



European Court rules in two cases against Italy concerning Sudanese migrants

The cases of [A.E. and T.B. v. Italy](#) (application nos. 18911/17, 18941/17, and 18959/17) and [W.A. and Others v. Italy](#) (no. 18787/17) concerned nine Sudanese nationals who arrived in Italy in the summer of 2016 and the attempted or actual removal of them from Italy by the authorities. The first case also concerned the applicants' complaints about their arrest, transportation and detention in Italy, and one of those applicant's allegations that he had been ill-treated.

The four applicants in the first case have since been granted international protection, while the five applicants in the second case claimed that they had been part of a group of 40 migrants who had been expelled soon after their arrival.

In today's **Chamber judgments**¹ the European Court of Human Rights, unanimously, declared **inadmissible all but one of the nine applicants' complaints under Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights concerning the Italian authorities not having taken into account the risk of inhuman treatment if they were returned to Sudan. The four applicants in the first case were no longer at risk of deportation, while, following investigative measures (Rule A1 §§ 1 and 2 of the Rules of the Court), it appeared that four out of the five applicants in the second case had not sufficiently substantiated their complaints.

In respect of the remaining applicant in the second case the Court held, unanimously, that there had been **no violation of Article 3** of the European Convention. Unlike the applicants in the first case who had been granted international protection on the basis of their personal history and consequences for their lives if returned, W.A. had only argued that he belonged to a tribe that was persecuted by the Sudanese Government *after* lodging his application with the European Court.

As concerned the **other complaints brought by the applicants in the first case**, it held, unanimously that there had been:

a violation of Article 3 as concerned the absence of a sufficiently compelling reason to justify the applicants being left naked together with many other migrants, with no privacy and while guarded by the police and the conditions of their subsequent bus transfers to and from a hotspot, under constant control of the police, without knowing where they were going or why;

a violation of Article 3 as no investigation had been carried out as concerned one of the applicant's allegations that he had been beaten by police officers during an attempt to remove him; and,

a violation of Article 5 §§ 1, 2 and 4 (right to liberty and security) as concerned three of the four applicants with regard to their arbitrary arrest, transportation and detention.

Principal facts

The four applicants in the first case were born between 1980 and 1994. They all live in Turin (Italy), except for one who lives in Germany.

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.

The applicants in the second case were born between 1989 and 1996. One lives in Egypt, one in Niger and three in Sudan.

All nine applicants arrived in Italy in the summer of 2016. The first four reached the Italian coast by boat, while the other five were rescued by the Italian navy from the sea. Some transited via various hotspots in Italy; all eventually ended up in Ventimiglia at the Red Cross centre.

According to the applicants in the first case, on 17 and 19 August 2016 they were arrested, forced into a police van and taken to what they understood to be a police station. They were searched, asked to undress and left naked for around ten minutes before having their fingerprints taken.

They were then forced to get on a bus, escorted by numerous police officers, without knowing their destination or being provided with any documents regarding the reasons for their transfer or deprivation of liberty. They later found out they had been transferred from Ventimiglia to the Taranto hotspot.

At the Taranto hotspot, which they were allegedly not permitted to leave, they maintain that they were served with a refusal-of-entry order on 22 August 2016. The next day they were returned to Ventimiglia by bus.

According to the applicants, conditions were difficult at the hotspot and during each of the 15-hour bus transfers. They were under constant police control, in a climate of violence and threats, without sufficient food or water at the height of summer. They maintain that they had not met a lawyer or a judge during that period and had not understood what was going on.

On 24 August 2016 they were transferred from Ventimiglia to Turin Airport in order to be put on a flight to Sudan. As there were not enough seats on the aircraft, their removal was postponed. They were thus transferred to the Turin CIE (Identification and Expulsion Centre) and the Chief of Police issued each of them with a detention order.

One of the applicants (T.B.) alleges that the authorities attempted to remove him again, on 1 September 2016. He protested and the police hit him in his face and stomach. They then forced him onto the plane and tied him up. However, the pilot refused to take off because of his agitated state. He was taken back to the Turin CIE.

All four applicants have since been granted international protection, essentially on the basis of their personal history in Sudan and consequent risk to their lives if returned.

According to the applicants in the second case, on the other hand, they were never informed at any point that they could ask for international protection. They also claim that they were part of a group of about 40 migrants for whom seats were found on the flight leaving on 24 August 2016 and were repatriated to Khartoum the same day.

The Italian Government contest that claim, submitting that the applicants had never been on Italian territory. They provided the Court with the ID photographs of the persons removed to Sudan on 24 August 2016, submitting that they did not have a close likeness to the applicants. They also argue that the names of those removed did not correspond to those of the applicants.

In view of the parties' disagreement the Court appointed a facial comparison expert from the Belgian police (Rule A1 §§ 1 and 2 of the Rules of Court – investigative measures) who, on 5 October 2022, submitted a report assessing whether the persons represented in the photographs and video footage provided by the applicants' representatives corresponded to those depicted in the ID photographs submitted by the Government. The report concluded, as concerned one of the applicants in the case, W.A., that the two individuals depicted in those sources corresponded to the

highest level of reliability. There was no reliable correspondence as concerned the other four applicants.

Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicants in both cases alleged that the authorities had failed to examine the risks they would be exposed to if returned to Sudan.

The applicants in the first case also made a number of other complaints under Article 3. All four alleged degrading treatment in their arrest, transportation and detention in Italy, while one (T.B.) alleged that he had been beaten during the second attempt to remove him. They also all alleged under Article 5 (right to liberty and security) that their deprivation of liberty from their arrest until they had been issued with detention orders had been unlawful.

The applications were lodged with the European Court of Human Rights on 17 February 2017 (*A.E. and Others*) and 13 February 2017 (*W.A. and Others*).

In the case *W.A. and Others* the Belgian Government and the Italian Coalition for Civil Liberties and Rights (CILD – excluding *Associazione Studi Giuridici sull’Immigrazione* (ASGI), one of the constituent associations) were granted leave to intervene as third parties.

The judgments were given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Alena **Poláčková** (Slovakia),
Krzysztof **Wojtyczek** (Poland),
Péter **Paczolay** (Hungary),
Ivana **Jelić** (Montenegro),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decisions of the Court

Article 3 (inhuman or degrading treatment)

Firstly, the Court rejected as inadmissible all but one of the nine applicants’ complaints about the Italian authorities not having taken into account the risk of inhuman treatment if they were returned to Sudan. In *A.E. and T.B. v. Italy* the applicants, who had been granted international protection, were no longer at risk of deportation and could not therefore claim to be victims of a violation of Article 3. In *W.A. and Others v. Italy* the Court considered that four out of the five applicants, for whom the 2022 Belgian police report had not established a reliable correspondence between the photographs provided by the parties, had not sufficiently substantiated their complaints.

The Court declared admissible the complaint of the remaining applicant, W.A.. It noted that the documents available were sufficient to conclude that he was one of the individuals indicated in the ID photographs provided by the Government. It therefore considered that he had been among the Sudanese nationals removed to Sudan on 24 August 2016.

However, the Court went on to hold that there had been no violation of Article 3 in W.A.’s case. It noted in particular that there had been inaccuracies in his application form to the Court, and that, even though he had been assisted by a lawyer at different points in the procedure to remove him, he had explicitly stated that he had not wished to ask for international protection and had merely been

transiting through Italy. Moreover, unlike the applicants in the case *A.E. and T.B. v. Italy*, who had been granted international protection on the basis of their personal experiences, W.A. had only argued that he belonged to a tribe that was persecuted by the Sudanese Government *after* lodging his application with the European Court. That information had not therefore been available to the Italian authorities at the relevant time and the Court concluded that the Italian Government had not breached their duty to provide effective guarantees to protect W.A. against arbitrary *refoulement* to his country of origin.

As concerned the remaining complaints by the applicants in *A.E. and T.B. v. Italy*, the Court found that the conditions of their arrest and bus transfers, taken together, had to have caused considerable distress and feelings of humiliation that had amounted to degrading treatment, in violation of Article 3.

In particular, although the Government had argued that the applicants had had to undress in order to be medically examined after their arrest, the Court found that that had not been a compelling enough reason to justify them being left naked together with many other migrants, with no privacy and while guarded by the police.

Furthermore, the applicants' subsequent long bus transfers had taken place over a short space of time and at a very hot time of the year, without sufficient food or water and without them knowing where they had been going or why. They had been under constant police control, in a climate of violence and threats. Cumulatively such conditions had to have been a source of distress.

Lastly, the Court found that there had been a violation of Article 3 as concerned the applicant (T.B.) who alleged that he had been beaten during another attempt to remove him. Two of the other applicants had corroborated his account at interviews concerning their requests for international protection; one stated in particular that he had seen another migrant being brought back from the airport by the police with a swollen face. Even though T.B. had said during an interview with the authorities that he could identify the three police officers responsible for his ill-treatment, no investigation had as yet been carried out.

Article 5 (right to liberty and security)

The Court noted that the Government had provided it with a copy of a refusal-of-entry order in respect of one of the applicants, A.E., dated 1 August 2016, and the Court therefore declared his complaint about his detention inadmissible.

On the other hand, it found that the other three applicants in the case, who had not been served with refusal-of-entry orders until 22 August 2016, had been arrested and transferred without any documentation and without them being able to leave the Taranto hotspot. That had amounted to an arbitrary deprivation of their liberty, in violation of Article 5 § 1 (f).

There was moreover a lack of clear and accessible legislation relating to hotspots, and the Court failed to see how the authorities could have informed the applicants of the legal reasons for their deprivation of liberty or have given them the opportunity to challenge in court the grounds for their *de facto* detention, in breach of Article 5 §§ 2 and 4.

Article 41 (just satisfaction)

The Court held that Italy was to pay the applicants in *A.E. and T.B. v. Italy* 27,000 euros (EUR) in total in respect of non-pecuniary damage and EUR 4,000, jointly, in respect of costs and expenses.

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.