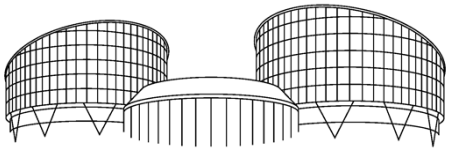

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF W.A. AND OTHERS v. ITALY

(Application no. 18787/17)

JUDGMENT

Art 3 (procedural) • Expulsion • Alleged removal of five Sudanese nationals as part of a group of forty migrants expelled to country of origin • Court's assessment as to whether applicants were part of removed group based on expert facial comparison report by the Belgian police Operational Coordination Division requested under Rule A1 §§ 1 and 2 of the Rules of Court • Sufficient elements to conclude only first applicant among removed individuals (admissible) but not remaining applicants (manifestly ill-founded) • Effective guarantees of protection to first applicant against arbitrary *refoulement* to Sudan

STRASBOURG

16 November 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of W.A. and Others v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Péter Paczolay,
Ivana Jelić,
Erik Wennerström,
Raffaele Sabato, *judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 18787/17) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the five Sudanese nationals indicated in the appended table ("the applicants"), on 13 February 2017;

the decision to give notice to the Italian Government ("the Government") of the complaints concerning Articles 3, 13 and 14 of the Convention and Article 4 of Protocol No. 4 to the Convention;

the decision not to have the applicants' names disclosed;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by the Belgian Government and by the CILD (the Italian Coalition for Civil Liberties and Rights, with the exclusion of ASGI (*Associazione Studi Giuridici sull'Immigrazione*), one of the constituent associations of the CILD), who were granted leave to intervene by the President of the Section;

the report submitted by the Belgian Federal Judicial Police, who were asked to provide an expert report by a decision of the Chamber;

Having deliberated in private on 17 October 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present application concerns the alleged removal of the applicants, Sudanese nationals, from Italy to Sudan and the risk of their being subjected to inhuman and degrading treatment in their country of origin in breach of Article 3 of the Convention.

2. The applicants also complained of having been subjected to a collective expulsion contrary to Article 4 of Protocol No. 4 to the Convention, of having been discriminated against based on their nationality in breach of Article 14 of the Convention, and of a violation of their right to an effective remedy in

order to redress the above-mentioned violations, under Article 13 of the Convention.

3. The facts of the case took place on 24 August 2016, the day of the applicants' alleged removal, and should be read together with those in today's judgment in *A.E. and Others v. Italy* (no. 18911/17). In the latter case, the order for the applicants' removal was eventually not enforced and the applicants were granted asylum.

THE FACTS

4. The applicants were born on the dates indicated in the appended table. The first applicant lives in Niger, the fourth applicant lives in Egypt and the three other applicants live in Sudan. The applicants were represented by Mr S. Fachile and Mr D. Belluccio, lawyers practising in Rome and Bari respectively.

5. The Government were represented by their Agent, Mr Lorenzo D'Ascia.

6. The facts of the case may be summarised as follows.

7. On 3 August 2016 a Memorandum of Understanding was signed between the Public Security Department of the Italian Ministry of the Interior and the National Police of the Sudanese Ministry of the Interior. The Memorandum was aimed at enhancing cooperation between the two police forces with a view to preventing criminal human trafficking by, among other things, improving border controls and migratory flows and the management of removal procedures for irregular Sudanese migrants.

8. On 24 August 2016 a group of forty Sudanese nationals were repatriated from Turin (Italy) to Khartoum (Sudan). The applicants claimed to have been part of that group and to have been forcibly and collectively removed to their country of origin. The Government contested that information and submitted that the applicants had never been on Italian territory.

9. The applicants' representatives met the applicants in Khartoum on 22 December 2016.

I. THE PARTIES' DISAGREEMENT AS TO THE APPLICANTS' IDENTITIES AND THE EXPERT REPORT BASED ON FACIAL COMPARISON

10. The Government contested the applicants' claim that they had been in the group of forty migrants removed from Turin to Khartoum on 24 August 2016. Following a request from the Court, they provided the ID photographs of the persons removed to Sudan on 24 August 2016. They submitted that the names and appearances of those persons did not correspond to those of the applicants.

11. The Government indicated that the results of searches of the data bank of the inter-forces investigation system and of enquiries made through the relevant police headquarters had shown that none of the applicants had ever been in Italy. They submitted that the application was therefore an abuse of the right of application and should be struck out of the list of cases or declared inadmissible *ratione personae* on account of the applicants' lack of victim status.

12. The applicants' representatives submitted several photographs of their clients, with the exception of the fifth applicant, for whom no photographs have been submitted, and a video interview of the first applicant. They stated that the first four applicants had been among the migrants removed on 24 August 2016. They also asserted that the discrepancies in the spellings of the applicants' names as they appeared on the application forms and on the Government's list of removed migrants was due to the transliteration of the applicants' names from the Arabic to the Latin alphabet. The applicants' representatives also insisted that the appearances of the applicants in the photographs and the video footage that they had provided corresponded to the relevant ID photographs provided by the Government.

13. In view of the parties' disagreement concerning essential information about the facts of the case, on 18 January 2022 the Chamber to which the case had been allocated decided to take investigative measures and to appoint an expert in facial comparison (Rule A1 §§ 1 and 2 of the Rules of Court – Investigative measures).

14. An expert report was subsequently requested of the Operational Coordination Division (DJT) of the Belgian Police to assess whether the appearances of the persons represented in the photographs and video footage provided by the applicants' representatives corresponded to those depicted in the relevant ID photographs of the persons removed on 24 August 2016, as provided by the Government.

15. On 11 August 2022 the DJT accepted the assignment and on 5 October 2022 a report was submitted by its Biometric Identification Service in both English and French.

16. The expert assessment was carried out using a specialised software and a detailed analysis of the morphological characteristics of facial features, including their shape, position, symmetry and proportions. The interpretation of the results was based on the following scale:

- -2: Source exclusion. Large difference in facial features and individual characteristics;
- -1: Support for exclusion. Differences in facial features;
- 0: Inconclusive. Similarities and differences in facial features and individual characteristics are not sufficient for elimination or for confirmation;
- +1: Support for common sources. Similarities in facial features;

- +2: Strongest support for common source. A combination of similarities in facial features and individual characteristics.

17. On the basis of the evidence which was of a quality permitting fruitful comparison, the expert reached the following conclusions:

- Mr W.A., first applicant: +2
- Mr A.A.A., second applicant: -2
- Mr M.A.A., third applicant: +1
- Mr N.B.M., fourth applicant: +1

18. The Government submitted their comments. While acknowledging that the facial comparison had been carried out using a technical methodology in accordance with international guidance in that field, they observed that facial comparison, even in cases producing a result of "strong support" (+2), did not constitute a reliable method of personal identification, and that only a fingerprint comparison could ensure reliable identification.

II. THE INITIAL FACTS AS SUBMITTED BY THE APPLICANTS

A. The first applicant, Mr W.A.

19. On 29 July 2016 the applicant was rescued by the Italian Navy and reached the Italian coast. He was moved to Rome and then to Ventimiglia, where he was hosted at a Red Cross centre. The applicant submitted that he had not received any information concerning international protection.

20. On 18 August 2016 the applicant was arrested outside the Red Cross Centre and subjected to a coercive identification procedure. He indicated that he had offered resistance to the officers, that he had been slapped, and that his fingerprints had been forcibly taken one by one.

21. The applicant was detained for five days in a police station.

22. During that time, he was interviewed by someone whom he identified as an Italian officer, possibly a Justice of the Peace (the applicant was unable to provide details as to this part of the facts as a result of his own difficulty in understanding the events) with the help of an interpreter who spoke a North African variety of Arabic. However, communication between the interpreter and the applicant was impaired owing to the fact that the latter spoke a different variety of Arabic.

23. On that occasion, according to the applicant's statement in his application form, he was not informed of the possibility of asking for international protection but he nonetheless clearly indicated that he did not wish to be repatriated to Sudan, from where he had fled because of the alleged persecution and serious human rights violations that he had faced as a member of the non-Arab population of Darfur.

24. The applicant indicated that no refusal-of-entry order or copy of any other document had been served on him or handed to him. He stated that he had not had access to the Justice of the Peace's file or to any other

administrative authority and that he had not received a copy of the record of the hearing.

B. The second applicant, Mr A.A.A.

25. On 31 July 2016 the applicant was rescued by the Italian Navy and reached Crotone. He was then transferred to the hotspot at Crotone for four days, during which time his photograph and fingerprints were taken. The applicant then reached Milan and, subsequently, Ventimiglia, where he was hosted at the Red Cross centre. The applicant submitted that he had not received any information concerning international protection.

26. On 18 August 2016 the applicant attempted to cross the French border. However, he was stopped by the French police and, after having spent a day in their custody, he was handed over to the Italian authorities in the absence of any formalities on 20 August 2016.

C. The third applicant, Mr M.A.A.

27. On 6 August 2016 the applicant was rescued by the Italian Navy and reached Sicily. He was then transferred to a hotspot for three days, during which time he was unable to leave the facility. His photograph and fingerprints were taken while at the hotspot. The applicant submitted that he had not received any information concerning international protection.

28. On 9 August 2016 he reached Milan and, subsequently, Ventimiglia, where he was hosted at the Red Cross centre.

29. Between 16 and 18 August 2016 the applicant attempted to cross the French border. However, he was stopped by the French police and then handed over to the Italian authorities in the absence of any formalities.

30. On 22 August 2016 the applicant was arrested outside the Red Cross Centre and subjected again to identification procedures.

31. The applicant was detained for two days in a police station.

D. The fourth applicant, Mr N.B.M.

32. On 6 August 2016 the applicant was rescued by the Italian Navy and reached Sicily. He was then transferred to a hotspot for two days, during which time he was unable to leave the facility. There, his photograph and fingerprints were taken. The applicant submitted that he had not received any information concerning international protection.

33. On 1 August 2016 the applicant reached Rome, then Milan and, subsequently, Ventimiglia, where he was hosted at the Red Cross centre.

34. On 20 August 2016 the applicant was arrested and subjected again to identification procedures.

35. The applicant was detained for three days in a police station.

E. The fifth applicant, Mr A.H.S.A.

36. On 6 July 2016 the applicant was rescued by the Italian Navy and reached Sicily. He was then transferred to a hotspot, where his photograph and fingerprints were taken. The applicant submitted that he had not received any information concerning international protection.

37. The applicant then reached Milan and, subsequently, Ventimiglia, where he was hosted at the Red Cross centre.

38. On 21 August 2016 the applicant was arrested outside the Red Cross centre and subjected again to identification procedures.

39. The applicant was detained for two days in a police station.

III. SUBSEQUENT FACTS AS SUBMITTED BY THE APPLICANTS

40. The applicants maintained that, while detained, they had made it clear that their possible repatriation to Sudan, from where they had fled because of the persecution and the human rights violations they had been subjected to in Darfur, would have put their life at risk because of their ethnicity (as members of the non-Arab population of Darfur) and because of the genocide carried out for many years by government armed groups.

41. The applicants were not provided with any written document. They were then taken to the Sudanese embassy, where they were recognised as being Sudanese nationals.

42. Notwithstanding their explicit wish not to be repatriated to Sudan, the applicants did not have an opportunity to meet a lawyer or to interact with representatives of any other human rights organisations.

43. On 24 August 2016 the applicants were taken, together with other Sudanese nationals, to Turin by the police and forcibly removed to Sudan. During the procedure the applicants and other co-nationals tried to physically resist their removal but were stopped from doing so by the police, who handcuffed them using Velcro straps.

44. Once in Sudan a five-year ban on leaving the country was imposed on them.

45. Other co-nationals, who managed to avoid repatriation because they put up stronger physical resistance or because they received help from human rights associations, were eventually granted international protection (see *A.E. and Others v. Italy*, cited above).

46. The applicants' representatives further indicated that the first applicant had eventually moved to Niger, where he lived in the refugee camp of Agadez and where he had obtained international protection. The first applicant provided a copy of the relevant certificate issued by the Nigerian Minister of the Interior and UNHCR confirming his refugee status under the Geneva Convention.

47. The first applicant recorded a video interview with a journalist in Agadez on 19 August 2018. He summarised the facts of his case (as set out in paragraphs 19 et seq. above). Regarding the risks to his safety in Sudan, the first applicant indicated that he belonged to the Zaghawa tribe, which was persecuted by the Sudanese government, and that he was therefore under threat from the local authorities when in Sudan.

IV. INFORMATION PROVIDED BY THE GOVERNMENT WITH REGARD TO THE PROCEDURE FOR THE REMOVAL OF FORTY MIGRANTS

48. In their submission, the Government provided the documents related to the procedure for the removal of the forty migrants on 24 August 2016, among which were documents relating to Mr A.A.

49. The Court does not need to examine the documents concerning the other migrants in the group and will only analyse the position of Mr A.A., that individual's photograph having been identified in the expert report as the one with the strongest support for a common source with those of the first applicant (see paragraphs 16 above and the Court's conclusions as to the admissibility of the case in paragraphs 65 and 66 below).

50. On 22 August 2016, Mr A.A. signed an information sheet (*foglio notizie*) at the Imperia police headquarters. The document contained general information about him and about his arrival in Italy. Concerning the "Reasons for entry", three options were given: "Find a job", "Tourism" and "Other reasons". The last option was ticked by Mr A.A., with an indication that he wished to move to Germany.

51. In the part "Concerning repatriation to my country of origin" Mr A.A. ticked the option that he "[did] not wish to go back to [his] country of origin".

52. At the end of the document, in the part "Other information", there was a handwritten declaration in both Italian and Arabic stating "I do not wish to ask for international protection".

53. On 23 August 2016 the Prefect of Imperia issued a refusal-of-entry order. The decision was served on Mr A.A. on the same day by the Imperia police headquarters[1].

54. On the same day, Mr A.A. was heard by the Justice of the Peace in Imperia for the validation of the refusal-of-entry order. His representative opposed the validation of the order, relying on Article 19 of Legislative Decree no. 286/1998 (the Immigration Act), which provides that no expulsion should be enforced when there is a well-founded fear that the individual might be subjected to inhuman or degrading treatment in the country of destination. The representative also relied on the Court's case-law (namely *A.A.*

[1] Two identical copies of the signed serving of the decision have been provided to the Court with the same date (23 August 2016) and different times (3.33 pm and 3.35 pm).

v. France, no. 18039/11, 15 January 2015, and *A.F. v. France*, no. 80086/13, 15 January 2015, where the Court concluded that the expulsion of the applicants to Sudan would have exposed them to the risk of a violation of Article 3 of the Convention, considering, among other things, the personal risks they would have incurred and which they raised before the domestic authorities).

55. The Justice of the Peace considered that Mr A.A. had declared that he was merely transiting through Italian territory on his way to another European country and that he did not have the intention to apply for a residence permit or for asylum. The Justice of the Peace also took into account the arguments of the Imperia police headquarters that Mr A.A., during an interview held in his mother tongue in the presence of three cultural mediators speaking Arabic, had refused to ask for international protection.

56. The Justice of the Peace referred, among other things, to the Memorandum of Understanding (see paragraph 7 above) and validated the removal order.

57. Mr A.A. was removed to Sudan on 24 August 2016.

THE LAW

I. PRELIMINARY OBJECTION AS TO THE ADMISSIBILITY OF THE APPLICATION

58. The Court notes at the outset that the parties disagreed on an essential point of the facts of the case, namely whether the applicants were actually removed to Sudan on 24 August 2016 or, from another point of view, whether the applicants, as named in the application forms and depicted in the photographs and video material provided by their representatives, were among the Sudanese nationals represented in the relevant ID photographs of the forty removed migrants and whether their names corresponded to the names indicated in the list provided by the Government.

59. In this connection, the Court has examined the material provided by the parties in the light of the expert report submitted on 5 October 2022 by the Biometric Identification Service of the DJT. It notes that, regarding the first applicant, the expert established to the highest level of reliability a correspondence between the two individuals depicted in the respective sources (see paragraph 16 above).

60. The Court observes that the Government have not contested the technical results of the expert report or provided an alternative report allowing the Court to reach a different conclusion.

61. It further notes the strong similarity between the name provided by the first applicant in his application form and the one corresponding to the relevant ID photograph of Mr A.A. submitted by the Government.

62. In these circumstances, the Court considers that the documents under examination are sufficient to conclude that the first applicant is actually Mr A.A., that is to say, the Sudanese national indicated by the Government with the corresponding ID photograph no. 22, and that the first applicant was therefore among the Sudanese nationals removed to Sudan on 24 August 2016 (see, *mutatis mutandis*, *Messina v. Italy*, 26 February 1993, § 31 *in fine*, Series A no. 257-H).

63. As for the third and fourth applicants, the Court is of the view that the material at its disposal is not adequate to conclude, to a sufficient degree of certainty, that those applicants correspond to the removed individuals. Regarding the second applicant, the Court acknowledges that the expert ruled out a correspondence between the two individuals depicted, owing to the significant difference in facial features and individual characteristics.

64. As for the fifth applicant, no correspondence with the removed individuals has been evaluated, since no comparable photographs have been provided to the Court.

65. The Court thus considers that the part of the application lodged by the second, third, fourth and fifth applicants has not been sufficiently substantiated and must be declared inadmissible as manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

66. Regarding the first applicant, to whom the Court will continue to refer hereinafter as "Mr W.A." (as indicated in his application form), the Court finds that he has shown that he was in Italy and removed on 24 August 2016. It therefore rejects the Government's objection in this regard.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

67. The first applicant complained that the authorities had failed to duly consider his claim that he would be exposed to a real risk of being subjected to inhuman treatment if returned to Sudan, in breach of Article 3 of the Convention. On the basis of the same arguments, he also complained that he had been subjected to a collective expulsion in breach of Article 4 of Protocol No. 4 to the Convention. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), will examine the complaint from the standpoint of Article 3 alone. Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

68. The Court notes that this complaint is neither manifestly ill-founded or inadmissible on any other grounds listed in Article 35 §§ 3 and 4 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' observations

(a) The first applicant, Mr W.A.

69. The first applicant stated that he had expressed his wish not to be returned to Sudan, but to no avail. In that context he referred to the facts of the case of *A.E. and Others v. Italy* (cited above) as emerging from the interviews of the applicants in that case in the framework of their asylum requests (ibid., §§ 35 et seq and 47 et seq.). Those applicants had indeed declared that, contrary to their own situation, another group of co-nationals, including the first applicant, had been removed to Sudan on the same occasion. Moreover, the first applicant emphasised that the critical situation concerning human rights in Sudan had been well known at the time of the facts and that, as he had stated in his video interview of 19 August 2018 – which has been submitted to the Court – he was a member of the non-Arab population of Darfur, a group which was the victim of ill-treatment and persecution.

70. With regard to the possibility of applying for asylum, the first applicant stated that he had not been put in a position to understand what a request for international protection meant. In particular, the Italian authorities had failed to explain to him and his co-nationals that an asylum request was advisable in their situation and that, if he failed to lodge such a request, he might be repatriated to Sudan.

71. Even though he had not used the exact wording indicating a request for international protection, the first applicant, together with his co-nationals, had clearly voiced his wish not to be removed to Sudan, especially when it became clear that the Italian government intended to repatriate him. Unlike his co-nationals, the first applicant had not, however, offered sufficient physical resistance to prevent his repatriation (the first applicant contrasted his case with that of *A.E. and Others*, cited above).

72. The lack of information provided to the first applicant and his co-nationals about international protection procedures was illustrated by the contrast between his situation and that of the applicants interviewed in asylum proceedings in *A.E. and Others* (ibid.), whose statements had been duly considered by the appropriate territorial commission, which had eventually granted them asylum. Moreover, the fact that the first applicant had subsequently applied for and obtained international protection in Niger was evidence that he had also been in need of protection when on Italian soil.

73. Lastly, the first applicant submitted that the Government had provided no evidence for their argument that clear information had been given to the group of Sudanese nationals concerning asylum.

(b) The Government

74. The Government submitted that the first applicant's claim of being at risk of inhuman and degrading treatment in Sudan was vague and lacked reference to his personal situation. Moreover, he had failed to adduce any evidence supporting his allegations.

75. While reiterating their contention that the first applicant had not been among the forty migrants removed on 24 August 2016, the Government indicated that, in any event, the relevant domestic provisions regarding expulsion procedures, respect for human rights and the *non-refoulement* principle had been applied in those cases.

76. They also maintained that all forty Sudanese nationals repatriated on 24 August 2016 had received assistance, had been supported by cultural mediators and interpreters, and had received the necessary information on the possibility of requesting international protection. Moreover, their individual situations had been examined on a case-by-case basis and several Sudanese nationals who had been part of the same group of people as the first applicant had eventually filed asylum requests which had subsequently been granted. The Government emphasised the presence of a signed and handwritten note in the first applicant's information sheet to the effect that he did not wish to apply for international protection.

77. They also asserted that the first applicant had failed to provide any specific information as to the individual risk of his being subjected to inhuman and degrading treatment once removed to Sudan.

78. Lastly, the Government submitted that the Memorandum of Understanding merely constituted a means of simplifying procedures concerning irregular aliens but did not amount to a collective expulsion instrument.

2. The third-party interveners

(a) The Belgian Government

79. The Belgian Government observed that information concerning the possible risk of a migrant being subjected to inhuman or degrading treatment in the event of removal to the country of origin should be formulated in the framework of an asylum request. Therefore, a simple declaration of fearing being removed to the country of origin without any assessment by the national authority as to the claims made in the context of an asylum request did not amount to sufficient evidence to demonstrate that there were serious reasons to fear that the migrant might be exposed to a risk of a violation of Article 3 of the Convention.

80. While the respondent Government endorsed those submissions, the first applicant observed that he had not been given any concrete opportunity to apply for international protection as the exchange with the Italian authorities had lasted a couple of minutes, communication with the interpreter had been difficult and his explicit request not to be sent back to Sudan had remained unheard.

81. The first applicant also submitted that Article 3 of the Convention applied irrespective of whether an asylum request had actually been made. Moreover, he contended that the burden of proof in demonstrating the lawfulness of the repatriation procedure also lay with the Government.

(b) The CILD

82. This third-party intervener noted that the applicants' removal had taken place on the basis of a Memorandum of Understanding, signed by the Chiefs of Police of the two countries, without having been approved by the Italian Parliament or government. Moreover, no reference was made in that Memorandum to the *non-refoulement* principle or to the situation with regard to human rights in Darfur, where the applicants were destined.

83. The respondent Government emphasised that the Memorandum of Understanding was a means of police cooperation between the two countries in order to strengthen the fight against transnational organised crime, in particular trafficking in human beings, drug trafficking and terrorism. The Memorandum was thus a mere technical and operational instrument that could be signed at intergovernmental level, since it did not entail political choices but was limited to simplifying procedures which already had a legal basis in the domestic legal system.

84. In the case at hand, each of the applicants' specific situations had been individually assessed, they had been assisted by cultural mediators and interpreters and specific information about the possibility of requesting international protection had been provided to them.

3. The Court's assessment

(a) General principles

85. The Court has on many occasions acknowledged the importance of the principle of *non-refoulement* (see, for example, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 286, ECHR 2011, and *M.A. v. Cyprus*, no. 41872/10, § 133, ECHR 2013 (extracts)). The Court's main concern in cases concerning the removal of an asylum-seeker is "whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled" (see, among other authorities, *M.S.S. v. Belgium and Greece*, cited above, § 286).

86. As to the responsibility of Contracting States under Article 3 of the Convention regarding the removal of aliens, the Court refers to the general principles summarised in *Khasanov and Rakhmanov v. Russia* ([GC], nos. 28492/15 and 49975/15, §§ 93-101, 29 April 2022) and *D v. Bulgaria* (no. 29447/17, §§ 108-13, 20 July 2021).

87. With regard to the distribution of the burden of proof, the Court reiterates that the assessment of the existence of a real risk must necessarily be a rigorous one. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see, for example, *Saadi v. Italy* [GC], no. 37201/06, § 129, ECHR 2008, and *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence has been adduced, it is for the Government to dispel any doubts raised by it (see *F.G. v. Sweden* [GC], no. 43611/11, § 120, 23 March 2016).

88. In relation to claims based on a real individual risk, it is incumbent on persons who allege that their removal would amount to a breach of Article 3 to adduce, to the greatest extent practically possible, material and information allowing the authorities of the Contracting State concerned, as well as the Court, to assess the risk a removal may entail (see *Said v. the Netherlands*, no. 2345/02, § 49, ECHR 2005-VI). While a number of individual factors may not, when considered separately, constitute a real risk, the same factors may give rise to a real risk when taken cumulatively and when considered in a situation of general violence and heightened security (see *NA. v. the United Kingdom*, no. 25904/07, § 130, 17 July 2008).

89. Similarly, when an applicant argues that the general situation in the country is such as to preclude all removals, it is in principle for him or her to adduce the requisite evidence. However, for claims based on a well-known general risk, when information regarding such a risk is freely ascertainable from a wide range of sources, the obligations incumbent on States under Articles 2 and 3 of the Convention mean that the authorities should carry out an assessment of that risk of their own motion (see *F.G. v. Sweden*, cited above, §§ 126-27, with further references).

(b) Application of the above general principles to the instant case

90. The Court notes at the outset that some of the information provided by the first applicant in his application form appears to be inaccurate in the light of the Government's observations and the documents submitted by them.

91. It emerges from the material in the case file that the refusal-of-entry order of 23 August 2016 was served on the first applicant and signed by him, whereas he had indicated in his submissions to the Court that no written document, including a refusal-of-entry order, had been served on him (see paragraph 24 above). Moreover, and differently from what the first applicant

stated in his application form, it appears that during the procedure for the validation of his refusal-of-entry order by the Justice of the Peace the first applicant was assisted by both a legal representative and an interpreter (see, *mutatis mutandis*, *M.S.S. v. Belgium and Greece*, cited above, § 301, and, *mutatis mutandis*, *S.H. v. Malta*, no. 37241/21, § 80, 20 December 2022).

92. It should also be noted that, before the validation hearing, the first applicant explicitly stated by way of a handwritten declaration in his information sheet of 22 August 2016 that he did not wish to ask for international protection. Unlike in the case of *A.E. and Others v. Italy* (cited above), the declaration was written in both Italian and Arabic, and there is nothing in the case file to indicate that the first applicant's level of literacy was such that he might not have understood the content of the declaration.

93. In addition, it is apparent from the validation decision of the Imperia Justice of the Peace of 23 August 2016 that the first applicant had declared that he was merely transiting through Italian territory on his way to another European country. The first applicant had also stated on that occasion that he did not have the intention to apply for a residence permit or for asylum. The Justice of the Peace took into account in that connection the arguments of the Imperia police headquarters to the effect that the first applicant was aware of the possibility of requesting international protection and that, nonetheless, he had refused to apply.

94. The first applicant did not challenge that information but contended that he had not been given the chance to understand what the consequences of not requesting asylum would be in his case, namely his removal to Sudan.

95. Be that as it may, the Court cannot but observe that during the validation proceedings before the Justice of the Peace the first applicant was represented by a lawyer. The latter referred to the provisions of the Immigration Act by which no expulsion should be enforced when there was a well-founded fear that the individual might be subjected to inhuman and degrading treatment in the country of destination. However, on that occasion the first applicant's counsel failed to raise any argument before the domestic authorities which might have outweighed the first applicant's previously expressed refusal to apply for asylum by emphasising the personal risks that the first applicant would incur in the event of repatriation (contrast *D v. Bulgaria*, cited above, § 125; *M.A. and Others v. Lithuania*, no. 59793/17, § 105, 11 December 2018; *M.K. and Others v. Poland*, nos. 40503/17 and 2 others, §§ 166-73, 23 July 2020; *M.A. and Others v. Latvia* (dec.), no. 25564/18, §§ 53-54, 29 March 2022; and *A.A. v. France* and *A.F. v. France*, both cited above, which were mentioned by the first applicant's counsel during the validation hearing).

96. In that regard, the Court also highlights that in *A.E. and Others v. Italy* (cited above), it was on the basis of the applicants' personal experiences that the authorities granted them the refugee status.

97. In that context, the fact that the first applicant eventually obtained refugee status in Niger is not evidence of a lack of guarantees offered by the Italian authorities to protect him against arbitrary *refoulement*. It appears, in fact, that the first applicant referred, only after the application had been lodged with the Court, to his belonging to a tribe persecuted by the Sudanese government and to his fear that he would be subjected to threats (see the content of his video interview of 19 August 2018). However, that information was not available to the Italian authorities at the time of the facts.

98. The foregoing considerations are sufficient to enable the Court to conclude that, in the circumstances of the present case, the respondent Government did not breach their duty to offer effective guarantees to protect the first applicant against arbitrary *refoulement* to his country of origin. Therefore, there has been no violation of Article 3 of the Convention.

III OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. The first applicant also complained that he had not had at his disposal an effective domestic remedy for his Convention complaints under Article 3 of the Convention, as required by Article 13 of the Convention. He alleged that he was not served with a refusal-of-entry order and that therefore, he was not put in a position to challenge it. Taking into account that the refusal-of-entry order of 23 August 2016 was actually served on the first applicant and signed by him (see paragraph 91 above), this complaint is manifestly ill-founded and must be rejected under Article 35 §§ 3 and 4 of the Convention.

100. The first applicant finally relied on Article 14 of the Convention, read in conjunction with Article 4 of Protocol No. 4, alleging that he had been discriminated against in the enjoyment of his Convention rights on the ground of his national origin. The Court notes that this complaint has not been sufficiently substantiated and it must be therefore declared manifestly ill-founded under Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint raised by the first applicant, Mr W.A., under Article 3 of the Convention, admissible and the remaining complaints inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention in respect of the first applicant.

Done in English and notified in writing on 16 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President

APPENDIX

List of applicants

No.	Applicant's name and year of birth	Name of individuals removed on 24 August 2016 according to the Government's information	Material provided by the Government. List of ID photographs of the individuals expelled on 24 August 2016	Material provided by the applicants' representatives
1.	W.A. 1990	A.A.	ID photograph no. 22	- 13-minute video interview of the applicant; - Photograph with one of the applicants' representatives. The applicant is the second person from the right.
2.	A.A.A. 1993	J.M.B.	ID photograph no. 6	- 3 ID photographs; - Photograph with the applicants' representative. The applicant is the person standing up, next to one of the applicants' representatives. The representative is the individual in a grey suit.
3.	M.A.A. 1992	E.A.	ID photograph no. 2	- Photograph with one of the applicants' representatives. The applicant is the first person from the left.
4.	N.B.M. 1996	B.N.	ID photograph no. 16	- Photograph with one of the applicants' representatives. The applicant is the first person from the right; - Other photographs sent by the applicants' representatives.
5.	A.H.S.A. 1989	-	No photographs to be compared	No photographs to be compared.