



## Conditions in Maltese immigration detention centre constituted degrading treatment

In today's Chamber judgment in the case of [Aden Ahmed v. Malta](#) (application no. 55352/12), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights; and,

**a violation of Article 5 §§ 1 and 4 (right to liberty and security)** of the Convention.

The case concerned a Somali national, Ms Ahmed, and her detention in Malta after entering the country irregularly, by boat, to seek asylum in February 2009.

This is the first time the Court found a violation of Article 3 against Malta concerning immigration detention conditions.

The Court was concerned about the conditions in which Ms Ahmed was detained in Lyster Barracks detention centre (Hal Far), notably the possible exposure of detainees to cold conditions, the lack of female staff in the detention centre, a complete lack of access to open air and exercise for periods of up to three months, an inadequate diet, and the particular vulnerability of Ms Ahmed due to her fragile health and personal emotional circumstances. Taken as a whole, those conditions, in which she had lived for 14 and a half months as a detained immigrant, amounted to degrading treatment.

Moreover, deportation proceedings were not in progress while Ms Ahmed was being detained and the Maltese authorities had taken no steps whatsoever to remove her, so her continued detention for 14 and half months was therefore unlawful. The Court also found that the domestic remedies in Malta had not provided Ms Ahmed with a speedy review of the lawfulness of her detention.

### Principal facts

The applicant, Aslya Aden Ahmed, is a Somali national who was born in 1987 and lives in Hal Far (Malta).

In February 2009 she entered Malta irregularly, by boat. She was registered by the immigration authorities and served with a removal order before being detained. She applied for asylum and in May 2009 her application was rejected by the office of the Refugee Commissioner.

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

Soon afterwards she escaped from detention, making her way to the Netherlands where she hoped to travel to Sweden to be reunited with her father, siblings and young son.

She was returned to Malta in February 2011 under the Dublin II Regulation<sup>2</sup> and was charged with escaping from public custody and giving false information. She was found guilty and sentenced to six months' imprisonment. She was pregnant at this time, and during her imprisonment was admitted to hospital where she miscarried in March 2011, also contracting an infection which required hospitalisation.

Having served her sentence, Ms Ahmed was again detained for immigration purposes in view of her deportation from Malta. In November 2011 Ms Ahmed requested a reconsideration of her application for asylum. The Refugee Commissioner decided against her application. In February 2012 she also applied to the Immigration Appeals Board ("IAB") to be released from detention, arguing that there was no reasonable prospect that the authorities would be able to remove her to Somalia within a reasonable time and that in fact no such removal had ever occurred in practice, that her psychological health was suffering due to her detention, and that she had miscarried while in prison. The Principle Immigration Officer responded negatively, however her application was never actually set for hearing by the IAB and in August 2012 she was released in line with Maltese government policy, as she had spent a total of 18 months in "immigration detention" since her arrival in Malta.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Ms Ahmed complained about the conditions in which she had been held throughout most of her time in Maltese government custody. Relying in particular on Article 5 §§ 1 and 4 (right to liberty and security), she also complained that her detention had been unlawful and that she had not had an effective remedy to challenge its lawfulness.

The application was lodged with the European Court of Human Rights on 27 August 2012.

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 (prohibition of inhuman and degrading treatment)

Ms Ahmed complained about the conditions in which she had been detained throughout most of her time in Maltese government custody, from 5 February to 17 May 2009 when she was held in Ta' Kandja Detention Centre after her initial arrival in Malta, from 17 February to 17 June 2011 when she was imprisoned and spent time in hospital due to

<sup>2</sup> An EC regulation under which EU Member States are required to determine, based on a hierarchy of criteria, which Member State is responsible for examining an asylum application lodged on their territory.

her pregnancy and subsequent miscarriage, and from 17 June 2011 to 30 August 2012 when she was detained, purportedly awaiting deportation at Lyster Barracks, Hal Far. However, only the final period of detention in Lyster Barracks was admissible due to the operation of the six-month rule, which allowed the Court to consider matters only within a period of six months from the final decision that exhausted all domestic remedies, if any where available. In the circumstances of the case the Court found that no effective remedy was available and thus the six months had to be calculated from the end of the situation complained of. Each period of detention had to be considered separately, and could not be viewed as part of one continuing violation as Ms Ahmed contended.

Ms Ahmed claimed that during summer the dormitories in which detainees had been kept at Lyster Barracks became oppressively hot and at other times were very cold and no proper blankets were supplied. Although the government claimed that the buildings had been heated, they did not support this with any evidence, despite substantiating other claims with photographs, and this was a point of concern for the Court. Similarly the lack of female staff working in the centre had to have caused discomfort for female detainees, particularly for Ms Ahmed who had specific medical conditions as a result of her miscarriage. The fact that the only access she had to open air, namely the outside exercise yard (which already left much to be desired), had been closed for three months was of particular concern. Moreover Ms Ahmed was personally vulnerable due to her physical and mental health. She suffered from insomnia, recurrent physical pain and depression and claimed that the effects of the poor detention conditions had been exacerbated by her emotional and psychological circumstances, her separation from her son and her miscarriage. As a result of her poor health an appropriate and varied diet was crucial, but it could not be established that this had been provided.

Ms Ahmed lived in those conditions for 14 and a half months in an immigrant detention context and not as someone who had committed a criminal offence. Taken as a whole and in the light of her specific situation, the cumulative effect of those conditions had diminished her human dignity and had to have made her feel anguish and inferiority capable of humiliating and debasing her and possibly breaking her physical and moral resistance, thus constituting degrading treatment within the meaning of Article 3 of the Convention.

#### [Article 5 § 4 \(effective remedy to challenge lawfulness of detention\)](#)

The Court found that pursuing a constitutional application would not have provided Ms Ahmed with a speedy review of the lawfulness of her detention, nor would an application to the IAB. Indeed, Ms Ahmed's proceedings before the IAB had failed to produce a decision after more than six months, at which point they were discontinued as she had been released. As a result the Court concluded that she had not had an effective and speedy remedy under domestic law to challenge the lawfulness of her detention.

#### [Article 5 § 1 \(unlawful detention\)](#)

As the Maltese authorities had not taken steps to pursue Ms Ahmed's deportation while she was being detained, and indeed it would appear that one year after her release she was still in Malta and that no steps had been taken to remove her, it could not be said that deportation was the legitimate purpose of her detention. Consequently her detention was unlawful.

#### [Article 41 \(just satisfaction\)](#)

The court held that Malta was to pay Ms Ahmed 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of 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.