



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

FOURTH SECTION

DECISION

Application no. 14535/10
Hassan Ahmed ABDI IBRAHIM
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,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having regard to the above application lodged on 8 March 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Hassan Ahmed Abdi Ibrahim, is a Somali national. He is currently held in immigration detention in West Drayton. He is represented before the Court by Ms J. Hunt of Wilson & Co. Solicitors, a firm of lawyers practising in London. The United Kingdom Government (“the Government”) were represented by their Agent, Mr M. Kuzmicki of the Foreign and Commonwealth Office.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. The applicant was born in Somalia in 1982. He arrived in the United Kingdom in 1989, at the age of seven, with his father, step-mother, uncle and siblings, having spent two years in a refugee camp in Ethiopia immediately prior to his arrival. He was, together with his family, granted refugee status on 6 January 1990 and indefinite leave to remain on 11 July 1994.

4. On 14 November 1995, the applicant made an allegation of child abuse, claiming that since he was five years old, his father had regularly beaten him and deprived him of food. He was placed with foster carers but, as the local authority's investigations into his allegations were inconclusive and the applicant's father agreed not to use force against him, he was returned home later the same month. However, following further allegations of violence against his father, the applicant was placed with foster carers in January 1996. He returned home for a short period later that month but, following further allegations, was placed with foster carers in February 1996. He absconded, and in March 1996 was placed in a residential children's home. A medical examination conducted on 12 April 1996 indicated that the applicant had old injuries consistent with his account of abuse at the hands of his father and was extremely thin. He went to live with his uncle in November 1996, until March 1997 when his uncle stated that he could no longer care for him and the applicant was placed back in a residential children's home.

5. Throughout the period 1996-1997 there were problems with the applicant's behaviour. He used drugs, including crack cocaine, and stole to finance his drug use, accumulating 12 criminal convictions as a minor. He frequently absconded from his residential placements and was excluded from school. In March 1998 the residential children's home terminated his placement, on the grounds that his behaviour was beyond their control, and in particular that he was bullying residents and threatening staff. At the age of 16, he moved into bed and breakfast accommodation. In the Autumn of 1998 the applicant persuaded his father to pay for him to travel to Ethiopia to visit his grandmother, where he remained until March 1999 (by which time he was aged 17). Thereafter he received support, including with accommodation, from the social services "leaving care team", although from 2000 onwards he spent substantial periods in custody.

6. Between 26 June 1997 and 1 December 2005 the applicant was convicted of 21 offences, including theft, affray, common assault, possession of Class A and B drugs, burglary, robbery, handling stolen goods and failing to surrender to bail. In February 2001 he received a nine month custodial sentence for robbery. In November 2001, whilst still under

supervision by the probation service following his release, he committed further offences and on 5 February 2002 he was convicted of robbery and offering to supply a Class B drug and sentenced to four and a half years' imprisonment. The applicant had forced the 16 year-old he was supplying with drugs to strip and was verbally and physically aggressive towards him because he was unable to pay. On his release, in November 2004, the applicant failed to attend probation appointments and was recalled to prison. He was re-released on 15 April 2005. On 18 April 2005 he committed a further robbery, for which he was convicted on 15 July 2005. He was initially sentenced to life imprisonment with a tariff based on a determinate sentence of four years, but on appeal this was reduced to a sentence of four years' imprisonment. In the course of that period of detention he received approximately 20 in-prison adjudications for misconduct, including fighting and disobeying orders. The applicant was released on 5 June 2007, but was recalled to prison on 27 August 2007 following a fight with another resident of the hostel where he was living.

7. On 1 July 2005 the applicant was informed that the Secretary of State had decided to deport him to Somalia, as conducive to the public good. However, this decision was subsequently withdrawn as the applicant's refugee status had not been considered. On 9 April 2009 the applicant was informed that the decision had been taken to revoke his refugee status. On 17 April 2009, his prison sentence ended, and he was immediately transferred into immigration detention.

8. The applicant appealed against both the decision to revoke his refugee status and the decision to deport him, and his appeal was heard by the then Asylum and Immigration Tribunal on 10 August 2009. The Tribunal took note of the applicant's claims to have been drug-free since 2007, and to have been let down by social services in failing to investigate the abuse he had suffered at the hands of his father and in failing subsequently to provide him with adequate support. However, the Tribunal found that, while the local authority should have investigated the applicant's allegations of abuse more rigorously, he had, in fact, received considerable support from social services and had on occasion abused this help by running away from care homes or failing to attend appointments. In his evidence to the Tribunal, the applicant claimed not to believe in God and not to be a practising Muslim but, undermining his credibility, this contrasted with his complaint to the local authority that he was placed in a drug rehabilitation unit which did not meet his cultural needs as a Muslim. According to a forensic psychiatric report, the applicant presented a moderate risk of violent recidivism, which would be increased if he returned to substance abuse or was subjected to negative peer influences. It appeared to the Tribunal that, if released, the applicant was likely to return to the same area where he had previously committed crimes; that he had no employment prospects; and that he had previously failed to comply with supervision in the community. Given these

facts and the seriousness of his offence, particularly when combined with his “appalling record” of previous convictions, the Tribunal concluded that the applicant was a danger to the community and that deportation was appropriate. The Tribunal considered a number of recent country guidance cases and the expert reports submitted by the applicant (see paragraphs 16-19 below) and concluded that the revocation of his refugee status was also appropriate. There was evidence that his father had been born in Hargeisa in Somaliland, which meant that the applicant would be allowed entry by the Somaliland authorities. He was of the Isaaq clan, which was the majority clan in Somaliland, and would be able to seek clan protection. The objective evidence indicated that the situation in Somaliland was reasonably stable. The grant of asylum to the applicant was no longer necessary. The tribunal also rejected the applicant’s claim to protection under Article 3 of the Convention, concluding:

“There is no evidence to support the appellant’s view that he faces a real risk of ill-treatment upon return to Somaliland. The appellant is a young single male with no dependants who would be able to establish himself in northern Somalia and obtain protection from his clan.”

9. The applicant sought reconsideration of the Tribunal’s decision, which was refused by a Senior Immigration Judge on 9 September 2009. Pending his application to the High Court he was granted bail by the Asylum and Immigration Tribunal on 1 December 2009, on conditions including twice weekly reporting. The applicant failed to comply with the bail conditions and did not report at all during December 2009. His application for reconsideration was refused by the High Court on 11 January 2010. The High Court found that the Tribunal had been entitled to hold that the applicant’s removal to Somaliland would not breach the Refugee Convention and that his deportation would not amount to a disproportionate interference with his Article 8 rights. The Tribunal had plainly had regard to all the applicant’s arguments and there was no realistic possibility that another Tribunal would reach a different conclusion.

10. Meanwhile, on 31 December 2009 the applicant was arrested on a charge of theft and remanded to prison. On 15 January 2010 he was sentenced to 28 days’ imprisonment, and, following completion of his sentence, a decision was made to detain him under immigration powers. On 21 April 2010, while in immigration detention, the applicant was involved in a fight with another detained person, and on 24 June 2010 he was convicted and fined for resisting or obstructing a person assisting a constable, which incident had taken place on 7 December 2009. In August 2010 the applicant was, with others, involved in a serious disturbance whilst in immigration detention, resulting in injury to a number of individuals, including staff. He was placed in a segregation unit, and transferred to prison on 6 September 2010.

B. Relevant country of origin information

1. United Nations' High Commissioner for Refugees (UNHCR)

11. A report published by UNHCR on 5 May 2010, "Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Somalia", stated as follows:

"The self-declared Republic of Somaliland, which has not been recognized by the international community as an independent sovereign state, has been relatively peaceful and secure with the exception of the problematic presidential elections process...

UNHCR considers that a situation of generalized violence or events seriously disturbing public order does not exist to the extent that an individual present in either Puntland or Somaliland would be at risk of serious harm."

2. Amnesty International

12. In a report published on 17 March 2009, "Human Rights Challenges: Somaliland", Amnesty International observed:

"While overall human rights and humanitarian conditions have continued to worsen in southern and central Somalia, as well as in Puntland, a stable Somaliland has devoted attention to democratization, institutional capacity-building, stability and development in its 18-year pursuit of international recognition of self-declared independence. While Amnesty International takes no position on Somaliland's claim to independence, the international community should provide the *de facto* authorities of the Government of Somaliland with necessary support to promote the rights of its people, and to ensure its capacity to firmly establish broad human rights protections."

In their Annual Report on Somalia, published on 13 May 2011, Amnesty International found in relation to Somaliland that:

"Presidential elections were held on 26 June in the Republic of Somaliland. Ahmed Mohamed Mahamoud Silanyo, a former opposition politician, was declared the new President in July. According to independent observers, the elections were generally free, fair and peaceful. However, media freedom organizations reported some instances of restrictions on journalists in the lead-up to the elections.

Tensions flared in the border areas of Sool and Sanaag claimed by Puntland. A new armed group clashed with Somaliland security forces from May onwards. Thousands of people were reportedly displaced by the clashes.

Displaced people from southern and central Somalia continued to live in difficult conditions.

Minority groups continued to suffer discrimination."

3. Human Rights Watch

13. In a report published on 13 July 2009, "Hostages to Peace: Threats to Human Rights and Democracy in Somaliland", Human Rights Watch reported as follows:

What Somaliland has accomplished over the years is both improbable and deeply impressive. While much of south/central Somalia remains mired in chaos and bloodshed, Somaliland has built a hard-won peace that it has now maintained for more than a decade. That peace has sheltered Somalilanders from the horrific abuses that have destroyed so many lives across Somalia. At the same time, Somaliland has done much to build the foundations of democratic governance grounded in respect for fundamental human rights. In 2003 and 2005 it held competitive and credible national elections, including parliamentary polls that put the territory's House of Representatives firmly in the hands of the political opposition. There is a vibrant print media and an active and independent civil society. Somaliland has accomplished these things primarily on its own, in one of the world's most volatile regions."

Human Rights Watch's more recent "World Report 2011 – Somalia", published on 24 January 2011, stated:

"After almost two years of delay, Somaliland finally held its presidential election on June 26, 2010. International observers deemed the polls reasonably free and fair despite an isolated incident in the Sool region, where one person was killed. The incumbent President Dahir Riyale accepted defeat and peacefully ceded power to an opposition candidate, further advancing hopes for stability in the northern region.

The situation remains unstable in the contested regions of Sool, Sanag, and Cayn, which lie between Somaliland, in Somalia's northwest, and the autonomous state of Puntland in the northeast. Thousands of civilians were displaced by clan-based clashes and conflicts over resources in the disputed area in June."

4. *United Kingdom Border Agency*

14. The most recent Operational Guidance Note on Somalia, published on 15 December 2011, provided:

"Somaliland and Puntland, are in general relatively safe. A long-standing dispute exists over the territories of Cayn, Sool and Sanag, with both Somaliland and Puntland claiming them and the Sool-Sanag-Cayn alliances fighting to remain part of the original state of Somalia. General insecurity resulting from armed violence continues to be the main protection concern in the North-West regions of Somaliland and there has also been an increase in violence and assassinations in Puntland, since the beginning of 2011, mostly in Galkayo, Bossaso and areas around Galgala.

There are major protection concerns around [internally displaced person] settlements both in Puntland and Somaliland, which include overcrowding, severe levels of malnourishment, economic exploitation of children and a lack of physical security, rapes, gang rapes and other instances of sexual and gender-based violence.

The authorities in Somaliland will only admit failed asylum seekers returning from European countries who originate from their territory or those who have close affiliations to the territory through clan membership. In the case of majority clan affiliates, this means those associated with the Isaaq in Somaliland. In Somaliland taxis and 4x4 vehicles can easily travel from Hargeisa, Burao, Lasanod and Garowe. The main transportation between Somaliland and South Central is by lorry. People travel by air between Mogadishu and Hargeisa. The Tribunal in *AMM and others* ... also found that a person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly

the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.”

5. *The Memorandum of Understanding between the United Kingdom and Somaliland authorities*

15. In *R. (Hussein) v. the Secretary of State for the Home Department* [2009] EWHC 2506 (Admin), heard by the High Court on 14 October 2009, reference was made to a Memorandum of Understanding between the Government of the United Kingdom and the Somaliland authorities concluded in 2003 and renewed in 2007, which dealt with the question of returns. The Memorandum of Understanding provided that the Somaliland authorities would accept the return of persons who had no right to remain in the United Kingdom and had a right of return to Somaliland. Such return might be voluntary or enforced as regards the individual, but required the prior consent of the authorities. Such consent would be granted only after the provision of bio-data to satisfy the Somaliland authorities that the individual in question had a sufficient connection to Somaliland, which would generally entail that the person came from a clan with a sizeable representation in the region, and/or had been born or had parents who had been born in the region, and/or had family currently residing there. If a returnee were to be rejected by the Somaliland authorities at the point of entry, he or she would be brought back to the United Kingdom at the Government’s expense.

6. *The applicant’s expert reports*

16. During the domestic proceedings and in his application to this Court, the applicant relied on two reports, dated March 2007 and July 2009, by Markus Höhne, from the Max Planck Institute of Social Anthropology. Mr Höhne had learnt the Somali language and had carried out research on Somali history, culture and politics since 2001, including extensive field research throughout 2002-2004 in Somaliland and Puntland.

17. In his first report, Mr Höhne gave an overview of events in Somalia from 1979 onwards. He noted that warlord rule prevailed in southern Somalia, but that in the North West the situation developed differently, since the Somali National Movement, a guerrilla organisation predominantly supported by the Isaaq clan, seized control early in 1991. The guerrillas entered into peace negotiations with the various other clans in the region and Somaliland was declared a secessionist republic in May 1991. Over the following decade Somaliland developed as a peaceful *de facto* State, with a clan-based political system. In recent years, democratic reforms had been introduced and elections were held in 2002 and 2005. However, the effectiveness of the Somaliland Government was limited by lack of resources, non-recognition by the international

community and military challenges from other clans, who opposed a separate Somaliland.

18. Mr Höhne referred to the Court's conclusions in *Salah Sheekh v. the Netherlands*, no. 1948/04, 11 January 2007 that individuals without ties to Somaliland would risk being turned back at the airport or subjected to harassment and abuse by the authorities. Although it appeared that the applicant originated from Somaliland, it was unclear from which clan he descended, and without any contacts to arrange his reception and arrival at Hargeisa airport, he might face rejection by the authorities. If he were allowed to enter, he might face severe problems in finding proper accommodation and meeting his other basic needs. Individuals who stood out because they dressed or spoke differently from the general population were subject to verbal harassment on the street, possibly escalating into physical attacks. Somaliland was strictly Islamic and any person who failed to conform to Islamic norms would be stigmatised and excluded from access to work, health care and other basic services. There was no welfare state or free access to health care, and people with serious illnesses had to rely on their families for support. Educational facilities were poor and unemployment was high. In most cases, it was necessary to rely on assistance from relatives in order to get a job. The reaction of the local population to the applicant would, therefore, depend on his ability to conform to the local culture. If he did become stigmatised because of his inability to fit in, he would face exclusion from employment and basic social services.

19. In his 2009 report, Mr Höhne referred to a report by Amnesty International that the ongoing instability and armed conflict in southern and central Somalia had had an impact in Somaliland. There were at least six camps for displaced persons in Hargeisa, populated by refugees from elsewhere in Somalia and Ethiopia, and members of minority groups originating in Somaliland. Living conditions in the camps were harsh, with no running water or electricity and problems with security. Religious extremism had increased in Somaliland in recent years, due in part to radical Islamist groups such as Al-Shabaab increasing their following, with the result that much of the population took great pains to follow Islamic rules and norms in all areas of daily life, and practices which had previously been tolerated, particularly in the urban centres of the region, were now completely unacceptable. Such practices included the wearing of light clothes or even trousers by women, and smoking by men. The applicant's lack of knowledge of and adherence to the principles of Islam would, in the light of the increasingly strict and intolerant religious context, be an even more worrying issue for him. Furthermore, the fact that it had now emerged that the applicant was from the majority Isaaq clan did not alter Mr Höhne's view that, without contacts or family connections in Somaliland, the applicant would face severe difficulties in establishing himself. Housing,

employment and other services were usually organised within family networks; unemployment was high and it was extremely hard to find a job without good qualifications and family support. An individual would need detailed knowledge about clan relations and other social structures in order to find his way through daily life.

COMPLAINTS

The applicant complained that his deportation would give rise to violations of his rights under Articles 3 and 8 of the Convention.

THE LAW

A. Alleged violation of Article 3 of the Convention

20. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

1. *The parties' submissions*

a. **The applicant**

21. The applicant claimed that his removal would most likely take place via Mogadishu and that his life and physical integrity would be endangered by being required to transit through the airport there. In 2008 and 2009 there had been attacks on Mogadishu airport. The general situation in Mogadishu remained violent and unstable and the airport was still treated as a legitimate target by armed insurgents and vulnerable to attack.

22. Moreover, there was no reason to believe that the authorities there would permit him to enter. The applicant relied on the expert report of Markus Höhne, which found that it was unclear which clan the applicant descended from and pointed out that, given his lack of contact with friends or relatives in Somaliland, the applicant would be in a similar position to a non-Somalilander. Without anyone in Somaliland to arrange his reception and arrival at Hargeysa, Mr Höhne predicted that the applicant might face rejection by the authorities at the airport. The applicant also referred to the Memorandum of Understanding as considered by the High Court in the *Hussein* case (see paragraph 15 above). It appeared that the consent of the Somaliland authorities was required before an individual could be removed there and that the mere fact of being Isaaq and originating in Somaliland

were insufficient to secure that consent; it might also be necessary to have family currently residing there. The Government had not produced any evidence to show that the Somaliland authorities had accepted the applicant for admission pursuant to the Memorandum of Understanding. In all the circumstances, he submitted that there was a substantial risk that he would be sent back to Somalia, where he had no family ties and where he would be at risk of serious harm.

23. In the alternative, the applicant submitted that, if he were admitted to Somaliland, he would be at risk of destitution and severe social exclusion. He claimed that the bare facts of origin in Somaliland and membership of the Isaaq clan would be insufficient to avoid the consequences of having no personal ties or experience of living there and utilizing clan and other relationships. Somaliland society was violence-prone and hostile to outsiders. Without real social, cultural and family ties there, the applicant's Westernised upbringing, lack of linguistic and cultural knowledge, disregard of Islam and physical signs of his past life, such as tattoos and piercings, would result in lasting stigma. He would be at risk of verbal and physical harassment and exclusion from basic social services and employment, all of which were family-based.

b. The Government

24. The Government submitted that there was no reason to fear that the applicant would be placed at risk by transiting through Mogadishu airport. As the Court had found in *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 268, 28 June 2011, the airport was in regular use and there was no real risk involved in arrival at the airport. Nor was there any basis to believe that the applicant would be denied entry to Somaliland, given that he was descended from the majority Isaaq clan through his father. The Government referred to the Memorandum of Understanding considered by the High Court in *R. v. Hussein* (see paragraph 15 above), under the terms of which the applicant, who had been born in Somaliland and was a member of the majority Isaaq clan, should be permitted to enter. In any event, if he were refused entry, he would be returned to the United Kingdom and not to Somalia.

25. The Government did not consider that the applicant would face ill-treatment contrary to Article 3 once admitted to Somaliland. The available country information about Somaliland demonstrated that the general human rights situation provided no basis for concluding that the applicant would be at risk there. The applicant, through his father, was a member of the majority Isaaq clan. Although there were abundant reports from non-governmental organisations in the region, the applicant's expert, Markus Höhne, had identified no material demonstrating that returning members of the Isaaq clan were routinely subjected to serious harassment or abuse. The reports of which the Government were aware did not support

this conclusion, and in *Salah Sheekh v. the Netherlands*, no. 1948/04, § 139, 11 January 2007, the Court drew a clear distinction between the position of persons such as Salah Sheekh, who had no ties to the majority clans in the region, and members of the majority clan, such as this applicant.

26. Markus Höhne had concluded that the applicant would face social and economic exclusion because of his lack of familiarity with the Somali language, his non-adherence to the Islamic religion, his previous use of drugs and the tattoo on his forearm. However, Mr Höhne had predicated his opinion on the account given by the applicant, who had not been accepted by the Tribunal as a credible witness. In particular, the applicant's claim not to adhere to the tenets of Islam was inconsistent with his complaint against the local authority for placing him in a Unit which did not meet his cultural needs as a Muslim. There was no credible evidence to suggest that, if returned to Somaliland, the applicant would behave in a manner that would be culturally unacceptable to the local population. In particular, he claimed to have been drug-free for several years. While the Government accepted that the applicant might not be as fluent in Somali as a person who had lived in the region all his life, they pointed out that Somali had been the applicant's first language, which he had spoken until coming to the United Kingdom at the age of five and which he probably continued to use in the family home, where he remained until he was 13. In addition, English was one of the official languages of Somaliland.

27. The applicant was a single man, aged 28, who was in good health and able to undertake physical work. Although he had no formal qualifications, he had a good command of written and spoken English and should be taken to have a reasonable command of Somali. While the Government accepted that the applicant might experience some harassment because of his westernised background, it was not accepted that either this, or the fact that his economic position might be worse in Somaliland than it had been in the United Kingdom, would give rise to such severe hardship as to reach the threshold of Article 3.

2. *The Court's assessment*

a. **General principles**

28. It is settled case-law that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (*Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-....; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 67, *Boujlifa v. France*, judgment of 21 October 1997, *Reports* 1997-VI, p. 2264, § 42). The right to political asylum is also not contained in either the Convention or its Protocols (*Salah Sheekh*, cited above, § 135, with further authorities). However,

expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, 28 February 2008; see also *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 212, 28 June 2011). As the prohibition of torture and of inhuman or degrading treatment or punishment is absolute, irrespective of the victim's conduct, the nature of the offence allegedly committed by the applicants is irrelevant for the purposes of Article 3 (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 79; *Saadi v. Italy*, cited above, § 127; *Sufi and Elmi*, cited above, § 212).

29. The assessment whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II).

30. Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (*H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, § 40). The Court's assessment must focus on the foreseeable consequences of the removal of the applicant to the country of destination. This in turn must be considered in the light of the general situation there as well as the applicant's personal circumstances (*Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 108). In this connection, and where it is relevant to do so, the Court will have regard to whether there is a general situation of violence existing in the country of destination (see *Sufi and Elmi*, cited above, § 216).

31. On the other hand, the mere fact of return to a country where one's economic position will be worse than in a Contracting State is not sufficient to meet the threshold of ill-treatment proscribed by Article 3 (see *Miah v. the United Kingdom* (dec.), no. 53080/07, § 14, 27 April 2010 and, *mutatis mutandis*, *N. v. the United Kingdom* [GC], no. 26565/05, § 42, 27 May 2008). Although many of the rights it contains have implications of a social or economic nature, the Convention is essentially directed at the

protection of civil and political rights (*Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, § 26). Aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. In the absence of exceptionally compelling humanitarian grounds against removal, the fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to breach of Article 3 (see *N. v. the United Kingdom* [GC], no. 26565/05, § 42, ECHR 2008; see also *Sufi and Elmi*, cited above, § 282).

32. The assessment of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Sufi and Elmi*, cited above, § 214). If the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Saadi v. Italy*, cited above, § 133). A full and *ex nunc* assessment is called for as the situation in a country of destination may change in the course of time. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities (see *Salah Sheekh*, cited above, § 136; *Sufi and Elmi*, cited above, § 215).

b. Application to the facts of the case

33. The Court considers that the applicant's complaint under Article 3 can be divided into three elements. As regards the first alleged ground of risk, the probable need to transit through Mogadishu airport, the Court recalls its findings in *Sufi and Elmi*, cited above, at § 268, that there was no real risk that a person being returned to central and southern Somalia would be subjected to ill-treatment at the airport, and finds that this applies with equal force to those who are simply transiting through the airport. The Court finds that neither the applicant's claimed fear of being refused entry to Somaliland or his fear of suffering ill-treatment during transit through Mogadishu have any force.

34. In addition, the applicant contends that there is a risk that he will be denied entry to Somaliland and forced to settle in Somalia. However, the

Court has taken note of the Government's reference to the confidential Memorandum of Understanding on returnees concluded between the British and Somaliland authorities, discussed in *R. v. Hussein* (see paragraph 15 above). The Court does not consider that the applicant has established a real risk that he will be denied entry to Somaliland and forced to remain in Mogadishu. First, as a member of the majority Isaaq clan, who was born in what is now Somaliland and whose father was also born there, it appears that he fulfils the criteria set out in the Memorandum of Understanding and would thus be permitted entry by the Somaliland authorities. Moreover, should directions for his removal be set, arrangements will be made for him to travel all the way to Somaliland, albeit perhaps with a transit stop in Mogadishu. The Government of the United Kingdom has undertaken to the Somaliland authorities under the Memorandum of Understanding that any returnee who is denied entry to Somaliland will be returned to the United Kingdom, at the expense of the Government. Even if he were to be denied entry to Somaliland, therefore, the applicant has not demonstrated that he will be forced to remain in Mogadishu or elsewhere in Somalia as a result.

35. It therefore remains to assess the risk which the applicant would be likely to face in Somaliland. The Court has previously found that Somaliland can be categorised as "relatively safe" for those who, like the applicant, originate from the area and have links to the majority clan (see *Salah Sheekh*, cited above, § 139). The applicant has not submitted anything to the Court which would tend to indicate that its findings with regard to the situation in Somaliland are no longer applicable or relevant. The Court notes from its examination of the relevant background country evidence on Somaliland that the area, unlike south and central Somalia, has a functioning system of government, has remained stable for many years and does not suffer from a high level of general violence. There is nothing to suggest that the situation in the region is such that a person, merely by being present on the territory, would be subjected to a real risk of Article 3 ill-treatment.

36. As stated above, the burden is on the applicant to adduce evidence demonstrating that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 if returned to Somaliland. In this connection, he has submitted two expert reports written by Mr Markus Höhne (see paragraphs 16-19 above). Mr Höhne identifies two broad grounds of risk for the applicant. First, he states that an individual who stands out from the crowd, because of the way he dresses or talks, or because of a failure to be seen to adhere to the precepts of Islam as practised in the region, might be at risk of verbal or physical harassment from the population. Mr Höhne's report does not include any concrete example of this type of harassment taking place. Moreover, the Court recalls that the applicant is a young man, with no particular health problems. He spent the first five years of his life in what is now Somaliland, and lived with Somali family members, first in a

camp in Ethiopia and subsequently in the United Kingdom, until he was 13 or 14 years old. In 1998/1999 he spent several months visiting relatives in Ethiopia. The Court considers it likely, therefore, that the applicant has some knowledge of the Somali language and of the behaviour required to blend into Somali communities. It cannot be said on the evidence before the Court that the applicant has established that, if returned to Somaliland, he would face a real risk of physical attack from non-State actors which would reach the degree of severity required for a violation of Article 3. Secondly, Mr Höhne emphasises the difficult economic situation in the area, and states that access to employment is largely dependent on family connections, and that the family also provides a safety net in the event of serious illness or poverty. Without such family connections, it is contended that the applicant would face social exclusion and economic deprivation. However, again the Court finds Mr Höhne's evidence to be lacking in detail. His first report was written on the assumption that the applicant had no affiliation to the majority Isaaq clan. In his second report, when it had become clear that the applicant was connected to the Isaaq through his father, Mr Höhne merely stated that this did not affect his earlier view that it would be difficult for the applicant to enter or establish himself in Somaliland. The reports provide no detailed information as to the working of the clan structure in relation to individuals who return to Somaliland after living in Europe. The applicant is a member of the majority clan; he is young, healthy and physically strong, with certain skills, such as a knowledge of English. The Court does not find it established that he will inevitably be excluded from all forms of economic activity. In particular, the evidence before the Court does not demonstrate the existence of exceptionally compelling humanitarian grounds against the removal of the applicant to Somaliland (see paragraph 31 above).

37. In conclusion, the Court finds that the applicant's complaint under Article 3 of the Convention is manifestly ill-founded and therefore inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 8 of the Convention

38. Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

1. The parties' submissions

a. The applicant

39. The applicant contended that his removal to Somaliland would violate his right to respect for private life under Article 8. Again he relied on the reports of Markus Höhne, and the problems of social isolation, harassment and economic exclusion he would be likely to experience as a result of his lack of family connections, limited knowledge of the language and Westernised appearance and demeanour. He further submitted that the nature and seriousness of his offending were insufficient to outweigh the difficulties he would experience if deported.

b. The Government

40. The Government took the view that the applicant was a prolific and persistent offender. He had spent most of his adult life in prison. The most recent risk assessment, produced on the applicant's behalf in 2009 and taking into account his claim to be drug-free, acknowledged that the risk of his reoffending was high and assessed that he presented a moderate risk of violent reoffending. On each release from prison, the applicant immediately committed another crime. Furthermore, his conduct in prison gave cause for concern, since he had received approximately 20 adjudications, including seven for fighting. The applicant was a single man with no partner or children. He had stated that he had had no visits from family members while in prison, that he did not have much support from his family or others in the community and that, if released, he wanted to be away from all the people he used to know. In response to the applicant's claim that he been let down by social services as a child, the Government pointed out that his complaints had been investigated and the only aspect that was upheld was the finding that a more rigorous inquiry should have been made into his allegations of physical abuse from his father in 1995 and 1996. His other allegations regarding the quality of care provided by the local authority were rejected. The Government submitted that, in all the circumstances the applicant's deportation would strike a fair balance under Article 8.

2. The Court's assessment

a. General principles

41. The Court notes that the applicant does not claim currently to have "family life" in the United Kingdom within the meaning of Article 8. However, it recalls that, as Article 8 protects the right to establish and develop relationships with other human beings and the outside world and can sometimes embrace aspects of an individual's social identity, it must be accepted that the totality of social ties between settled migrants such as the applicant and the community in which they are living constitutes part of the

concept of “private life” within the meaning of Article 8. Indeed it will be a rare case where a settled migrant will be unable to demonstrate that his or her deportation would interfere with his or her private life as guaranteed by Article 8 (see *Miah*, cited above, § 17).

42. An interference with a person’s private life will be in breach of Article 8 of the Convention unless it can be justified under paragraph 2 of that Article as being “in accordance with the law”, as pursuing one or more of the legitimate aims listed therein, and as being “necessary in a democratic society” in order to achieve the aim or aims concerned. In determining whether an interference is necessary in a democratic society, the relevant criteria to be applied, where the applicant has no family life in the host State, include: the nature and seriousness of the offence or offences committed by him; the length of his stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant’s conduct during that period; and the solidity of social, cultural and family ties with the host country and with the country of destination (see *Üner v. the Netherlands* [GC], no. 46410/99, §§ 57-58, ECHR 2006-XII). These principles apply regardless of whether an alien entered the host country as an adult or at a very young age, or was perhaps even born there. While a number of Contracting States have enacted legislation or adopted policy rules to the effect that long-term immigrants who were born in those States or who arrived there during early childhood cannot be expelled on the basis of their criminal record, such an absolute right not to be expelled cannot be derived from Article 8 of the Convention, couched, as paragraph 2 of that provision is, in terms which clearly allow for exceptions to be made to the general rights guaranteed in the first paragraph (see *Üner*, cited above, § 55). However, the age of the person is of significant relevance when applying certain of the criteria. For instance, when assessing the nature and seriousness of the offences committed by an applicant, it has to be taken into account whether he or she committed them as a juvenile or as an adult. The age at which the person entered the host country is also of relevance, as is the question of whether they spent a large part or even all of their childhood in that country (see *Maslov v. Austria* [GC], no. 1638/03, §§ 72-73, ECHR 2008). The Court has previously found that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country, very serious reasons are required to justify expulsion (see *Maslov*, cited above, § 75).

b. Application to the facts of the case

43. It is not in dispute between the parties that the proposed deportation would amount to an interference with the applicant’s right to respect for private life, but that it would be “in accordance with law” and in pursuit of a legitimate aim, namely the prevention of crime. It only remains for the

Court to determine, therefore, whether the deportation would be “necessary in a democratic society”.

44. The Court takes as its starting point the fact that the applicant, now aged 29 or 30, has lived in the United Kingdom since the age of seven. Given that the applicant can be classed as a settled migrant who has spent virtually the whole of his childhood in the host country, the Court finds that very serious reasons would be required to justify his expulsion (see *Maslov*, cited above, § 75).

45. However, it is significant that the applicant has spent most of his adult life in prison. He applicant has been convicted as an adult of over 20 offences involving theft, dishonesty, drug dealing and violence, including two robberies which attracted sentences of four and a half years’ and four years’ imprisonment. He has reoffended almost immediately each time he has been released from prison. The Court therefore considers that there is a significant risk of the applicant’s reoffending and a strong public interest in removing him from the United Kingdom. While the Court views with sympathy the circumstances of the applicant’s formative years, the fact remains that he is responsible for his own actions. Particularly in light of the fact that the majority of the applicant’s offences were committed when he was already an adult, the Court finds that the applicant cannot excuse his past criminal conduct by reference to his upbringing (see, *mutatis mutandis*, *Balogun v. the United Kingdom*, no. 60286/09, § 58, 10 April 2012).

46. To a certain extent it is true, as the Government emphasise, that the applicant’s history of imprisonment and, more recently, immigration detention, has meant that the private life he has developed in the United Kingdom has been restricted, in terms of education, employment and ties to the wider community. Nonetheless, the fact that the applicant has lived so much of his life in the United Kingdom must mean that he has some ties, and certainly a familiarity with the British culture and way of life. Set against this, he does not appear to have any friends or family in Somaliland, where he has not lived since he was five.

47. As previously stated, very serious reasons are required to justify the deportation of settled migrants. In the case of this particular applicant, moreover, it is not in doubt that his deportation to Somaliland will have a very serious impact on his private life, given his length of residence in the United Kingdom and his limited ties to his country of origin. However, the Court has paid specific regard to the applicant’s history of repeated, drugs-related and violent offending and the fact that the majority of his offending was committed when he was an adult. With these factors in mind, the Court finds that the interference with the applicant’s private life caused by his deportation would not be disproportionate in all the circumstances of the case. It therefore follows that his deportation to Somaliland would not amount to a violation of Article 8 of the Convention.

48. In conclusion, the Court finds that the applicant's complaint under Article 8 of the Convention is manifestly ill-founded and therefore inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Lech Garlicki
President