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EMD praksis vedr. udsendelse til krigsramte lande

Artikel 3

Forbud mod tortur

Ingen må underkastes tortur og ej heller umenneskelig eller vanærende behandling eller straf.

SUFI and ELMI v. UK

28. juni 2011

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Lech Garlicki, *President,*
Nicolas Bratza,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

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241. In the present case the applicants submitted that the indiscriminate violence in Mogadishu was of a sufficient level of intensity to pose a real risk to the life or person of **any civilian in the capital**. Although the Court has previously indicated that it would only be "in the most extreme cases" that a situation of general violence would be of sufficient intensity to pose such a risk, it has not provided any further guidance on how the intensity of a conflict is to be assessed. However, the Court identified the following criteria: first, whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; secondly, whether the use of such methods and/or tactics was widespread among the parties to the conflict; thirdly, whether the fighting was localised or widespread; and finally, the number of civilians killed, injured and displaced as a result of the fighting. While these criteria are not to be seen as an exhaustive list to be applied in all future cases, in the context of the present case the Court considers that they form an appropriate yardstick by which to assess the level of violence in Mogadishu. ...

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242. It is not in dispute that towards the end of 2008 Mogadishu was not a safe place to live for the great majority of its citizens. In the most recent Country Guideline determination, *AM & AM (Somalia)* (cited above), the then Asylum and Immigration Tribunal carefully considered the intensity of the fighting, the security situation and the extent of the population displacement and concluded that the armed conflict in Mogadishu amounted to indiscriminate violence of such a level of severity as to place the majority of the population at risk of serious harm. However, it did not rule out that there might be certain individuals who on the facts might be considered to be able to live safely in the city, for example if they had close connections with powerful actors in Mogadishu, such as prominent businessmen or senior figures in the insurgency or in powerful criminal gangs.

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250. Consequently, the Court concludes that the violence in Mogadishu is of such a level of intensity that anyone in the city, except possibly those who are exceptionally well-connected to "powerful actors", would be at real risk of treatment prohibited by Article 3 of the Convention.

Se dog K.A.B. v. SWEDEN, 2013 (om udviklingen i Mogadishu)

samt R.H. v. Sweden, 2015 (kvinde, credibility)

Criterias

- whether the parties to the conflict were either employing methods and tactics of **warfare** which increased the risk of civilian casualties or directly targeting civilians;
- whether the use of such methods and/or tactics was **widespread among the parties to the conflict**;
- whether the fighting was localised or widespread; and finally, the **number of civilians killed, injured and displaced** as a result of the fighting.
- While these criteria are not to be seen as an exhaustive list to be applied in all future cases, in the context of the present case the Court considers that they form an appropriate yardstick by which to assess the level of violence in Mogadishu.

L.M. and others v. RUSSIA

15. oktober 2015

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

András Sajó, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

L.M. and others v. RUSSIA

119. The Court notes that a general situation of violence will not normally in itself entail a violation of Article 3 in the event of expulsion; however, it has never ruled out the possibility that the **general situation of violence** in a country of destination **may be of a sufficient level of intensity** as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.

L.M. and others v. RUSSIA

120. As a matter of comparison, when considering situations in different areas of Somalia, the Court concluded that the risks of generalised violence, dire humanitarian conditions and **absence of the possibility of relocating internally** without the danger of being exposed to a risk of ill-treatment could lead to a finding of breach of Article 3, unless it could be sufficiently demonstrated that special circumstances such as powerful clan or family connections could ensure the individual's protection.

L.M. and others v. RUSSIA

123. Turning to the present case, the Court notes that it has not yet adopted a judgment to evaluate the allegations of a risk of danger to life or ill-treatment in the context of the ongoing conflict in Syria. This is undoubtedly at least in part due to the fact that, as it appears from the relevant UNHCR documents, most European countries do not at present carry out involuntary returns to Syria. In October 2014 the UNHCR "welcomed the positive protection practices of many European States with respect to Syrian nationals, including a *de facto* moratoria on returns to Syria, the decision to process Syrian claims in most countries, and high protection rates" The latest UN reports describe the situation as a "humanitarian crisis" and speak of "immeasurable suffering" of the civilians, massive violations of human rights and humanitarian law by all parties and the resulting displacement of almost half of the country's population.

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124. The Court notes that the applicants originate from Aleppo and Damascus, where particularly heavy fighting has been raging. M.A. referred to the killing of his relatives by armed militia who had taken over the district where he lived, and feared that he would be killed too. L.M. is a stateless Palestinian. According to UNHCR, "nearly all the areas hosting large numbers of Palestinian refugees are directly affected by the conflict". This group was regarded by the UNHCR as being in need of international protection. The Court further notes that the applicants are young men who, in the view of the Human Rights Watch, are in particular danger of detention and ill-treatment (see paragraph 79 above).

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125. The above elements are sufficient for the Court to conclude that the applicants have put forward a well-founded allegation that their return to Syria would be in breach of Articles 2 and/or 3 of the Convention. The Government have not presented any arguments or relevant information that could dispel these allegations, nor referred to any special circumstances which could ensure sufficient protection for the applicants if returned.
126. The foregoing considerations are sufficient to enable the Court to conclude that if the applicants were expelled to Syria, it would be in breach of Articles 2 and/or 3 of the Convention.

J.K. and others v. SWEDEN

23. august 2016

In the case of J.K. and Others v. Sweden,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Ledi Bianku,
Kristina Pardalos,
Helena Jäderblom,
Krzysztof Wojtyczek,
Valeriu Griţco,
Dmitry Dedov,
Iulia Motoc,
Jon Fridrik Kjølbro,
Síofra O'Leary,

Carlo Ranzoni,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Søren Prebensen, *Deputy Grand Chamber Registrar,*

J.K. and others v. SWEDEN

96. The Court notes that it is the shared duty of an asylum-seeker and the immigration authorities to ascertain and evaluate all relevant facts of the case in the asylum proceedings. Asylum-seekers are normally the only parties who are able to provide information about their own personal circumstances. Therefore, as far as the individual circumstances are concerned, the burden of proof should in principle lie on the applicants, who must submit, as soon as possible, all evidence relating to their individual circumstances that is needed to substantiate their application for international protection. This requirement is also expressed both in the UNHCR documents.

J.K. and others v. SWEDEN

98. The Court notes that, as far as the evaluation of the general situation in a specific country is concerned, a different approach should be taken. In respect of such matters, the domestic authorities examining a request for international protection have full access to information. For this reason, the general situation in another country, including the ability of its public authorities to provide protection, has to be established *proprio motu* by the competent domestic immigration authorities. A similar approach is advocated in paragraph 6 of the above-mentioned Note issued by the UNHCR, according to which the authorities adjudicating on an asylum claim have to take "the objective situation in the country of origin concerned" into account *proprio motu*. Similarly, Article 4 § 3 of the Qualification Directive requires that "all relevant facts as they relate to the country of origin" are taken into account.

J.K. and others v. SWEDEN

121. The Court considers that, in the light of the above information on matters including the complex and volatile general security situation, the Iraqi authorities' capacity to protect their people must be regarded as diminished. Although the current level of protection may still be sufficient for the general public in Iraq, the situation is different for individuals, such as the applicants, who are members of a targeted group. The Court is therefore not convinced, in the particular circumstances of the applicants' case, that the Iraqi State would be able to provide them with effective protection against threats by al-Qaeda or other private groups in the current situation. **The cumulative effect** of the applicants' personal circumstances and the Iraqi authorities' diminished ability to protect them must therefore be considered to create a real risk of ill-treatment in the event of their return to Iraq.

Danmark og artikel 3

Savran v. Denmark (1. oktober 2019, Chamber)

65. Accordingly, although the threshold for the application of Article 3 of the Convention is high in cases concerning the removal of aliens suffering from serious illness, the Court shares the concern expressed by the City Court, that it is unclear whether the applicant has a real possibility of receiving relevant psychiatric treatment, including the necessary follow-up and control in connection with intensive outpatient therapy, if returned to Turkey.
66. In the Court's view, this uncertainty raises serious doubts as to the impact of removal on the applicant. When such serious doubts persist, the returning State must either dispel such doubts or obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment will be available and accessible to the persons concerned so that they do not find themselves in a situation contrary to Article 3 (see *Paposhvili,* cited above, §§ 187 and 191).
67. It follows that if the applicant were to be removed to Turkey without the Danish authorities having obtained such individual and sufficient assurances, there would be a violation of Article 3 of the Convention.

Paposhvili v. Belgium (13. december 2016, Grand Chamber)