

## ECtHR ? Feilazoo v. Malta, Application no. 6865/19, 11 March 2021

**Country of Applicant:**

Nigeria

**Date of Decision:**

11-03-2021

**Citation:**

ECtHR, Feilazoo v. Malta, Application no. 6865/19, 2021

**Additional Citation:**

ECLI:CE:ECHR:2021:0311JUD000686519

**Court Name:**

The European Court of Human Rights (First Section)

**Keywords:**[Detention](#) [1][Legal assistance / Legal representation / Legal aid](#) [2][Health \(right to\)](#) [3][Inhuman or degrading treatment or punishment](#) [4]**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 3](#) [6]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 5](#) [7] > Art 5.1 > Art 5.1 (f)Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [5] > [Article 34](#) [8]**Headnote:**

The conditions of detention amounted to a violation of Article 3, in so far as the applicant remained in isolation, in a container with inadequate natural light and ventilation, for a significant amount of time and without any consideration of alternatives. The applicant's unnecessary placement in a part of the detention facility that was reserved for Covid-19 quarantine also exposed him to health risk.

The applicant's detention was not lawful under Article 5 (1) ECHR, as it lasted for fourteen months, the authorities were aware that the deportation was not feasible and failed to pursue the matter with diligence. Article 34 was also violated due to irregularities in the manner that legal aid was provided to the applicant and the lack of confidentiality and support during his communication with the Court while he was in detention.

**Facts:**

The applicant, a Nigerian national, served an imprisonment sentence of 12 years following a conviction on drug-related charges. Upon his release in 2018, he was taken to the Immigration Office and was informed that he would be returned back to Nigeria on the basis of national immigration laws on criminal-related removal. He would be kept in detention for the purpose of removal and was ordered to enter the van that would take him to the detention centre. He resisted and during the fight that ensued he sustained several injuries.

The police officers involved brought criminal action against the applicant for assault; the applicant was convicted and, in May 2019, he was transferred to a detention centre for immigrants. A few days later, following a judgment converting his fine into a sentence because he was unable to pay it, he was moved back to a correctional facility. In September 2019, he was once again transferred to a detention Centre without any information on his deportation date. He was informed that he could leave the detention centre in November 2020.

The applicant lodged a complaint with the European Court of Human Rights. Following irregularities in the manner that the Maltese legal aid office advised and represented him, he was invited to benefit from the Court's legal aid. A separate request for legal aid to help him challenge his conditions of detention was granted but no consultation had taken place at least until October 2020.

The complaint alleges violations of Articles 3, 5, 6 §§ 1 and 3 (c).

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**Decision & Reasoning:**

The Court ruled that only the parts of the complaint under Article 3 (conditions of detention) and Article 5 will be considered admissible. Regarding the remainder of the application, the Court noted that the possibility of constitutional redress proceedings had not been exhausted. [58-64]

**Article 3 (conditions of detention)**

The Court started its analysis by reiterating the main principles regarding Article 3 and detention and noted that it had already expressed concerns about the detention facility that the applicant had been held in. It noted that, although the applicant submitted photos supporting his claims, the Government did not present general observations that were supported by any documentation or specificity. However, it was not proven that medical care had been unacceptably limited nor that the conditions resulted in overcrowding. The other claims of the applicant would in any case merit consideration as there was no rebuttal by the Government and they coincide with concerns raised in previous Maltese detention cases. [84-88]

The Court placed significant emphasis on the 75 days that the applicant spent alone in a container without any access to natural light and no possibility for exercise during the first half of it and the fact that the Government did not give sufficient explanation and evidence to refute this claim. Although accommodation in a container might not necessarily violate Article 3, the limited light and

ventilation are important factors in this assessment. [89-90]

Although the applicant was placed in isolation for his own protection due to threats he had received, the severity and duration of the measure was excessive and it seemed that the authorities did not consider other alternatives. Moreover, it is equally concerning that after this period of isolation the applicant was transferred to a different part of the facility where new arrivals of asylum seekers were placed in Covid-19 quarantine. This quarantine lasted for almost seven weeks and there was no reason to believe that the applicant needed it. This measure could have posed a risk to the applicant's health and cannot be considered as complying with basic sanitary requirements. [91-93]

## **Article 5**

The applicant complained that his detention was unlawful because his deportation was not feasible. Having analysed the main principles [101-104], the Court noted *inter alia* that the applicant was detained for fourteen months with a view to his deportation. There were no pending legal proceedings to delay the applicant's deportation but the only step that the authorities took was to contact the Nigerian authorities for the issuing of a passport.

Although the Maltese authorities could not compel the other country to issue a travel document, it is not shown that they actively tried to deal with the situation. There was only one *note verbal* in those fourteen months, which cannot be considering as 'diligent steps with a view to deportation'. Lastly, the Nigerian authorities that visited the applicant had doubts as to his identity and the issuing of a travel document was rather uncertain. The authorities were aware of the lack of prospects of deportation. [107-110]

## **Article 34**

The applicant also claimed that his right to a petition before the Court had been hindered due to interference by the prison authorities with his communication and the irregularities in his representation by a lawyer appointed under the domestic legal aid system. [112-116]

The Court analysed its principles regarding Article 34 and communication with the Court and noted that the absence of confidentiality in the way that the Court's correspondence was communicated to him raised serious concerns. [117-121] Moreover, the Court reiterated that the protection afforded under Article 34 does not depend on whether the alleged interference actually had an impact on the person's right to petition. In the same line, the fact that the the applicant was not provided with copies of documents to substantiate his application also indicated unjustified interference. [122-124]

On the irregularities in the provision of legal aid, the Court reiterated its case law on Article 6 and the circumstances that indicate that legal aid was 'practical and effective.' [125-126] In the present case, the Court did not examine the quality of the advice offered but noted that the appointed lawyer did not maintain confidentiality in her communication with the applicant and abandoned her mandate without informing him and without an official court-ordered revocation of her appointment. [127-129]

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## **Outcome:**

Violation of Article 3 of the Convention;

Violation of Article 5 § 1 of the Convention;

Violation of Article 34.

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**Case Law Cited:**

[ECtHR - Khlaifia and Others v. Italy \(GC\), no. 16483/12, 15 December 2016](#) [9]

[ECtHR - M.S.S. v Belgium and Greece \[GC\], Application No. 30696/09](#) [10]

[ECtHR - Saadi v. United Kingdom, no. 13229/03, 29 January 2008](#) [11]

[ECtHR - Louled Massoud v. Malta, Application No. 24340/08](#) [12]

ECtHR - Ramirez Sanchez v. France [GC], Application No. 59450/00

ECtHR - Ananyev et al. Russia, Application Nos. 42525/07 and 60800/08

ECtHR - Artico v. Italy, Application No. 6694/74

ECtHR - Akdivar v Turkey, Application No. 21893/93

ECtHR - El Masri v. the former Yugoslav Republic of Macedonia [GC], Application No. 39630/09

ECtHR - Aksoy v Turkey, Application No. 21987/93

ECtHR - Nada v. Switzerland [GC], Application No. 10593/08

ECtHR - Riad and Idiab v. Belgium, Application Nos. 29787/03 and 29810/03

ECtHR - Peers v. Greece, Application No. 28524/95

ECtHR - McFeeley and others v. the United Kingdom, Application No. 8317/78

ECtHR - Dougoz v. Greece, Application No. 40907/98

ECtHR - Kudla v Poland [GC], Application No. 30210/96

ECtHR - Khudoyorov v Russia, Application No. 6847/02

ECtHR - Gnahoré v. France, Application No. 40031/98

[ECtHR - Tabesh v. Greece, Application no. 8256/07, 26 November 2009](#) [13]

ECtHR - Amie and Others v. Bulgaria, no. 58149/08, 12 February 2013

Mursic v Croatia, Application No 7334/13, 20 October 2016

ECtHR - Story and Others v. Malta, nos. 56854/13, 57005/13 and 57043/13, § 110, 29 October 2015

[ECtHR - Abdullahi Elmi and Aweys Abubakar v. Malta, Application No. 25794/13 and 28151/13, 22 February 2017](#) [14]

ECtHR - Karalevicius v Lithuania, Application no 53252/99, 7 April 2005

ECtHR - Vuckovic and others v Serbia, Application No. 17153/11

ECtHR - Kamasinski v Austria, 19 December 1989, Series A no. 168

ECtHR - Varnava and Others v. Turkey [GC] (nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, ECHR 18 September 2009)

[ECtHR - Chahal v. The United Kingdom, Application No. 22414/93, 15 November 1996](#) [15]

Suso Musa v Malta app 42337/12, 23 July 2013 4th section

[ECtHR- A.A. v. Greece, Application no. 12186/08, 22 July 2010](#) [16]

ECtHR - Auad v. Bulgaria, no. 46390/10, 11 October 2011

ECtHR - Mocanu and Others v. Romania [GC], nos. 10865/09, 45886/07 and 32431/08

ECtHR - N.C. v. Italy [GC], no. 24952/94

[ECtHR- S.D. v. Greece, Application no. 53541/07, 11 September 2009](#) [17]

[ECtHR- Aden Ahmed v. Malta, \(Application no. 55352/12, 9 December 2013](#) [18]

ECtHR- Gubin v. Russia, Application No. 8217/04

ECtHR- Visloguzov v. Ukraine, Application No. 32362/02

ECtHR - Aydin v Turkey (Application no. 25660/94)

**Attachment(s):**



[CASE OF FEILAZOO v. MALTA.pdf](#)[19]

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**Other sources cited:**

[Rapid reaction visit to Malta - migrant detainees](#) [20], Council of Europe's Committee for the Prevention of Torture (CPT), September 2020

[?Shocking? cycle of violence for migrants departing Libya to seek safety in Europe](#) [21], UN Human Rights Office, 2 October 2020

**Authentic Language:**

English

**State Party:**

Malta

**National / Other Legislative Provisions:**

Articles 5

14 and 25  
Immigration Act  
Chapter 217 of the Laws of Malta  
Regulation 18 (3) of the Prison Regulations  
Subsidiary Legislation 260.03  
Regulation 42 of the Detention Services Regulations  
Subsidiary Legislation 217.1  
Articles 911 and 925  
Code of Organisation and Civil procedure  
Chapter 12 of the Laws of Malta

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**Links:**

- [1] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A27](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27)
- [2] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A45](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A45)
- [3] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A2491](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2491)
- [4] [https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A43](https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43)
- [5] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [6] [https://m.asylumlawdatabase.eu/node/195#toc\\_12](https://m.asylumlawdatabase.eu/node/195#toc_12)
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- [8] [https://m.asylumlawdatabase.eu/node/195#toc\\_132](https://m.asylumlawdatabase.eu/node/195#toc_132)
- [9] <https://m.asylumlawdatabase.eu/en/content/ecthr-khlaifia-and-others-v-italy-gc-no-1648312-15-december-2016-0>
- [10] <https://m.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609>
- [11] <https://m.asylumlawdatabase.eu/en/content/ecthr-saadi-v-united-kingdom-no-1322903-29-january-2008>
- [12] <https://m.asylumlawdatabase.eu/en/content/ecthr-louled-massoud-v-malta-application-no-2434008-0>
- [13] <https://m.asylumlawdatabase.eu/en/content/ecthr-tabesh-v-greece-application-no-825607-26-november-2009>
- [14] <https://m.asylumlawdatabase.eu/en/content/ecthr-abdullahi-elmi-and-aweys-abubakar-v-malta-application-no-2579413-and-2815113-22>
- [15] <https://m.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493-15-november-1996>
- [16] <https://m.asylumlawdatabase.eu/en/content/ecthr-aa-v-greece-application-no-1218608-22-july-2010>
- [17] <https://m.asylumlawdatabase.eu/en/content/ecthr-sd-v-greece-application-no-5354107-11-september-2009>
- [18] <https://m.asylumlawdatabase.eu/en/content/ecthr-aden-ahmed-v-malta-application-no-5535212-9-december-2013>
- [19] <https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20FEILAZOO%20v.%20MALTA>
- [20] <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-undertakes-rapid-reaction-visit-to-malta-to-examine-treatment-of-migrants#:~:text=The%20Council%20of%20Europe&#039;s%20Committee,17%20to%2022%20Septemb>
- [21] <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26337&LangID=E>