



Hungarian Helsinki Committee

KNOWLEDGE-BASED HARMONISATION OF EUROPEAN ASYLUM PRACTICES

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Case Summary

Country of Decision/Jurisdiction	Malta
Case Name/Title	A. H. H. A. and K.I.N. v. The Minister of Justice and Home Affairs
Court Name <i>(Both in English and in the original language)</i>	First Hall Civil Court (Constitutional Jurisdiction); Qorti Ċivili Prim'Awla (Gurisdizzjoni Kostituzzjonali)
Neutral Citation Number	56/2007
Other Citation Number	N/A
Date Decision Delivered	29/11/2011
Country of Applicant/Claimant	Somalia
Keywords	Credibility, torture, assessment of facts and circumstances, access to procedure, detention, effective remedy (right to), inhuman or degrading treatment or punishment, relevant documentation, safe third country
Head Note (Summary of Summary)	Applicants were returned to Libya directly from Malta without being given the opportunity to seek asylum.
Case Summary (150-500)	<p>The two applicants had entered Malta by boat in an irregular manner, having left from Libya. Due to their irregular entry, they were detained by the Maltese authorities but denied the possibility of seeking asylum or of contacting the UNHCR for assistance. They were subsequently forcibly returned to Libya, where they suffered torture and other human rights violations.</p> <p>In their application the applicants claimed violations of Article 3 of the European Convention on Human Rights (ECHR), and of the corresponding Article 36 of the Constitution of Malta, Article 4 of the Fourth Protocol to the ECHR and of Article 13 ECHR since they were not granted access to an effective remedy to challenge their deportation order.</p> <p>Refuting the Maltese Government's arguments, the Court found that the authorities' actions, in fact, violated Articles 3 and 13 of the ECHR and ordered the Maltese Government to pay €10,000 to each applicant as compensation. No violation of Article 4 of the ECHR was found.</p>
<i>Facts</i>	<p>Together with twenty-four other persons, the applicants left Libya by boat and were brought to Malta on the 1st of October 2004. Upon arrival they were detained in one of Malta's immigrant detention centres. A group of the new arrivals, including the applicants, were subsequently informed that they would be returned to Libya. Until this stage, the applicants had not been informed of the possibility to seek asylum in Malta, nor were they allowed to make contact with the UNHCR. They were forcibly boarded onto a plane and deported to Libya.</p> <p>In Libya, they were further detained and suffered torture at the hands of the</p>



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	<p>Libyan police. Following a summary trial, they were sentenced to one-year imprisonment, during which time they were again tortured. At the expiration of their jail term, the returned group were taken into the Sahara desert and left there without any water or food. Two persons from the group did not survive this ordeal, whereas the applicants were rescued by Berbers. The applicants managed to reach Malta on 23rd June 2006, where they sought and were granted international protection.</p> <p>They subsequently filed a Constitutional application in relation to their forced return to Libya.</p>
<p><i>Decision & Reasoning</i></p>	<p>The Court noted that the applicant’s version of events was consistent and largely supported by the evidence provided, including by that of the Maltese Government, particularly with respect to the initial reception procedures relevant for the effective exercise of the right to seek asylum in Malta.</p> <p>Given the nature of the case, the Court made extensive reference to ECtHR jurisprudence on the extra-territorial nature of the Convention and, particularly, of Article 3. Reference was made to <i>Soering, Cruz Varas, Vilvarajah, Chalal, Said, Gebremedhin, Ahmed</i> and <i>T.I.</i></p> <p>The nature of the treatment suffered by the applicants in Libya was also central to the Court establishing whether or not Article 3 ECHR was violated. Whilst the Maltese authorities did not challenge the applicant’s specific claims regarding the manner of treatment, they insisted they were not aware of the possibility of this when the deportation order was issued. The Court listed the acts suffered by the applicants as: torture, beatings, prolonged detention in inhuman and degrading conditions, and the ease in which this treatment could have resulted in the applicants’ deaths.</p> <p>The Court accepted as evidence of credibility the several reports brought by the applicants on the treatment of migrants in Libya, particularly persons of Eritrean and Somali origin. In its description of the situation in Libya, the Court referred primarily to reports of UNHCR and Amnesty International (including <i>Country Operations Plan – Libyan Arab Jamahiriya, Urgent Appeal 227/03, Libya- Time to make human rights a reality, Forcible return/fear for safety/fear of torture</i>).</p> <p>Interestingly, the Court’s main reference was to a document of the EU External Relations Council (<i>Libya/EU Open Letter to EU Foreign Ministers</i>), where detailed descriptions are provided of the political, social and human rights situation in the country (the judgement contains extensive quotations from this letter). This letter was complemented by reference to an EU Commission report following a visit to Libya (<i>Technical Mission to Libya on illegal immigration 27th November – 6th December 2004</i>).</p> <p>A further point made by the Court was that these instances of torture were not limited to one part of Libya but were in fact widespread and institutionalised. In this respect, the Court said that the international knowledge of these issues confirms the applicants’ credibility and rejects the Government’s arguments that they were unaware of these incidents in Libya. Importantly, the Court said that even if the Government had really not known of these situations, it did have the means to get to know of them due to the publication of so many reliable reports on Libya and its treatment of</p>



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	<p>migrants.</p> <p>In relation to the severity of the treatment suffered by the applicants, the Court also highlighted the fact that since the applicants were asylum-seekers from a country known to be in conflict, including by the Maltese authorities, additional care should have been exercised in view of the risk of an onward deportation by the Libyan authorities. The Court emphasised that, from an asylum perspective, Libya could in no way be considered a safe country (the Court also referred to the 2004 UNHCR position of asylum-seekers from Somalia.).</p>
<i>Outcome</i>	<p>An order to the Maltese Government to pay €10,000 to each applicant as compensation.</p>