



Somali national's detention pending deportation was not lawful under domestic law

In today's Chamber judgment in the case of **[Abdi v. the United Kingdom](#)** (application no. 27770/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 (right to liberty and security) of the European Convention on Human Rights.

The case concerned a complaint by a Somali national that he was kept in detention for more than three years, pending his proposed deportation to his country of origin.

The Court found in particular that, where lawfulness of detention is in issue, the European Convention refers essentially to national law, laying down the obligation to conform to rules of national law. In Mr Abdi's case, it held that his detention from 3 December 2004 to mid-April 2007 was not lawful under domestic law because the regular reviews required by the Secretary of State's published policy on the detention of foreign national prisoners were not carried out. Indeed, the British Government had accepted the unlawfulness of Mr Abdi's detention following the Supreme Court's judgment in another similar case.

It also **struck out** Mr Abdi's complaint under **Article 3 (prohibition of inhuman and degrading treatment)** that his removal to Somalia would put him at risk of ill-treatment and therefore decided to lift its indication to the United Kingdom Government (made under Rule 39 of the Rules of Court – interim measures) that Mr Abdi should not be expelled until further notice.

Principal facts

The applicant, Mustafa Abdi, is a Somali national who is currently detained in HMP Brixton.

Mr Abdi arrived in the United Kingdom on 7 May 1995 and, although refused asylum, was granted exceptional leave to remain in the United Kingdom until February 2000. On 23 July 1998 he was convicted of a number of offences, including rape, and sentenced to eight years' imprisonment. On 20 May 2002 the Secretary of State for the Home Department ordered Mr Abdi's deportation and on 27 May 2002 he issued an authority for detention until the making of a deportation order. On 3 September 2003 Mr Abdi's release became automatic; however he remained in detention on the basis of the authority issued on 27 May 2002. On 5 April 2004 the Secretary of State for the Home Department authorised Mr Abdi's detention until his deportation.

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

From August 2004 until July 2006 it was not possible for the Government to remove Mr Abdi from the United Kingdom to Somalia. This was because in August 2004 the last carrier willing to take "enforced returns" to Somalia withdrew, and because in November 2004 Mr Abdi refused a formal request to sign a disclaimer confirming that he was willing to return voluntarily. In July 2006 the Government concluded an agreement with African Express Airlines which made enforced removals to Somalia possible again.

In September 2006 Mr Abdi was granted permission to apply for judicial review of the decision to detain him. In December 2006 the Administrative Court held that the period of detention from 3 December 2004, which was the date of Mr Abdi's first review following his refusal to return voluntarily, to 30 June 2006 was unlawful. On 30 July 2007 the Court of Appeal held that the period of detention between 3 December 2004 and 30 June 2006 was lawful because Mr Abdi could have returned to Somalia voluntarily. On 13 December 2007 Mr Abdi was refused permission to appeal to the House of Lords.

Mr Abdi was released in April 2007 but re-detained in April 2008 after breaching his bail conditions.

Complaints, procedure and composition of the Court

Mr Abdi complained in particular that his detention – and notably, its length – breached his rights under on Article 5 (right to liberty and security). Further relying on Article 3 (prohibition of inhuman or degrading treatment), he also complained that his removal to Mogadishu would put him at risk of ill-treatment.

The application was lodged with the European Court of Human Rights on 10 June 2008.

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

Ineta **Ziemele** (Latvia), *President*,
David Thór **Björgvinsson** (Iceland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **de Gaetano** (Malta),
Paul **Mahoney** (the United Kingdom),

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

Decision of the Court

Article 3

The Court considered that Mr Abdi would benefit from the UK Government's undertakings, set out in a letter addressed to the Court on 10 February 2012², to not return applicants to Mogadishu without a full examination of their claims, giving them the opportunity to lodge new applications with the European Court of Human Rights should the need arise. Accordingly, it decided to strike Mr Abdi's complaint under Article 3 out of its list of cases and to lift its indication to the United Kingdom Government (made under Rule 39 of the Rules of Court – interim measures) that Mr Abdi should not be expelled until further notice.

² In response to the judgment of 28 June 2011 in the case of *Sufi and Elmi v. the United Kingdom* concerning the removal of Somali nationals to Mogadishu.

Article 5

The Court held that where the lawfulness of detention is in issue, including whether “a procedure prescribed by law” has been followed, the European Convention refers essentially to national law and lays down the obligation to conform to rules of national law.

The Court noted that following a Supreme Court judgment in another case³ Mr Abdi’s detention from 3 September 2003 to 13 April 2007 could not be said to have been lawful under domestic law because the regular reviews required by the Secretary of State’s published policy were not carried out. Accordingly the Court held that there had been a violation of Article 5 for the period from 3 December 2004 until mid April 2007, the period of detention before 3 December 2004 having been found inadmissible for non-exhaustion of domestic remedies.

Given that conclusion, the Court did not consider it necessary to examine Mr Abdi’s complaints under Article 5 § 1 of the Convention concerning the length of his detention.

Just satisfaction (Article 41)

The Court held that the United Kingdom was to pay Mr Abdi 1,500 Euros (EUR) in respect of non-pecuniary damage.

It also awarded 7,000 Euros (EUR) for his lawyers’ costs and expenses.

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.

³ *Shepherd Masimba Kambadzi v Secretary of State for the Home Department* [2011] UKSC 23.