

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

FOURTH SECTION

DECISION

Application no. 48694/06
Omar Ali MOHAMMED
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 18 September 2012 as a Chamber composed of:

Lech Garlicki, *President,*
David Thór Björgvinsson,
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 17 October 2006,

Having regard to the Government's observations lodged on 9 February 2007 and to the applicant's reply,

Having regard to the Government's proposal made on 10 February 2012, and

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Omar Ali Mohammed, is a Somali national, who was born in 1978 and lives in South Lanarkshire. He is represented before the Court by Bruce Short Solicitors, a firm of solicitors practising in Dundee.

2. The United Kingdom Government ("the Government") were represented by their Agent, Mr D Walton of the Foreign & Commonwealth Office.

3. The applicant complained that his removal to Somalia would violate his rights under Articles 2, 3 and 8 of the Convention.

4. The applicant's complaints were communicated to the Government, who submitted their observations on the admissibility and merits on 9 February 2007. The observations were forwarded to the applicant, who submitted his own observations on 2 April 2007.

5. On 28 June 2011 the Court gave its judgment in *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, 28 June 2011, in which it gave detailed guidance on the compatibility of the removal of Somali nationals to Mogadishu with the respondent State's obligations under Articles 2 and 3 of the Convention.

6. On 10 February 2012 the Government wrote to the Court setting out the following proposals:

> "Cases pending before the Court
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> The Government consider that where an application challenging removal to Somalia (but not Somaliland or Puntland) is pending before the Court it would be appropriate to consider whether the reasoning of the Court in the *Sufi and Elmi* judgment, together with a more recent country guidance case in the Immigration and Asylum Tribunal *(AMM & Others) (Conflict; Humanitarian Crisis; Returnees; FGM)* Somalia CG[2011] UKUT 445 (IAC) (28 November 2011)) have any impact on the decision to remove that individual. In light of the significant numbers of such cases pending before the Court, the Government propose that the following procedure be put in place to accomplish this.
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> The Court would inform the applicants contesting removal to Somalia and in respect of whom the Court has previously applied Rule 39 measures, that the following procedure would apply to their case. The Court would lift the Rule 39 measure in each such case in order to allow the procedure to be followed; and would inform the applicant that any new application for Rule 39 would not normally be considered until such time as the procedure and any consequent judicial remedies, including application for judicial review, had been exhausted;
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> The Court would notify the Government of those applicants to whom it had written in these terms;
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> Upon receipt of such notification, UKBA would write to the applicant or his or her representative, inviting them to submit further representations in their case;
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> UKBA would assess each such case in light of any representations submitted, applying new guidance that takes account both of the *Sufi and Elmi* judgments and the *AMM* decision of the domestic courts;
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> If UKBA conclude that in light of the new guidance and any representations made, removal should not be ordered, appropriate leave to remain in the United Kingdom

will be granted; if in light of the new guidance removal to Somalia is appropriate, the application will be refused and new removal directions may be set;

In the event of a decision to refuse an application, the applicant will have the following remedies. If the representations submitted are considered to amount to a fresh claim, any decision to refuse the application will, in most cases, attract an in-country right of appeal to the AIT. If the representations are considered to amount to further submissions, any decision to reject those submissions would not attract a right of appeal. It would, however, be open to the applicant to apply to the High Court to have the decision of the Secretary of State for the Home Department judicially reviewed. An application for judicial review would normally suspend removal; and the High Court would consider any review on the basis of the current state of the law including the Court's judgments in *Sufi and Elmi* and the *AMM* decision. There is also a further option to apply to the High Court for any injunction to prevent removal.

The Government's assumption is that, in light of the judgment in *Sufi and Elmi* and the *AMM* judgment, Rule 39 measures will be lifted in respect of those applications currently pending before the Court that challenge removal to Somalia; and these applications will be declared inadmissible or otherwise disposed of by the Court.

The Government are confident these arrangements would ensure that the appropriate domestic authorities have an opportunity to reconsider the cases of those whose claims currently pending before the Court might be affected by the reasoning set out in the Court's judgment and would provide such applicants with appropriate judicial remedies in the domestic courts.

Cases not currently pending before the Court

The Government also propose that, before setting removal directions for removal to Somalia (but not Somaliland or Puntland) in any future case (i.e. including cases not currently pending before the Court), the case will be assessed against the new guidance, taking account of both *Sufi and Elmi* and *AMM*. It will, of course, still be open to the individual applicants to submit further representations on the basis of *Sufi and Elmi* and *AMM* if they wish to do so. Remedies set out in paragraph (f) above would apply to any individual whose applications were rejected applying the new guidance, i.e. they would have the opportunity either to appeal against the decision to the AIT or to apply for judicial review in the High Court.

The Court can therefore be confident that in any case in which removal directions for Somalia have been set after 22 February 2012, UKBA will have considered the case against the new guidance. Furthermore the Court can also be confident that a judicial remedy would be available to any such applicant. In these circumstances, the Government will respectfully request the Court to require any new applicants to make fresh representations to UKBA if they have not already done so and to exhaust the possibility of a domestic appeal and/or judicial review before the Court considers granting a request for Rule 39 to be applied in their cases so as to halt removal to Somalia."

7. In a decision dated 10 April 2012, the Court accepted the Government's proposal and notified the applicants accordingly.

8. On 26 June 2012 the Court struck out all applications challenging removal to Mogadishu which had not been communicated to the Government.

9. By letter dated 12 June 2012, the applicant's representative was notified of the Court's intention to strike his application out of its list of cases pursuant to the Government's proposal. The applicant's representative was invited to submit any comments on the Government's proposal by 26 June 2012. He was warned that if he did not contact the Court within this deadline, the application might be struck out without further notice.

10. No response has been received.

THE LAW

11. The Court considers that, in these circumstances, the applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention.

12. Furthermore, the applicant will now benefit from the undertakings of the Government set out in the letter of 10 February 2012. The practical effect of these undertakings is that he will not be returned to Mogadishu without a full examination of his claims by the Government of the United Kingdom and, moreover, he will have the opportunity to lodge a new application with the Court (including the possibility of requesting an interim measure under Rule 39 of the Rules of Court) should that need arise.

13. In accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case. Accordingly, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Lawrence Early
Registrar

Lech Garlicki
President