EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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ECHR 309 (2020)
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Deportation of applicant to Sudan: violation of Convention

In today's **Chamber** judgment[1] in the case of M.A. v. Belgium (application no. 19656/18) the European Court of Human Rights held, unanimously, that there had been:

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

a violation of Article 13 (right to an effective remedy) taken together with Article 3 of the Convention.

The case concerned the applicant's removal to Sudan by the Belgian authorities in spite of a court decision ordering the suspension of the measure.

The Court found in particular that on account of procedural defects attributable to the Belgian authorities prior to the applicant's removal to Sudan, he had been prevented from pursuing the asylum application that he had lodged in Belgium and the Belgian authorities had not sufficiently assessed the real risks that he faced in Sudan.

In addition, by deporting the applicant in spite of the court order to suspend the measure, the authorities had rendered ineffective the applicant's successful appeal.

Principal facts

The applicant, M. A., is a Sudanese national who was born in 1993.

M A. entered Belgium unlawfully on an unknown date, having passed through Italy and with the intention of going on to the United Kingdom. He slept in Parc Maximilien in Brussels with about 100 other Sudanese migrants. While trying to reach the UK, he was stopped by the Belgian police on 18 August 2017. He was issued with an order to leave the country and to be held pending removal. On the same day, the Belgian authorities transferred him to a migrant detention centre near Brussels Airport.

Exercising his right to be heard before his removal, M.A. told an official at the centre that he had fled because of the situation in his country, where he was a wanted person. On 6 September 2017 he submitted an asylum application containing his statements. Shortly afterwards, social media and the Sudanese press relayed an announcement by the Belgian authorities that they were working with the Sudanese authorities to identify and repatriate Sudanese nationals who had unlawfully entered Belgium. M.A. withdrew his application a few days later, referring to these developments and to the fact that he did not have a lawyer. On 27 September 2017, in the detention centre, M.A. was present at a meeting with members of the Sudanese embassy and the Sudanese identification mission, following which the embassy issued him with a travel permit to return to his country.

After consulting a lawyer on 30 September 2017, M.A. filed a request for release with the Louvain Court of First Instance. On 12 October 2017, before the request could be examined, he was warned that he would have to board a flight to Khartoum (Sudan). Ruling on an application from M.A., the

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.

President of the Dutch-speaking Court of First Instance in Brussels held that the Belgian State could not deport the applicant before the courts had ruled on the custodial measure, subject to a coercive fine of 10,000 euros (EUR). The deportation, arranged for the following day, was cancelled, but M.A. was nevertheless taken to the airport. He alleged that he had been met there by a man in uniform who explained to him in Arabic that if he refused to board the plane, further attempts to remove him would be organised and that he had been threatened with sedatives if he refused. The applicant signed a statement authorising his departure and boarded the flight.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicant complained that there had been no prior examination prior to his deportation of the risks he was facing in Sudan. Under Article 13 (right to an effective remedy), he also alleged that he had not had any effective remedy by which to submit his complaints under Article 3 or a suspensive remedy in respect of his removal. He also argued that the Belgian authorities had breached his rights under Article 6 § 1 (right to a fair hearing / right of access to a court) by infringing the court order. Lastly, he complained that his detention had been incompatible with Article 5 (right to liberty and security).

The application was lodged with the European Court of Human Rights on 13 April 2018.

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

Georgios A. **Serghides** (Cyprus), *President*,
Paul **Lemmens** (Belgium),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Darian **Pavli** (Albania),
Anja **Seibert-Fohr** (Germany),
Peeter **Roosma** (Estonia),

and also Milan **Blaško**, *Section Registrar.*

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

As to the information available on the situation in Sudan, it was well known that the general human rights situation there had been problematic at the time. In those circumstances, it could not readily be argued, as the Government had done, that the existence of a serious and established risk for the applicant was to be ruled out. The Court emphasised that a post-removal finding that the applicant did not run any risk in his country of origin, as made in the present case, could not serve to release the authorities retrospectively of their procedural obligations during the removal process.

As to whether the applicant had had a real and effective opportunity to make submissions about the personal risks that he faced if returned to Sudan, the Court noted that he had repeatedly expressed his fears. It reiterated that, while the burden of proof with regard to substantiating the individual risks lay on the person submitting an asylum application, the rules concerning the burden of proof should not render ineffective the rights protected under Article 3 of the Convention. It was also important to take into account the practical difficulties that an alien might encounter in pursuing an asylum application.

The Court attached weight to the applicant's allegation that he had not consulted a lawyer during the first few weeks of his detention, a fact which was not contradicted by the evidence. It also noted

that during the interview organised on the applicant's arrival in the detention centre, no official interpreter had been present, even though he only understood Arabic. The Court found that these circumstances undoubtedly represented obstacles which could explain the applicant's inconsistent procedural attitude and the brevity of the information he had provided to the authorities and that he had not been provided with a realistic prospect of access to international protection. It appeared from the form which had been filled in on the basis of his statements that only general questions had been asked about the risks he might face, without any reference or question concerning his region of origin, ethnic origin or reasons for having left Sudan. The Court was therefore of the opinion that the Government had not carried out a sufficient prior assessment of the risks faced by the applicant under Article 3.

Furthermore, the Court was of the view that the conditions in which the applicant had been identified raised concerns. The official who had interviewed him was not fluent in Arabic, the language in which the interviews had been conducted, and the applicant had not been informed beforehand that such an interview would take place.

In the light of those procedural defects, the Court found that there had been a violation of Article 3.

Article 13 (right to an effective remedy) taken together with Article 3

As to whether the applicant had been afforded effective access to the remedies available against arbitrary *refoulement*, the Court found that having regard to the reasoning which led it to find a violation of Article 3 in the present case, there was no justification for a separate examination of the same facts and complaints under Article 13.

Turning to the applicant's allegation that he had not been afforded a suspensive remedy in respect of his deportation, the Court found that in the present case it had been a combination of the remedy he had exercised – the application for release combined with the urgent application to the President of the Court of First Instance – which had provided the applicant with protection against arbitrary removal, at least temporarily. As the President's decision prohibiting his return had been enforceable and thus binding on the authorities, the applicant had been entitled to expect compliance with the order.

Having regard to the fact that the applicant could not be considered to have voluntarily left Belgium or even to have voluntarily signed a statement accepting his removal, and in view of the speed with which the authorities had acted the very next day, in spite of the order prohibiting the deportation, it had to be concluded that, by failing to suspend the measure in compliance with a court decision, the Belgian authorities had rendered ineffective the applicant's successful appeal.

There had thus been a violation of Article 13 taken together with Article 3 of the Convention.

Other Articles

The Court found that it did not need to examine the applicant's complaints under Article 6 § 1 of the Convention (right to a fair hearing / right of access to a court) and declared the complaints under Article 5 (right to liberty and security) inadmissible.

Just satisfaction (Article 41)

As the applicant had not made any claim by way of just satisfaction, the Court found that there was no call to make an award under this head.

The judgment is available only in French.

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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.