005 Aliens Act (*Utlänningslagen*, 2005:716 – hereafter referred to as "the 2005 Act").

21. An alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden (Chapter 5, section 1 of the 2005 Act). The term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country (Chapter 4, section 1). This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, section 2).

22. Moreover, if a residence permit cannot be granted on the above grounds, such a permit may be issued to an alien if, after an overall assessment of his or her situation, there are such particularly distressing circumstances (*synnerligen ömmande omständigheter*) to allow him or her

to remain in Sweden (Chapter 5, section 6). Special consideration should be given, *inter alia*, to the alien's health status. According to the preparatory works (Government Bill 2004/05:170, pp. 190-191), life-threatening physical or mental illness for which no treatment can be given in the alien's home country could constitute a reason for the grant of a residence permit.

23. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, section 1). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, section 2).

24. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This is the case where new circumstances have emerged which indicate that there are reasonable grounds for believing, *inter alia*, that enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced (Chapter 12, section 18). If a residence permit cannot be granted under these criteria, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, sections 1 and 2, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not having done so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, section 19).

25. Under the 2005 Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances: the Migration Board, the Migration Court and the Migration Court of Appeal.

III. RELEVANT COUNTRY INFORMATION

26. Extensive information about Somalia can be found in *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, §§ 37-195, 28 June 2011, and in *K.A.B. v. Sweden*, no. 886/11, §§ 28 to 49. The information set out below concerns events and developments occurring after the delivery of the latter judgment on 5 September 2013.

27. The most recent UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia ("the Eligibility Guidelines") were published on 17 January 2014 (see

http://www.refworld.org/docid/52d7fc5f4.html). In that connection, in a press release of 28 January 2014, UNHCR stated the following:

> "As a result of the ongoing fighting and human rights abuses, thousands of civilians continue to be displaced both within and outside of Somalia. More than 57,800 people were newly displaced in Southern and Central Somalia between January and September 2013. As of 1 October 2013, the number of internally displaced people (IDPs) in this part of Somalia was estimated at 893,000, out of a total of 1.1 million IDPs countrywide.
>
> UNHCR is appealing to all states to uphold their international obligations with regard to no forced returns, or non-refoulement. Somali nationals should not be forcibly returned to Somalia unless the returning state is convinced that the persons involved would not be at risk of persecution.
>
> UNHCR's new guidelines on the international protection needs of people fleeing Southern and Central Somalia include a number of risk profiles. Applications by Somali asylum seekers with such profiles require especially careful examination.
>
> We consider the options for Somalis to find protection from persecution or serious harm within Southern and Central Somalia to be limited. This is especially true for large areas that remain under the control of Al-Shabaab and its allies. At the same time, in Mogadishu protection to people at risk of persecution at the hands of Al-Shabaab is also generally not available."

28. More concretely, under the heading: III. Assessment of International Protection Needs of Asylum-seekers from Mogadishu and other areas of Southern and Central Somalia, the guidelines stated:

> "Where applications for international protection of asylum-seekers who have fled Southern and Central Somalia are considered on an individual basis, they should be assessed carefully in accordance with established asylum or refugee status determination procedures. The evidence presented by the applicant must be taken into account, as well as reliable current information about the situation in Mogadishu and other areas of Southern and Central Somalia. UNHCR considers that persons with any of the profiles below, or a combination thereof, may be in need of international protection in the sense of the Convention Relating to the Status of Refugees ("1951 Convention"). Where relevant, particular consideration needs to be given to any past persecution to which applicants for refugee status may have been subjected. In light of the history of violent conflict and human rights abuses in Somalia, the applicability of the exclusion clauses may need to be considered in certain cases. The profiles listed here are not necessarily exhaustive; they are based on information available to UNHCR at the time of writing. Hence, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified here. In the forthcoming eligibility guidelines these profiles will be further updated as needed and analyzed in detail.
>
> Potential Risk Profiles:
>
> 1. Individuals associated with, or (perceived as) supportive of the SFG and the international community, including the AMISOM forces;
>
> 2. Individuals (perceived as) contravening Islamic Sharia and decrees imposed by Al-Shabaab, including converts from Islam, other "apostates" and moderate Islamic scholars who have criticized Al-Shabaab extremism;

3. Individuals (perceived as) opposing the SFG and related interests and individuals (suspected of) supporting armed anti-Government groups;

4. Individuals in certain professions such as journalists, members of the judiciary, humanitarian workers and human rights activists, teachers and staff of educational facilities, business people and other people (perceived to be) of means;

5. Individuals (at risk of being) forcibly recruited;

6. Members of minority groups such as members of the Christian religious minority and members of minority clans;

7. Individuals belonging to a clan engaged in a blood feud;

8. Women and girls;

9. Children;

10. Victims and persons at risk of trafficking;

11. Sexual and/or gender non-conforming persons (lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals);

12. Persons with a mental disability or suffering from mental illness."

29. On 9 April 2014, the UK Home Office issued a country information and guidance report on Somalia which under the heading: Module 1. Security and humanitarian situation in south and central Somalia, included the following:

"Introduction

At present it is only possible to remove nationals of Somalia to Mogadishu; or in some cases to Puntland or Somaliland for those formerly resident or having clan connections in those areas. Therefore, unless the person can be removed to Somaliland or Puntland, the first consideration is whether the person would be at risk on return to Mogadishu and, if so, whether they can reasonably be expected to relocate to another area in Somalia. That will, in part, depend on whether the person can get to that area safely and, if so, the general humanitarian situation in that area."

...

Security situation in Somaliland

1.2.66 The UN Independent Expert on the situation of human rights in Somalia reported that compared to south and central Somalia there are clear signs of social and economic progress in Somaliland, though political conflict, security concerns and the fight against terrorism are having a negative impact on some basic human rights, including the rights to justice and to freedom of expression and of the media.

1.2.67 The UN Secretary-General reported that between 16 May and 15 August 2013, the situation in Somaliland remained relatively stable despite continued tension over the disputed Sool, Sanaag and Cayn regions, and periodic clashes between Somaliland forces and the self-proclaimed Khatumo State militias. The Somaliland authorities also reportedly undertook a number of successful actions to arrest Al-Shabaab operatives. In late August 2013, the visit of the Vice-President of Puntland to Talh (Sool) reignited local clan tensions, which escalated into two clashes between pro-Khatumo militias and Somaliland forces at Gambadhe (Sool) on 13 and 15 September. Episodes of civil unrest, some of which turned violent, were also reported in Sanaag in mid-to-late September, following the ban by the Somaliland

authorities on the old local currency owing to continuing claims of counterfeit Somali currency circulating in Somaliland. The Somaliland authorities reported an alarming incidence of about 239 rape cases for the months of September and October. Most victims in southern and central Somalia are displaced women and girls. In Somaliland, victims are not only from the settlements for internally displaced persons, but also from the host communities, and include children of affluent families.

1.2.68 The UN Secretary General noted for the period 16 November 2013 to 15 February 2014 that Somaliland was relatively calm. Isolated armed clashes were reported in the disputed Sool, Sanaag, and Cayn regions on 27 and 28 November. Tension was high in early December following reports of a military build-up along the border between Somaliland and Puntland, but no further incidents were reported. Further information see: Report of the Independent Expert on the situation of human rights in Somalia, 16 August 2013; and UN Secretary General reports to the Security Council of January, May, September and December 2013.

30. Heading, Module 3, Women, set out, among other things:

"Somaliland

3.2.6 UNHCR's Guidelines, published in May 2009 found that women from Somaliland, with the specific profiles [victims of FGM and sexual and gender-based violence], are at risk, on account of their membership of a particular social group.

3.2.7 With regard to FGM, the US Department of State reported that the Somaliland administration worked with the UN FGM/C task force to develop an FGM/C policy for Somaliland, but the policy was not completed by year's end [2012].

3.2.8 With regard to sexual violence, the US Department of State report noted that ... gang rape continued to be a problem in urban areas, primarily perpetrated by youth gangs and male students. Many of these cases occurred in poorer neighborhoods and among immigrants, returned refugees, and displaced rural populations living in urban areas. According to a local Hargeisa-based NGO, gang rapes constituted 30 percent of reported rape cases and 55 percent of reported cases involved a minor as the victim. Many cases went unreported. In May 2013 IRIN reported that stiffer penalties and reduced reliance on traditional justice systems could help end the rising incidence of rape in Somaliland, with an estimated 5,000 rape cases to have taken place in 2012. The same news article noted that the extent of rape in Somaliland remains difficult to measure, with most cases going unreported or being resolved between families. While rape is punishable with a jail term of five to 15 years in Somaliland, cases are often settled outside the courts by traditional leaders, with perpetrators typically paying compensation or marrying the victim. The UN Secretary-General's report on Somalia of December 2013 reported that the Somaliland authorities reported an ... alarming incidence of about 239 rape cases for the months of September and October with victims coming from IDP settlements and host communities, including children of affluent families."

31. Heading, Module 5, Actors of Protection, set out, among other things:

"5.2.19 The US State Department noted that, in Somaliland functional courts existed, although there was a serious shortage of trained judges and legal documentation upon which to build judicial precedent. There was reportedly widespread interference in the judicial process by officials. International NGOs reported local officials often interfered in legal matters and the public order law was often invoked to detain and incarcerate persons without trial. For information about

the police force and judicial system see: Swedish Migration Board, Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012, dated 5 March 2013. Section 3.4 US State Department, Country Reports on Human Rights Practices for 2012: Somalia, 19 April 2013; and Country Reports on Human Rights Practices for 2012: Somalia, 27 February 2014."

32. Heading, Module 6, Internal relocation, set out, *inter alia*:

"Somaliland and Puntland

6.2.16 In its May 2010 Eligibility Guidelines, UNHCR considered that the generally deplorable living conditions of displaced persons in Puntland and Somaliland indicates that internal relocation was generally not available for individuals from southern and central Somalia in these territories. However, it also stated that whether an internal flight argument exists in Puntland or Somaliland will depend on the circumstances of the individual case, including whether the individual is a member of a majority or minority clan and whether the individual originates from the territory to which they are seeking to relocate. The US State Department noted that Somaliland prohibited federal officials, including those of Somaliland origin, from entering Somaliland. It also prevented traditional elders in Somaliland from travelling to Mogadishu to participate in federal government processes."

33. The Danish Immigration Service and the Norwegian Landinfo Fact Finding Mission report, *Update on security and protection issues in Mogadishu and South-Central Somalia,* 1-15 November 2013, released on 3 March 2014 (see www.newtodenmark.dk and www.landinfo.no), stated among other things:

"2.3 Internally Displaced Persons (IDPs) and refugees

UNHCR explained that it looks in parallel at Somali IDPs and Somali refugees. UNHCR is closely cooperating with the Norwegian Refugee Council (NRC) and the Danish Refugee Council (DRC) on issues related to Somali IDPs and Somali refugees. UNHCR explained that the Tripartite Agreement is a tool of dialogue to regulate and consult.

UNHCR added that there are a number of Ethiopian asylum seekers and refugees in Somalia, mainly in Puntland and Somaliland. However, they have limited freedom of movement in these locations.

UNHCR also explained that since the beginning of 2013 but especially since August 2013, there has been a strong push for IDPs to leave the central districts of Mogadishu and settle in KM 7 and KM 11. The process is ongoing. There have also been thousands of forced evictions of IDPs. One of the consequences is that there are several new settlements on the outskirts of Mogadishu as well as in the Afgoye Corridor; they are all managed by gatekeepers."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicants complained that their removal from Sweden would expose them to a real risk of being subjected to treatment in breach of Article 3 of the Convention, which reads as follows:

Article 3:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

35. The respondent Government claimed that the application was inadmissible for failure to comply with the six-month rule in Article 35 § 1 of the Convention, as the final decision in the domestic proceedings had been taken on 3 September 2010, almost nine months before the applicant initiated the present proceedings.

36. The applicant contested this argument.

37. The Court has already dealt with this issue (see, most recently *T.K.H. v. Sweden*, no. 1231/11, §§27-29, 19 December 2013), and found that:

> "While ... the date of the final domestic decision providing an effective remedy is normally the starting-point for the calculation of the period of six months, the Court reiterates ... that the responsibility of a sending State under Article 2 or 3 of the Convention is, as a rule, incurred only at the time when the measure is taken to remove the individual concerned from its territory. Specific provisions of the Convention should be interpreted and understood in the context of other provisions as well as the issues relevant in a particular type of case. The Court therefore finds that the considerations relevant in determining the date of the sending State's responsibility must be applicable also in the context of the six-month rule. In other words, the date of the State's responsibility under Article 2 or 3 corresponds to the date when the six-month period under Article 35 § 1 starts to run for the applicant. If a decision ordering a removal has not been enforced and the individual remains on the territory of the State wishing to remove him or her ... the six-month period has not yet started to run."

38. The Court sees no reason to find otherwise in the present case. The Government's objection under Article 35 § 1 must accordingly be rejected.

39. No other ground for declaring the application inadmissible has been put forward or established. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

40. The applicants maintained that they would be at risk of treatment contrary to Article 3 of the Convention upon return to Somalia.

41. They originated from Hosingo in the south of Somalia, but could not return there since all parts of south and central Somalia were areas where even civilians were subject to severe and personal risk from the armed conflict.

42. Moreover, since the applicants had no relations, family, clan or other connections in Somaliland or northern Somalia, they could not settle or even gain admittance thereto either, as alleged by the Swedish Government.

43. In particular the first applicant contested the conclusions drawn from the language analysis. The test had been of short duration and the analyst who carried out the test was from Mogadishu. Thus, he may not have been able to distinguish whether the first applicant had an accent, for example, due to his having travelled and studied in Saudi Arabia or because he had picked up some of the dialect spoken by the Ogarden clan, who also lived in the village, and who spoke a dialect similar to those in the north. In the applicants' view, the allegation by the Swedish authorities that the applicants had been living in the north was therefore not supported by any evidence and was purely speculative.

44. It should also be taken into consideration that the language test and the first two interviews had been performed before legal counsel was appointed to the applicants. In addition, the Migration Court had refused to hear the two witnesses who could have certified that they were from Hosingo. These witnesses were only allowed to submit written statements.

45. Finally, as to the stamps in the first applicant's passport, the applicants stated before the Court that at some point in time the airport in Mogadishu was closed, so the first applicant had to travel with private companies running planes leaving from airports in the north.

46. The Government maintained that the applicants had been living in Somaliland in the years before leaving and that there were no indications that they would not be safe upon returning there. The first applicant has a university degree from Saudi Arabia and has previously been able to support himself and his children in Somaliland. Consequently, the applicants could be deported to Somaliland, where the safety level was acceptable and which could be reached directly by plane.

47. The Government pointed out that the Migration Board and courts had made a thorough examination of the applicants' case. The Board had conducted four interviews with the first and second applicants. An interpreter had been present each time and their legal counsel had been present during the last interview. The applicants had been given the opportunity to submit written observations on the minutes from the

interviews. Moreover, the Migration Court had held an oral hearing in the case. These procedural measures enhanced the authorities' ability to assess the applicants' submissions. In the light of that, and in the light of the expertise of these authorities on asylum law and practices, their findings should be given great weight. For the sake of information, the Government submitted that at the relevant time all asylum seekers from Somalia, except those originating from the northern parts of the country, were granted residence permits in Sweden on grounds of protection. That was why it was unnecessary to appoint legal counsel immediately for all asylum seekers from Somalia from the moment their application was handed in.

48. In support of the immigration authorities' finding, the Government emphasised, among other things, the result of the language analysis, which gave a clear indication that the applicants had been living in Somaliland in the years before leaving the country. It also referred to the first applicant's passport which, up until 2005, contained entry and departure stamps from airports and cities in northwest Somalia, but no stamps from trips to or from southern Somalia. Finally, having regard to the applicants' statements, *inter alia*, the first applicant's vague and insufficient details concerning events in central Somalia in recent years, and the second applicant's lack of detailed knowledge about Hosingo, the Government submitted that the applicants' allegation that they had lived in the south from 1999 until they left the country, had not been made out.

2. The Court's assessment

49. The Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; Abdulaziz, Cabales and Ba*lkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 67; and *Boujlifa v. France*, judgment of 21 October 1997, Reports 1997-VI, p. 2264, § 42). However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008-...).

50. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assesses the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC],

nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (*H.L.R. v. France*, judgment of 29 April 1997, Reports 1997-III, § 40).

51. The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, Reports 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). In this respect, the Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *Collins and Akasiebie v. Sweden* (dec.), no. 23944/05, 8 March 2007; and *Hakizimana v. Sweden* (dec.), no. 37913/05, 27 March 2008).

52. If the applicant has not been extradited or deported when the Court examines the case, the material point in time must be that of the Court's consideration of the case (*see Chahal v. the United Kingdom*, § 86, cited above). It is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision was taken by the domestic authorities (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007, and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 215, 28 June 2011).

53. The assessment must focus on the foreseeable consequences of the removal of the applicant to the country of destination, which must be considered in the light of the general situation there, as well as his personal circumstances (*Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 108). In this connection, and where it is relevant to do so, the Court will have regard to whether there is a general situation of violence existing in the country of destination (*Sufi and Elmi*, cited above, § 216).

54. In cases concerning the expulsion of asylum seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention relating to the status of refugees. It must be satisfied, though, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other contracting or non-contracting states, agencies of the United Nations and reputable non-governmental organisations (see *N.A. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008).

55. Turning to the circumstances of the present case, the Court first notes that at the relevant time the Swedish authorities did not return any asylum seekers from Somalia except those originating from the northern parts of the country.

56. In the present case the Swedish authorities found, in spite of the applicants' denial thereof, that they had lived in Somaliland for years before entering Sweden and that consequently, they could be returned there. It does not appear that any contacts have been made with the Somaliland authorities to establish whether the applicants would be admitted there.

57. As to the current situation in Somaliland it will be recalled from *K.A.B. v. Sweden*, (cited above, §§ 80-85) that the Court noted, with reference to the United Kingdom Border and Immigration Agency's "Operational Guidance Note on Somalia, dated 15 December 2011", that Somali nationals would not be able to gain admittance to Somaliland unless they were born there or had strong clan connections to the region, that is, in the case of majority clan affiliates, those connected to the Isaaq clan. Moreover, referring to the UNHCR Eligibility Guidelines of 5 May 2010, it noted that without clan protection they would be under "a perpetual threat of eviction". (See also *M.S. v. United Kingdom* (dec.), 56090/08, 16 October 2012 and *Hassan Ahmed ABDI IBRAHIM v. United Kingdom* (dec.), 14535/10, 18 September 2012).

58. The situation has remained broadly unchanged (see, *inter alia*, the country information and guidance report on Somalia, issued by the UK Home Office on 9 April 2014, paragraphs 32-35 above), and at present the UK authorities take the view that it is only possible to remove nationals of Somalia to Somaliland for those formerly resident or having clan connections in those areas.

59. The applicants in the present case belong to the Sheikal clan and there are no indications that they have any affiliations with the Isaaq clan in Somaliland.

60. However, questioning the applicants' credibility in general, the Government submitted, in line with the Migration Board and courts, that the applicants must have been resident in northern Somalia before leaving the country. That finding was based in particular on the language analysis of the

first and the second applicants. The analysis report stated that the first applicant had his origin in Somalia and that the dialect showed elements more characteristic of northern than southern Somalia, although some of the characteristics of his pronunciation were also associated with Somalian as spoken in southern Somalia. As regards the second applicant, the language analysis report concluded that her pronunciation was typical of the dialect of northern Somalia and that she also used words typical of southern Somalia. In addition, the stamps in the first applicant's passport showed that in the period from 2000 to 2005 he had entered or left Lowyacado, Borama and Berbera situated in Somaliland. He had also entered Djibouti in that period. There were no stamps from southern Somalia at all.

61. In the Court's view this is the kind of information which gives strong reasons to question the veracity of the applicants' submission that they remained in Hosingo from 1999 until they left Somalia in 2008, and that they have no ties with northern Somalia. In these circumstances, the applicants can be expected to provide a satisfactory explanation for the alleged discrepancies (see paragraph 55 above).

62. It does not appear, though, that before the domestic authorities the applicants contested the findings by the specific language analyst, or his skills, nor did they make any statement on whether in their opinion they spoke a dialect, and in the affirmative, provide some sort of explanation as to where that dialect could have come from.

63. It was only in their observations before the Court that the applicants submitted that the test had been of short duration and that the analyst who undertook the test was from Mogadishu. Thus, they maintained, he may not have been able to distinguish whether the first applicant had an accent, for example, due to his having travelled and studied in Saudi Arabia or because he had picked up some of the dialect spoken by the Ogarden clan, who also lived in the village, and who spoke a dialect similar to those in the north. The applicants also mentioned that they were trying to find an independent linguistic expert to present another language analysis to the Court.

64. The applicants did not submit another language analysis to the Court, nor did they state why they have given up this intention. The Court also notes that the applicants have not provided any explanation as to why, in their view, the analyst concluded that the second applicant, born in 1990, originated from Somaliland.

65. Furthermore, in respect of the first applicant's travel activity, he had originally insisted before the Swedish authorities that the family, including him, had remained in Hosingo from 1999 until they left Somalia in 2008. Confronted with the stamps from Djibouti in his passport in the period from 2000 to 2005, he eventually stated that he had to go via Djibouti to Saudi Arabia once to visit his brother's daughter in Saudi Arabia. He could not recall the other visit. It is unknown whether he gave any explanation as to

the stamps in his passport in the period from 2000 to 2005 from Lowyacado, Borama and Berbera, situated in Somaliland.

66. Before the Court, in his observations, he submitted that when he left for Saudi Arabia, the airport in Mogadishu was closed, so he had to travel with private companies running airplanes leaving Somalia from airports in the north.

67. The first applicant has not provided any reasonable explanation, though, as to why it was important for him, despite the airport in Mogadishu allegedly being closed, nevertheless to travel by private airlines from southern Somalia via Somaliland and Djibouti to go to Saudi Arabia, once to visit his brother's daughter and once for a reason he could not remember.

68. In addition, the Court notes that before the domestic authorities, the first applicant provided contradictory statements about the crucial event in 2008, notably whether the spiritual leader of the village was killed immediately after the negotiation with Al Shabaab or six days later, and as to why Al Shabaab wanted to kill him. He was also vague about the situation in south and central Somalia. The second applicant could not give any detailed information about the village or her clan which could be verified. Finally, there appears to be no information about, for example, how the first applicant supported his family in Somalia, whether his wife and other children were left behind (as indicated by the second applicant in her initial interview with the Swedish authorities), how he financed his alleged travel to Saudi Arabia, and how the family reached Sweden.

69. In these circumstances, the Court is satisfied that the assessment made by the Swedish authorities, that the applicants must have been former residents of Somaliland before they left Somalia, was adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources.

70. The Court notes that the Swedish authorities intend to remove the applicants directly to Somaliland, although for the time being no travel arrangements have been made. The Court understands that the practical procedure in cases where enforcement cannot be executed on a voluntary basis is for the Migration Board to request the assistance of the police. The police escort the alien to his or her destination and, should the alien not be accepted in Somaliland upon arrival, he or she returns to Sweden with the police escort. Thus, the Court is satisfied that if the applicants do not gain admittance to Somaliland, a fresh assessment would have to be made by the Swedish migration authorities. The Court finds that the applicants have failed to substantiate that they would be exposed to a real risk of being subjected to treatment contrary to Article 3 upon return to Somaliland.

71. Consequently, the applicants' deportation to Somaliland would not involve a violation of Article 3 of the Convention.

II. RULE 39 OF THE RULES OF COURT

72. The Court points out that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

73. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above § 4) must remain in force until the present judgment becomes final or until the Court takes a further decision in this connection.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the implementation of the deportation order against the applicants would not give rise to a violation of Article 3 of the Convention;

3. *Decides* to maintain the indication made to the Government under Rule 39 of the Rules of Court until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 24 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Mark Villiger
Deputy Registrar	President