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ECTHR HALTS FORCED DEPORTATION OF UYGHUR COUPLE SEEKING ASYLUM IN MALTA: LATEST IN A SERIES OF BREACHES OF EUROPEAN CONVENTION ON HUMAN RIGHTS

by Tesa Hargis*

On January 16, 2023, the European Court of Human Rights (ECtHR) ordered Malta to halt the process of forcibly removing a Uyghur couple, A.B. and Y.M., seeking asylum.¹ The couple, who are Chinese nationals of Uyghur ethnicity and Muslim faith, arrived in Malta in 2016; the rejection of their initial application in 2017 forced them to live in hiding for years.² Prior to bringing their case to the ECtHR, the Uyghur couple had been detained at the Safi Barracks and were

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1 Letter from K. Ryngielewicz, Head of the Filtering Section, European Court of Human Rights, to Alexis Galand, Aditus Foundation (Jan. 16, 2023) (on file with the Aditus Foundation) [hereinafter Letter from K. Ryngielewicz] (conveying the ECtHR's decision to grant the request for interim measures).

2 *European Court of Human Rights Forces Malta to Halt Uyghur Deportation*, SAFEGUARD DEFENDERS (Jan. 17, 2023), <https://safeguarddefenders.com/en/blog/european-court-human-rights-forces-malta-halt-uyghur-deportation>.

facing immediate deportation to China.³

The couple's application for asylum consisted of evidence that forced return to Xinjiang would threaten their right to life under Article 2 of the European Convention of Human Rights ("the Convention") and protection against torture under Article 3.⁴ The application also contended that Malta further violated Article 13 by not providing the couple with access to a mechanism by which they could receive effective remedy for their complaint.⁵

The Maltese Immigration Appeals Board rejected the refugee couple's final appeal for humanitarian protection on January 12, 2023.⁶ The board's rejection was based on the argument that the couple "failed to produce further evidence to substantiate the principle of non-refoulement."⁷ The Maltese Appeals Court's decision was made despite a "hard-fought" report released by the United Nations Office of the High Commissioner for Human Rights (UNCHR) in August of last year.⁸ The report expressed concerns regarding the prohibited actions of member states utilizing forced deportation and violating international law regarding non-refoulement and implored those States to refrain from taking such actions.⁹

After the Maltese Court's last rejection, Aditus Foundation and Safeguard Defenders, along with Maltese and Spanish NGOs, filed an application for urgent interim measures under Rule 39 of the Rules of Court with the ECtHR.¹⁰ The ECtHR acted upon the NGOs' application and ordered that A.B. and Y.M. not be deported until the Court issues a decision regarding Malta's

3 *Id.*

4 European Convention for the Protection of Human Rights and Fundamental Freedoms arts. 1, 3, Nov. 4, 1950, Europ. T.S. No. 5 [hereinafter European Convention on Human Rights] (emphasis added).

5 *Id.* at art. 13.

6 SAFEGUARD DEFENDERS, *supra* note 2.

7 *Id.*; EUR. CT. H.R., RULES OF COURT 1 (2023), https://www.echr.coe.int/Documents/Rules_Court_ENG.pdf.

8 U.N. HUM. RTS. OFF. OF THE HIGH COMMISSIONER, OHCHR ASSESSMENT OF HUMAN RIGHTS CONCERNS IN THE XINJIANG UYGHUR AUTONOMOUS REGION, PEOPLE'S REPUBLIC OF CHINA ¶¶ 139, 142 (2022), <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>.

9 *Id.*

10 Letter from K. Ryngielewicz, *supra* note 1.

actions and the couple's status.¹¹

This is not the first instance in recent years where the ECtHR has intervened in Malta following the government's breach of the Convention and its corrupt asylum procedures. In September 2019, S.H., a Bangladeshi journalist, arrived in Malta and applied for asylum by November of the same year. S.H. sought asylum because he was a prominent reporter who spoke out against the corruption and fraud of the governing party, and as a result the governing party attacked him, vandalized his house, and threatened to kill him.¹² The ECtHR's December 20, 2022 judgment in *S.H. v. Malta* determined that Malta had breached Article 13, in conjunction with Article 3 of the Convention.¹³ The Court found that Malta had failed to conduct a satisfactory evaluation of the applicant's claim and had made a decision to remove S.H. by force without a renewed assessment, exposing them to the risk of treatment in violation of Article 3.¹⁴ The court further held that Malta must conduct a new review of S.H.'s claim and pay damages.¹⁵

In *S.H. v. Malta*, the ECtHR identified numerous issues in the asylum procedure of Malta, including "a complete lack of access to relevant information and legal services, . . . lengthy delays in receiving a decision [,] . . . [lack of contact] and lack of interpretation," all of which effectively deprives asylum seekers of effective remedies.¹⁶ It is essential that the ECtHR promote and facilitate a complete overhaul of the Maltese asylum system in conjunction with its numerous judgments which show the ineptitude of the current system.

11 *Id.*

12 *S.H. v. Malta*, App. No. 37241/21, ¶ 5 (Dec. 20, 2022), <https://hudoc.echr.coe.int/eng?i=001-221838>.

13 *Id.* at ¶¶ 1, 55.

14 *Id.* at ¶ 67.

15 *Id.* at ¶ 102.

16 *Id.* at ¶ 61.