



Deportation detainee housed with Covid-19 quarantine patients, and multiple other violations

In today's Chamber judgment¹ in the case of [Feilazoo v. Malta](#) (application no. 6865/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights,

a violation of Article 5 § 1 (right to liberty and security), and

a violation of Article 34 (right of individual application).

The case concerned the conditions of the applicant's immigration detention and its lawfulness. It also concerned complaints in relation to the proceedings before this Court, mainly related to interference with correspondence and domestic legal-aid representation.

The Court took issue with many aspects of the applicant's detention, including time spent detained in *de facto* isolation without exercise, and a subsequent period where he had been detained with people under Covid-19 quarantine unnecessarily. Overall it found the conditions inadequate.

The Court also found that the authorities had not been diligent enough in processing his deportation, and that the reasons for the applicant's detention had ceased to be valid. It also found that the authorities had not guaranteed the applicant's right to petition before the Court, as they had tampered with his correspondence and had not guaranteed to him adequate legal representation.

Principal facts

The applicant, Joseph Feilazoo, is a Nigerian national who was born in 1975 and lives in Safi (Malta).

On 23 February 2010 the applicant pleaded guilty to drug offences and received, besides a prison sentence, a fine and had to pay costs. As he was unable to pay, he was sentenced to an additional 22.5 months' imprisonment. Close to his release the applicant stated that he would return to Spain, where he had been resident. According to the Government, the Spanish authorities refused him permission to return. On his release he was instead brought to the Immigration Office. There he was told he would be returned to Nigeria. He was deemed to be a "prohibited immigrant" and to be at risk of absconding.

It was alleged that at one point the applicant had become aggressive, causing harm to and even biting prison officers; pepper spray was used on the applicant. He was taken to hospital, where a number of injuries were noted, later confirmed by an expert report. The two injured officers complained to the police.

An investigation was opened and the applicant was questioned without his lawyer present. He refused to sign the resulting statement. On 12 April 2018 assault proceedings were instituted and on

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

5 February 2019 the applicant was found guilty. He was sentenced to a fine and imprisonment and ordered to pay costs. The domestic court noted that medical documents and eyewitnesses proved beyond reasonable doubt that the correctional officers had suffered slight injuries. On appeal the sentence was reduced and the applicant's immediate deportation ordered. However, he was returned to prison as he was unable to pay the 4,000 euros fine.

The applicant claimed that while in prison he had been moved to different security regimes to impede his access to legal aid. He further claimed other interferences at that time with, for example, access to medical files. He was released on 14 September 2019 only to be put in immigration detention where he remained until 13 November 2020.

The Nigerian authorities refused to issue a travel document and so the applicant has not yet been deported.

On 19 August 2019 the applicant lodged his application, with the Government being notified of many of his complaints. The applicant's legal-aid representative at the time had not submitted any subsequent correspondence or observations despite being requested to do so, with the applicant claiming he had not been contacted by that lawyer and that he hadn't received legal aid. It appeared that owing to difficulties between the applicant and his counsel, the latter had asked to be removed from the case. However, this was not ruled on by the courts owing to the Covid-19 pandemic.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman and degrading treatment), 5 § 1 (right to liberty and security) and 34 (right of individual petition) of the Convention, the applicant complained, in particular, of excessive force used on him during his detention, the lack of an investigation into this, his conditions of detention, that some periods of his detention had been unlawful, and that the State had hindered his right of petition before the Court.

The application was lodged with the European Court of Human Rights on 19 August 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Alena **Poláčková** (Slovakia),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Lorraine **Schembri Orland** (Malta),

and also Renata **Degener**, *Deputy Section Registrar*.

Decision of the Court

Article 3

In respect of excessive use of force, the lack of an investigation into those allegations, and the failure to protect the applicant, the Court found that the applicant had not exhausted domestic remedies, and so the **complaint was inadmissible**.

Concerning the applicant's conditions of detention, the Court reiterated, in particular, that under the **Convention the State had to ensure that people were detained in conditions that respect human dignity and that avoid unnecessary hardship**. It furthermore noted that it had already expressed concern about the appropriateness of the place and the conditions of detention where the applicant

had been detained (Safi Barracks). It stated that those conditions had been exacerbated by the Libyan crisis.

The Court noted, in particular that while the applicant had submitted photos of the conditions of detention, the Government merely relied on general, unsubstantiated statements. The Court furthermore noted that the Government had not provided sufficient data on the numbers of detainees held and potential overcrowding, and the applicant had not provided sufficient information either, leading it to be unable to draw conclusions in that area. But the Court remained concerned about the various other aspects of the applicant's allegations that had gone un rebutted by the Government, including concerning ventilation, functioning toilets and pests. In particular, the Court was struck that the applicant had been held alone without access to natural light for 77 days, during much of which time he had also had no access to exercise. The Court was also very concerned by the un rebutted allegations that the applicant had been housed with people in Covid-19 quarantine where there appeared to have been no medical reason to do so.

In the light of the above, the Court found a violation of the applicant's Article 3 rights.

Article 5 § 1

The Court reiterated that Article 5 enshrined a fundamental human right – the protection of the individual against arbitrary interference by the State with his or her right to liberty.

The Government submitted, in particular, that the applicant's detention beginning on 15 September 2019 had been for the purposes of deportation, during which time the authorities had tried to secure a passport for the applicant.

The Court did not accept that the entire period of detention had clearly been for the purposes of deportation and that the authorities had acted with diligence during the fourteen-month detention, as it did not appear that the authorities had sufficiently pursued the passport matter with the Nigerian authorities. The Court concluded that the reasons for the applicant's detention had therefore not remained valid throughout the whole period.

The Court thus found a violation of the applicant's right to liberty and security.

Article 34

The Court reiterated the importance that, under Article 34 of the Convention, applicants or potential applicants be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints.

In this case, the Court considered that the authorities had failed to ensure that the applicant had been provided with the possibility of obtaining copies of documents which he had needed to substantiate his application, and that his correspondence concerning the case before the Court had not been dealt with confidentially, thus amounting to an unjustified interference with his right of individual application.

The Court also found that the applicant's representation had been inadequate in the light of, especially, the lack of diligence in dealing with his case, the lack of regular lawyer-client contact despite the Court's requests, and the inaction on the part of the authorities to rectify the situation.

In the light of the above, the Court found a violation of the applicant's right of individual application.

Just satisfaction (Article 41)

The Court held that Malta was to pay the applicant 25,000 euros in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.