



## Examination of decisions of the Swiss authorities to deport two Sudanese nationals to their country of origin

In today's Chamber judgments<sup>1</sup> in the cases of [N.A. v. Switzerland](#) (application no. 50364/14) and [A.I. v. Switzerland](#) (application no. 23378/15) the European Court of Human Rights held, unanimously, that in the event of deportation to Sudan there would be

**no violation of Article 2 (right to life) or Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in the case of N.A., and**

**a violation of Article 2 (right to life) and of Article 3 (prohibition of inhuman or degrading treatment) of the Convention in the case of A.I.**

The interim measures indicated by the Court under Rule 39 of the Rules of Court remained in force until the present judgments became final.

The cases concerned the decisions of the Swiss authorities to deport the applicants to Sudan after rejecting their applications for asylum.

In *N.A. v. Switzerland* the Court held in particular that the applicant's political activities in exile, which were limited to merely participating in the activities of the opposition organisations in exile, were not reasonably liable to attract the attention of the intelligence services and found accordingly that the applicant did not run a risk of ill-treatment or torture in the event of his return to Sudan.

In *A.I. v. Switzerland* the Court held in particular that, on account of his political activities in exile, it was possible that the applicant had attracted the attention of the Sudanese intelligence services. It found that there were therefore reasonable grounds for believing that the applicant ran the risk of being detained, interrogated and tortured on his arrival at Khartoum Airport.

### Principal facts

N.A., the applicant in case no. 50364/14, is a Sudanese national who was born in Khartoum (Sudan) in 1972 and currently lives in the Canton of Zurich. A.I., the applicant in case no. 23378/15, is a Sudanese national who was born in 1984 in the State of Sennar (Sudan) and currently lives in the Canton of Zurich.

N.A. alleged that he had been working in a car-wash in Sudan and had been stopped and searched by the Sudanese authorities one day while parking a car owned by a customer who belonged to the Justice and Equality Movement ("JEM"). He stated that he had been interrogated and ill-treated for 45 days and then imprisoned for five days. He also stated that he had left Sudan at the end of 2008, transiting through several different countries. N.A. entered Switzerland on 7 March 2012 where he lodged an asylum application.

A.I. submitted that ever since secondary school he had been a member of an organisation working to promote the rights of minorities and to combat discrimination in Darfur, and that since 2005 he had been a member of the JEM. He had collected money to support Darfur and had regularly sent

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](http://www.coe.int/t/dghl/monitoring/execution).

the money to two intermediaries, but the Sudanese authorities had picked him up at home following the arrest of those two intermediaries. He had left Sudan in 2009, transiting through several different countries before entering Switzerland on 7 July 2012 and lodging an asylum application.

The Federal Migration Office (now the State Secretariat for Migration ["SEM"]) interviewed the applicants and concluded that they were not refugees, rejected their asylum applications and ordered their deportation from Switzerland. N.A. and A.I. appealed against those decisions to the Federal Administrative Court (TAF), submitting that they ran a risk of persecution in Sudan on account of their political activities. The TAF dismissed their appeals.

They allege before the Court that would expose them to the.

## Complaints, procedure and composition of the Court

The applicants alleged that the enforcement of the Swiss authorities' decisions to deport them to Sudan would expose them to a risk of treatment contrary to Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The application was lodged with the European Court of Human Rights on 8 July 2014.

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

Helena Jäderblom (Sweden), *President*,  
Branko Lubarda (Serbia),  
Helen Keller (Switzerland),  
Pere Pastor Vilanova (Andorra),  
Alena Poláčková (Slovakia),  
Georgios A. Serghides (Cyprus),  
Jolien Schukking (the Netherlands),

and also Stephen Phillips, *Section Registrar*.

## Decision of the Court

### Articles 2 and 3

The Court reiterated that the human rights situation in Sudan was alarming, in particular for political opponents.

Concerning N.A.'s alleged reasons for fleeing the country, the Court could not identify any factors that would justify calling into question the assessment by the domestic authorities, who had found that the applicant's statements lacked credibility. N.A. had neither submitted decisive arguments nor provided the slightest documented evidence in support of his allegations of ill-treatment. With regard to A.I., the Court noted that the domestic authorities had not fundamentally questioned his account of his activities back in Sudan.

The Court observed that the applicants had been members of the JEM for a number of years and that A.I. was also a member of the Darfur Peace and Development Centre (*Darfur Friedens-und Entwicklungs-Zentrum* ("DFEZ")). It found that the Sudanese secret services did not systematically monitor the activities of political opponents abroad.

There was no evidence that the Sudanese authorities had taken any interest in N.A. when he was living in Sudan, or abroad before he arrived in Switzerland. As the JEM was one of the main rebel movements in Sudan, the Court acknowledged that the applicant's membership of the JEM for several years was a factor giving rise to a risk of persecution. However, considering that N.A.'s political activities in Switzerland had been limited to merely participating in activities of the

opposition organisations in exile, the Court found that those activities were not liable to attract the attention of the Sudanese intelligence services. Lastly, N.A. could not claim that he had personal or family ties with eminent members of the opposition in exile that might endanger him.

The Court therefore considered that N.A. did not run the risk of ill-treatment or torture in the event of his return to Sudan. Enforcement of the deportation order would not give rise to a violation of Article 2 or Article 3 of the Convention.

With regard to A.I., the Court considered that, despite certain inconsistencies, the credibility of his allegations concerning his political activities in Switzerland could not be called into question, as his submissions had been consistent throughout the proceedings and documented by substantial evidence. Admittedly, the Court found that there was no evidence that the Sudanese authorities had taken any interest in A.I. when he had still been living in Sudan or abroad, prior to arriving in Switzerland. However, the Court observed that his membership of the JEM, and of the DFEZ, was a factor giving rise to a risk of persecution. A.I.'s already non-negligible political commitment had intensified over time. Lastly, A.I. had regularly frequented the leaders of the Swiss branch of the opposition in exile.

In the light of those factors, the Court could therefore not rule out the possibility that A.I. had attracted the attention of the Sudanese intelligence services. It found that there were reasonable grounds for believing that the applicant ran the risk of being detained, interrogated and tortured on his arrival at Khartoum Airport. Consequently, the Court found that there would be a violation of Articles 2 and 3 of the Convention if A.I. were deported to Sudan.

*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.