



Czech authorities should not have expelled asylum seekers to Guinea without examining risk of ill-treatment

In today's Chamber judgment in the case [Diallo v. the Czech Republic](#) (application no. 20493/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been a **violation of Article 13 (right to an effective remedy)** in conjunction with **Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights.

The case concerned the complaint of two asylum seekers from Guinea that their asylum applications had been rejected by the Czech authorities without examining their substance, resulting in their forced return to Guinea.

Principal facts

The applicants, Ibrahima Diallo and Mamadou Dian Diallo, are two Guinean nationals who were born in 1980 and 1985 respectively. In the autumn of 2006, they arrived at Prague airport by plane from Dakar (Senegal), having transferred in Lisbon. They both applied immediately for asylum claiming they would be detained, and possibly even killed, if they returned to Guinea, where the police had been searching for them following their involvement in activities of which the Government disapproved.

The Department for Asylum and Migration Policy of the Ministry of the Interior dismissed their respective asylum applications under the relevant sections of the Asylum Act as manifestly unjustified without examining their merits, stating that they had arrived from Portugal, which was considered a safe third country. Both Ibrahima and Mamadou Diallo applied for judicial review of the respective decision, which in the case of the latter was rejected by the regional court in May 2007. In the case of the former, the proceedings remained pending until they were terminated on his request; however, under the Asylum Act they did not have a suspensive effect, as he had come from a country considered a safe third country.

As neither of the applicants complied with the order to leave the country, administrative expulsion proceedings were brought against them. In that context, the Ministry of the Interior gave its opinion that there were no obstacles to their removal, as they were facing expulsion to Portugal, which was a safe country. The police issued expulsion orders for the applicants to leave the country and their appeals against those orders were rejected. In May 2007 at about 4 a.m., without prior notice and without their lawyers being informed, they were both removed to Guinea by plane via Brussels. Ibrahima Diallo has been in contact with his lawyer after his removal and is currently living in Saudi Arabia. Mamadou Diallo's exact whereabouts are not known and his lawyer has not managed to contact him after his removal. However, Mamadou Diallo had

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

signed a power of attorney for his lawyer while still in Prague, authorising him to take any legal action relating to his expulsion.

Complaints, procedure and composition of the Court

Relying on Article 13 in conjunction with Article 3, the applicants complained that they had no effective remedy for their arguable claim that they would be ill-treated if returned to Guinea.

The application was lodged with the European Court of Human Rights on 15 May 2007.

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

Dean **Spielmann** (Luxembourg), *President*,
Karel **Jungwiert** (the Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Ann **Power** (Ireland),
Angelika **Nußberger** (Germany), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

[Article 13 in conjunction with Article 3](#)

The Court dismissed the Czech Government's objection that since Mamadou Diallo had not contacted his lawyer at any time after his removal, he had to be deemed to have lost interest in pursuing the case. It noted that by signing the power of attorney, authorising his lawyer to act on his behalf and to represent him before any court in relation with his expulsion, Mamadou Diallo had sufficiently demonstrated that he wished the lawyer to make an application to the Court on his behalf. It was further not Mr Diallo's fault that, having been deported to Guinea at 4 a.m. without prior notice, his lawyer had lost all contact with him.

The Court considered that both applicants had had an arguable claim, for the purpose of Article 13, that upon their return to Guinea they risked being ill-treated in violation of Article 3. In particular, the Court took note of various reports that documented human rights violations in Guinea in 2006 and 2007, drawn up in particular by the UN Human Rights Council and the organisations Amnesty International and Human Rights Watch. The personal circumstances of the applicants made their fears well-founded, as they were sought by the police for their political activities, participating in strikes and demonstrations and presiding an opposition youth organisation respectively.

As regards the asylum proceedings, the Court observed that the applicants' claims that they risked being ill-treated in Guinea had not been subjected to close and rigorous scrutiny by the Ministry of the Interior, as would have been required by the Convention, or in fact to any scrutiny at all, on the grounds that they had arrived from Portugal, which was considered a safe third country. While it was not the Court's task to interpret European Union law or domestic law to establish whether the Czech Republic or Portugal should have examined the asylum request, it was sufficient to note that the applicants had not been expelled to Portugal but to their country of origin, Guinea.

At the same time, their requests for judicial review had not had an automatic suspensive effect. Ibrahima Diallo could therefore not be faulted, as was suggested by the Czech

Government, for not having exhausted the domestic review proceedings. In his case, the domestic courts had not reviewed his request at all. In Mamadou Diallo's case, the domestic court had not scrutinised his arguable claim under Article 3, but had confined itself to confirming the decision that his application was unjustified because he had arrived from a safe third country. In those circumstances, the asylum proceedings had not provided the applicants with an effective domestic remedy within the meaning of Article 13.

As regards the administrative expulsion proceedings, the authorities had not examined the applicants' arguable claim under Article 3 either. In particular, the conclusion of the Ministry of the Interior that there were no hindrances to the expulsion had been based on the assumption that they were liable to be expelled to Portugal only. Lodging a request for judicial review of the administrative expulsion decision and a possible subsequent constitutional appeal would not have been an effective remedy, as the Constitutional Court would not have reviewed the merits of the claims under Article 3 but would have merely examined the question whether the applicable provisions of domestic law were in conformity with the Constitution. Furthermore, such proceedings would not have had a suspensive effect on the expulsion.

The Court concluded that there had been a violation of Article 13 taken in conjunction with Article 3 on account of the fact that none of the domestic authorities had examined the merits of the applicants' arguable claim under Article 3 and there had been no remedies with automatic suspensive effect available to them to challenge the decision not to grant them asylum and to expel them.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that the Czech Republic was to pay Ibrahima Diallo 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 400 in respect of costs and expenses. It further held that the question of just satisfaction was not ready for decision as regards Mamadou Diallo and invited the parties to submit their written observations on the matter within three months from the date on which the judgment becomes final.

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.