

Asylum Seekers and the European Courts

Upholding Human Rights vs State Politics

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Amid stories of under-investigated crimes committed against asylum seekers, and amid reports of refugee segregation within certain Swiss towns imposing restrictions to the immigrants' free movement,¹ the European Courts have been adamant in their quest to ensure that asylum seekers' fundamental human rights remain inalienable regardless of their political status, in line with Article 1 of the ECHR, regardless of their nationality when present within Member State jurisdictions.

Two recent European Court of Human Rights (the "ECtHR") Cases which prove extremely relevant to the domestic law situation are *Aden Ahmed v Malta*² and *Suso Muso v Malta*³, in which the ECtHR ruled that the conditions of the applicants' detention within the Maltese State constituted a breach of Article 3 of the European Convention of Human Rights (the "Convention"), therefore amounting to degrading treatment within the meaning of the Convention. The Court determined, in the former case, that the detention was in fact deemed to have diminished the applicant's dignity and stirred feelings of anguish within her. The Court failed to uphold the admissibility plea brought forth by the Maltese Government on the basis of non-exhaustion of local remedies, highlighting how the deficiency of non-pecuniary awards under the Maltese law of tort meant that such action could be considered as a 'sufficiently certain remedy in practice as regards compensation for allegedly inadequate detention conditions'⁴. This is significant in light of the fact that any infringement of Article 3 of the Convention must be countered not only by an improvement in the material conditions of detention, but also by compensation for the damage sustained on account of such conditions.⁵ The Court voiced its concern as to the poor access to effective legal aid which detainees had, which process was in turn neither expeditious nor effectual, as evidenced by the fact that Government could only produce evidence as to one other instance in which access to effective legal aid was granted to an immigrant in the past. In coming to its decision, the Court also took into consideration the applicant's known fragile health, the lack of female staff

¹ Imogen Foulkes, 'Swiss policies segregating asylum seekers draw outrage' (BBC News, 19 August 2013) <www.bbc.co.uk/news/world-europe-23753875> accessed 20 September 2013

² *Aden Ahmed vs Malta*, App no 55352/12 (ECHR 23/07/2013)

³ *Suso Musa vs Malta*, App no 42337/12 (ECHR 23/07/2013)

⁴ *Aden Ahmed vs Malta*, App no 55352/12 (ECHR 23/07/2013)

⁵ *Roman Karasev vs Russia*, App no 30251/03 (25/11/2010); *Z and Others vs the UK*, App no 29392/95 (10/05/2001)

within the detention centre, the lack of access to outdoor activity and climatic conditions, all of which contributed to the creation of feelings of inferiority capable of humiliating the detainee. The detention was also held to be impermissible in terms of Article 5(1) of the Convention given the lengthy duration thereof.

Another very recent judgment delivered this time by the Court of Justice of the European Union (CJEU) in August 2013, will also prove pivotal in advocating the rights of asylum seekers, particularly those of unaccompanied minors. In *MA & Others v. The UK*,⁶ the CJEU found itself in a position whereby it had to determine which State was to examine a request for asylum – and consequently take responsibility for immigrants of a minor age who applied for asylum in a number of countries as per the Dublin II Regulations. What is particularly noteworthy about the Court's final decision was the impact which the notion of the best interest of the child had on the final decision: unaccompanied children were categorized as falling within a particularly 'vulnerable' class of individuals, for which prompt access to the proper asylum procedures was extremely valuable.⁷ The extent of the Court's decision is significant given that unaccompanied immigrants present within a particular territory were deemed to fall within the responsibilities of that particular State in which jurisdiction the minors were present, regardless of whether or not such minors had any ties to that country in the form of relatives waiting for them within that territory. The CJEU therefore waived the effects of the Dublin Regulations, rendering them inapplicable for such children.⁸ The relevance of this judgment also lies in the fact that the CJEU interpreted EU legislation in line with the provisions of the ECHR for the first time, thereby setting much needed parameters for State action within immigration law. The Court further established that a subsequent denial by a particular State to that minor's claim for protection would allow the said minor to compel another Member State to review the said application.

The cases mentioned above represent only two of the more recent European judgments in which the Courts have attested to the vulnerability of asylum seekers, and in which extensive measures were taken in order to ensure that Member States comply with their international obligations and uphold the inalienability of their fundamental rights. This judicial intervention has in turn contributed to an ever-increasing change in national and European laws, which laws find themselves under the constant scrutiny in the hope that asylum seekers could be subjected to fair living conditions and to an efficient access of the law.

⁶ Case C-648/11, *MA & Others vs The UK* [2013] ECR I-0000

⁷ *Ibid*, Paragraph 61

⁸ 'Best interests of the child and the Dublin System (C-648/11)' (European Law Blog, News and Comments on EU Law, 26 September 2013) <www.europeanlawblog.eu/?p=1877> accessed 26 September 2013