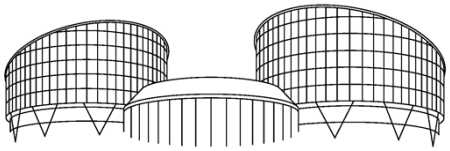

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF S.A. v. THE NETHERLANDS

(Application no. 49773/15)

JUDGMENT

Art 3 • Expulsion (Sudan) • General situation no longer entailing, in itself, a risk of ill-treatment in breach of the Convention • Personal situation • Region of origin: no reason to doubt domestic courts' conclusion, reached with full procedural guarantees • Non-Arab ethnic origin: not entailing, in itself, a risk of persecution or serious harm in Khartoum • No involvement in opposition to current regime or other individual factors or indication of negative interest from authorities • Risk of ill-treatment not established
Art 13 • Effective remedy duly offered

STRASBOURG

2 June 2020

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 S.A. v. the Netherlands,

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

Jon Fridrik Kjølbro, *President,*
Iulia Antoanella Motoc,
Branko Lubarda,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 49773/15) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Sudanese national, Mr S.A. ("the applicant"), on 9 October 2015;

the decision to give notice of the application to the Dutch Government ("the Government");

the decision not to have the applicant's name disclosed (Rule 47 § 4 of the Rules of Court);

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with;

Having deliberated in private on 21 April 2020,

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

INTRODUCTION

The applicant complained under Article 3 of the Convention that, if he were removed to Sudan, he would risk being subjected to treatment in breach of that provision on account of his origins and ethnicity (non-Arab Darfuri), the risk of forced recruitment and the general humanitarian situation in Sudan as a result of the conflict in Darfur. The applicant further complained under Article 13 that he did not have an effective remedy for the alleged violation of Article 3 of the Convention.

THE FACTS

1. The applicant claims that he is a Sudanese national who was born in 1993. He is currently residing in Utrecht. He was represented before the Court by Mr G.J. Dijkman, a lawyer practising in Utrecht.

2. The Government were represented by their Agent, Ms B. Koopman, and their Deputy Agent, Ms K. Adhin, both of the Ministry of Foreign Affairs.

3. On 31 August 2016, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, the President of the Section granted the Dutch Council for Refugees (*Vereniging VluchtelingenWerk Nederland*) leave to intervene as a third party in the proceedings. On 24 May 2019 the Dutch Council for Refugees withdrew its request for intervention.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. FIRST SET OF ASYLUM PROCEEDINGS

5. The applicant entered the Netherlands on 14 May 2010, where he lodged an asylum request. In his first interview (*eerste gehoor*) with the immigration authorities he stated that he had been born in a village in Nyala in South Darfur in 1993, that he had Sudanese nationality, and that he belonged to the Tunjur (a non-Arab ethnic group). He further stated that his mother was a Chadian national and that his father was from Darfur. A written record of this interview was drawn up, and on 3 June 2010 the applicant's lawyer submitted written corrections and additions.

6. A further interview (*nader gehoor*) was held on 13 September 2010 to enable the applicant to set out the reasons for his asylum application. He stated that his parents were divorced and that his father had tried to force him to join the fight of their ethnic group against the Janjaweed militia, to which his mother had objected. As she had feared that the applicant would be taken away by his father, his mother, aided by her new husband, had arranged for him to leave the country. The applicant stated that he feared that he would be killed by his father or members of his ethnic group upon his return to Sudan. A written record of this interview was drawn up, and on 1 October 2010 the applicant's lawyer submitted written corrections and additions.

7. On 22 March 2011 a report was issued following a language analysis test – taken by the applicant in December 2010 – by the Office for Country Information and Language Analysis (*Bureau Land en Taal*), a specialised unit of the Netherlands Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*, "the IND") of what was, at that time, the Ministry of the Interior and Kingdom Relations (*Ministerie van Binnenlandse Zaken en Koninkrijksrelaties*). That report concluded that the applicant had been unequivocally identified as originating from Sudan, that it was likely that his background was in Darfur where he had spent a part of his childhood, that his Arabic showed influences of the Arabic spoken in the Khartoum region (or outside Darfur) where he must have spent a significant part of his life, and that it was plausible that he belonged to a non-Arab group.

8. During an additional interview (*aanvullend gehoor*) held on 9 June 2011 it was pointed out to the applicant that, from still photographs taken from the security cameras at Schiphol Airport, it appeared that a person who

looked like him had entered the airport on 14 May 2010. This person had arrived from Istanbul and had travelled on a Chadian passport found to be authentic. The applicant had reported to the immigration authorities and submitted an asylum request on that very same day, without holding any kind of documentation. The Royal Military Constabulary *(Koninklijke Marechaussee*) had concluded that the person in the stills was the applicant. In the additional interview, the applicant confirmed that he was indeed the person who could be seen in the stills. He stated that the person who had arranged and facilitated his travel had only handed him the passport – which the applicant said bore his picture, but the personal details of a different person – at checkpoints. He had therefore returned the passport to this person. A written record of this interview was drawn up, and on 1 July 2011 the applicant's lawyer submitted written corrections and additions.

9. On 27 July 2011 the Minister for Immigration, Integration and Asylum Policy (*Minister voor Immigratie, Integratie en Asiel*) notified the applicant of his intention (*voornemen*) to reject his asylum application. On 26 August 2011 the applicant's lawyer submitted written comments (*zienswijze*) on that intended refusal.

10. On 11 October 2011 the minister rejected the applicant's asylum application. It was held that the applicant's failure to demonstrate his identity or nationality detracted from the credibility of his asylum statement. As it was found that he had entered the Netherlands holding an authentic Chadian passport, his claim that he was a Sudanese national was disbelieved. Consequently, no assessment of the merits of his application for asylum was carried out.

11. An appeal and subsequent further appeal by the applicant were rejected by the Regional Court (*rechtbank*) of The Hague and the Administrative Jurisdiction Division (*Afdeling Bestuursrechtspraak*) of the Council of State (*Raad van State*) on 7 June 2013 and 7 August 2013 respectively.

II. SECOND SET OF ASYLUM PROCEEDINGS

12. On 24 October 2014, after having been arrested on 23 October 2014 on suspicion of having committed assault, the applicant lodged a second asylum request. Pursuant to section 4:6 of the General Administrative Law Act (*Algemene Wet Bestuursrecht*), a repeat asylum request can only be examined if it is based on newly emerged facts and/or altered circumstances warranting a revision of the initial negative decision. The applicant was interviewed in relation to that request. He stated that he was a Sudanese national from Darfur and that the passport which he had used to enter the Netherlands was not his own, and that he still feared a return to Sudan, as he would be forced to fight either with the military against his ethnic group or with his ethnic group against the military. The applicant submitted two

documents: a declaration of residence (*domicilieverklaring*) issued by authorities in Sudan, and a statement of origin. Upon receiving the first document, the applicant had gone to the Sudanese embassy in the Netherlands, which had issued him with a statement confirming that he was from Sudan. The applicant had also gone to the Chadian embassy in Belgium in order to obtain a document confirming that he did not have Chadian nationality, but his request in that regard had been refused. A written record of this interview was drawn up, and on 7 November 2014, one day after the expiry of the time-limit fixed for this purpose, the applicant's lawyer submitted written corrections and additions.

13. On 7 November 2014 the Deputy Minister for Security and Justice (*Staatssecretaris van Veiligheid en Justitie*, the successor to the Minister for Immigration, Integration and Asylum Policy; "the Deputy Minister") notified the applicant of his intention to reject his second asylum request, as the applicant had failed to submit new facts or circumstances. On 8 November 2014 the applicant's lawyer submitted written comments on that intended refusal.

14. By a decision of 9 November 2014 the Deputy Minister rejected the second asylum application. The applicant lodged an appeal with the Regional Court of The Hague.

15. In its decision of 9 December 2014, the Regional Court considered that the Deputy Minister had erroneously held that there were no new facts or changed circumstances, and had wrongly failed to examine the applicant's asylum statement. It therefore upheld the applicant's appeal and ordered the Deputy Minister to decide the case anew.

16. On 16 December 2014 the Deputy Minister lodged a further appeal with the Administrative Jurisdiction Division of the Council of State.

17. On 12 February 2015 the Administrative Jurisdiction Division accepted the further appeal of the Deputy Minister, quashed the impugned judgment of 9 December 2014 and rejected the applicant's appeal against the decision of the Deputy Minister of 9 November 2014. The Administrative Jurisdiction Division held that neither the documents submitted by the applicant in his second set of asylum proceedings nor the fact that the Deputy Minister had accepted that the applicant had Sudanese nationality in another set of proceedings relating to his placement in immigration detention was capable of affecting the finding made in the proceedings relating to his first asylum application that he had Chadian nationality. The applicant had not demonstrated that he did not have this nationality. The Administrative Jurisdiction Division found that the applicant had not adduced any new facts or circumstances, and that no special circumstances pertained to justify examining his repeat asylum request on its merits. In connection with this last consideration, reference was made to the Court's judgment in *Bahaddar v. the Netherlands* (19 February 1998, § 45, *Reports of Judgments and Decisions* 1998-I).

18. On 12 August 2015, following an application filed by the applicant on 9 June 2015 on the initiative of the Repatriation and Departure Service (*Dienst Terugkeer en Vertrek*) of the Ministry of Security and Justice, the Sudanese embassy in the Netherlands issued a laissez-passer to the applicant which was valid for two months, that is, until 12 October 2015.

III. PROCEEDINGS CONCERNING THE APPLICANT'S REMOVAL TO SUDAN

19. On 9 October 2015 the applicant was informed by the Netherlands immigration authorities that he would be removed to Sudan on 10 October 2015. On that same day he filed an objection (*bezwaar*) with the Deputy Minister against his effective removal. As such an objection did not have automatic suspensive effect, the applicant also sought a provisional measure from the Regional Court in order to stay his removal pending a decision on his objection. He argued that his removal to Sudan would lead to a violation of Article 3 of the Convention, as he was from Darfur and of a non-Arab ethnicity, and he would therefore attract the negative attention of the authorities immediately upon his arrival at the airport in Khartoum. He further argued that it had not been assessed whether there was a real risk of his removal exposing him to treatment in breach of Article 3 of the Convention, and that this was contrary to Articles 3 and 13 of the Convention. Moreover, as he had an arguable claim of a violation of Article 3, he should have had access to an effective remedy with automatic suspensive effect.

20. In proceedings before the provisional-measures judge of the Regional Court, the Deputy Minister argued that the applicant's arguments were neither new nor relevant to the legitimacy of his removal.

21. The provisional-measures judge referred to the considerations of the Administrative Jurisdiction Division in its decision of 12 February 2015 (see paragraph 17 above), and to the arguments put forward by the Deputy Minister. It was concluded that no assessment of the question of whether the applicant's expulsion to Sudan would be contrary to Article 3 of the Convention was needed, as he had failed to establish his identity and nationality. The application for the provisional measure was rejected by a decision of 9 October 2015.

22. On the same day the present application was lodged and the accompanying request for an interim measure within the meaning of Rule 39 of the Rules of Court, in the form of a stay of the applicant's removal to Sudan, was granted until further notice.

IV. THIRD SET OF ASYLUM PROCEEDINGS

23. On 15 January 2016 the applicant lodged a third asylum application, and on the same day he was interviewed in relation to that new asylum application and notified of the Deputy Minister's intention to reject it. After being provided with the opportunity to submit written comments on the intended refusal, of which the applicant availed himself on 18 January 2016, the Deputy Minister rejected the new application on 19 January 2016. He considered that, in so far as it was to be assumed that the applicant also held Sudanese nationality, it remained the case that the applicant had given only vague and summary statements about his origin and stay in Sudan, whilst these statements were contradicted by what had been found to have been established through the language analysis (see paragraph 7 above). Accordingly, no credence was given to the applicant's alleged origin and problems encountered in his region of origin. No appeal was filed against that decision.

24. The applicant left the Netherlands on an unspecified date, and on 7 April 2016 he applied for asylum in France. He returned to the Netherlands after the Netherlands authorities had accepted, on 19 April 2016, the French authorities' request that they take responsibility for the applicant's asylum application under the Dublin Regulation.

25. On 6 September 2016 the Deputy Minister informed the applicant that he had decided to withdraw his decision of 19 January 2016 and that a fresh decision would be taken after an additional interview with the applicant.

26. On 12 September 2016 an additional interview with the applicant was held in which, *inter alia*, his participation in a demonstration held by the Sudanese opposition in The Hague in January 2016 was discussed. A written record of this interview was drawn up, and on 26 September 2016 the applicant's lawyer submitted written corrections and additions.

27. On 17 October 2016 the Deputy Minister notified the applicant of a fresh intended refusal. He held that the applicant had still not demonstrated that he did not hold Chadian nationality. He had entered the Netherlands on a genuine Chadian passport and his claim that he had obtained this passport through bribery had remained unsubstantiated. Moreover, he had stated that his mother was Chadian and he had a command of a Chadian (tribal) language. In so far as it was to be assumed that the applicant also held Sudanese nationality, it was relevant that he had given only vague, summary and demonstrably incorrect statements as regards his Sudanese origins. He had indicated during his first interview of 15 May 2010 that he hailed from Darfur, where he claimed to have lived for the first seventeen years of his life. He had further stated that Darfur was an independent region, and that he did not know where Darfur was or to which country it belonged. Furthermore, he was barely able to provide information about Nyala, where

he had allegedly lived during the three years preceding his arrival in the Netherlands. The Deputy Minister further considered that, although it appeared from the language analysis (see paragraph 7 above) that the applicant could be identified as originating from Sudan, the findings of this analysis contradicted the course of the applicant's life as described by him. He was unable to give the names of any places in the vicinity of Nyala, and could provide little information about this town where he had allegedly lived. Furthermore, although the applicant's speech contained authentic elements from the Arabic language of Darfur, his speech also showed a strong influence of the Arabic language as spoken in the region of Khartoum. It was also striking that his vocabulary was unusually large for someone who claimed to be uneducated. The conclusion of the language analysis was that, although it was likely that the applicant had a Darfuri background and belonged to the non-Arab population group of that region, he must have spent a significant part of his life outside Darfur. Accordingly, the Deputy Minister found that the applicant had not established that Darfur should be considered his region of origin, as he had given summary and incorrect statements about that region and there were strong indications that prior to his arrival in the Netherlands he had lived for a lengthy period outside the Darfur region, and consequently no credence could be given to his alleged region of origin and the problems he had allegedly encountered there. Furthermore, the Deputy Minister did not find it established that the applicant, if removed to Sudan, would be exposed to a risk of treatment in breach of Article 3 on account of having participated in a demonstration by the Sudanese opposition held in The Hague on 28 January 2016, or that he would risk forced conscription into the Sudanese army.

28. On 13 December 2016, having noted the applicant's written comments on the intended refusal, the Deputy Minister rejected the applicant's third asylum application. He maintained that no credence could be given to the risks to which the applicant would allegedly be exposed if removed to Sudan. The applicant filed an appeal with the Regional Court of The Hague.

29. In its interlocutory ruling (*tussenuitspraak*) of 18 July 2017 following a hearing held on 15 June 2017, noting both the outcome of the language analysis and the fact that the applicant's claim that he was a Sudanese national had been found to be credible, the Regional Court of The Hague sitting in Utrecht considered that the Deputy Minister had given insufficient reasons as to why it was accepted that the applicant was a Sudanese national but not, as he claimed, of Darfuri origin. The court further noted that, under section 8:51a(1) of the General Administrative Law Act, it could enable an administrative authority to repair or have repaired a flaw in an impugned decision, and in such a situation it would hand down an interlocutory ruling in accordance with section 8:80a of the General Administrative Law Act. In the case at hand, repair of such a flaw

was considered possible in the form of additional reasons being provided or a fresh decision being taken, together with the withdrawal of the impugned decision.

30. On 3 August 2017 the Deputy Minister notified the Regional Court and the applicant that he would avail himself of the opportunity to repair the flaw found by the Regional Court by giving additional reasons. The Deputy Minister did so on 25 August 2017, by providing more elaborate reasoning for his finding that the applicant had not demonstrated that he originated from the Sudanese part of Darfur. On 25 September 2017 the applicant submitted his written reaction to that additional reasoning. On 18 October 2017 the Regional Court requested that the Deputy Minister submit a further explanation as to why, given the findings of the language analysis (see paragraph 7 above), he had held that the outcome of the language analysis did still allow for the possibility that the applicant had grown up in Chad.

31. The Deputy Minister submitted that explanation on 1 November 2017, together with additional remarks on the language analysis report of 22 March 2011. Those additional comments were set out in a report of 31 October 2017 by the Research and Expertise Country Information and Language Analysis Team (*Team Onderzoek en Expertise Land en Taal*, "the TOELT"; previously called '*Bureau Land en Taal*', see paragraph 7 above) of the IND of the Ministry of Justice and Security, and stated that because of his Arabic speech, the applicant had been unequivocally identified as originating from (*eenduidig te herleiden tot*) the Khartoum region in Sudan, and it was plausible that he had spent most of his life or his entire life in this region. This report further stated that it was plausible that the applicant had a background in Darfur (Sudan) or Chad, and that it was possible that he had spent his early childhood in Darfur or in Chad, but because of his Arabic speech, this was rather unlikely. As regards the applicant's alleged Tunjur origin, the report stated that, as the Tunjur did not have their own language, in practice, it was not possible to verify a person's alleged Tunjur origin, and in the opinion of the TOELT, the applicant had submitted nothing warranting the assumption that he actually belonged to the Tunjur. During the language analysis carried out in December 2010, the applicant had demonstrated a command of Gorane, better known as Tubu or Tedaga, a language spoken in Chad, Niger and Nigeria. He had stated that he had learned it from his mother. The applicant submitted written comments on this report on 16 November 2017.

32. On 20 December 2017, following proceedings in which the applicant was assisted by a lawyer, the single-judge chamber (*enkelvoudige kamer*) of the Regional Court of The Hague sitting in Utrecht accepted the applicant's appeal against the decision of 13 December 2016 and quashed that decision, but also held that its legal consequences should still stand. It found that, having regard to the additional submissions of the Deputy Minister, the Deputy Minister had sufficiently reasoned why he did not assume that the

applicant hailed from Darfur and why it had not been excluded that he originated from Chad. Referring to the TOELT-report of 31 October 2017, it further accepted that it was plausible that the applicant had resided in the region of Khartoum for most of his life or his entire life. The Deputy Minister had thus correctly found that Khartoum should be considered the applicant's region of origin and that the applicant had not established that he would be exposed to a real risk of being subjected to treatment in breach of Article 3 of the Convention there. On the basis of the flaw found in the interlocutory ruling, the Regional Court allowed the appeal, but as this flaw had been repaired by the Deputy Minister, the Regional Court decided that its legal consequences should still stand.

33. On 15 January 2018 the applicant's lawyer filed a further appeal on the applicant's behalf with the Administrative Jurisdiction Division of the Council of State, which was rejected on 28 September 2018 by the single-judge chamber of the Administrative Jurisdiction Division. The further appeal was found not to provide grounds for quashing the impugned ruling (*kan niet tot vernietiging van de aangevallen uitspraak leiden*). Having regard to section 91(2) of the Aliens Act 2000 (*Vreemdelingenwet 2000*), no further reasoning was called for, as the arguments submitted did not raise any questions requiring a determination in the interest of legal unity, legal development or legal protection in the general sense. No further appeal lay against that ruling.

V. RELEVANT SUBSEQUENT DEVELOPMENTS

34. On 11 April 2019, after several months of street protests against his rule, the Sudanese President Omar Al-Bashir was ousted by the army of Sudan. The next day Lieutenant-General Abdel Fattah Al-Burhan was sworn in as chairman of the Transitional Military Council ("the TMC"). In his first public address, Lieutenant-General Al-Burhan stated that the military were committed to civilian rule. He further ordered the release of protesters jailed under emergency laws.

35. On 16 April 2019 the African Union warned Sudan's military that Sudan had fifteen days to install a civilian government or risk suspension from the African Union. In a statement issued on 30 April 2019, the African Union stated that it noted with deep regret that the military in Sudan had not stepped aside and handed over power to civilians within the fifteen-day period it had set. It granted the TMC of Sudan another sixty days to hand over power to a civilian authority or face suspension from the African Union.

36. On 4 August 2019 the TMC and the Forces of Freedom and Change, a broad alliance of political and social organisations, signed the Draft Constitutional Declaration, which defined the transfer of power from the TMC to the Sovereignty Council of Sudan and other transitional State

bodies. The Sovereignty Council started its thirty-nine-month mandate on 20 August 2019. On 11 February 2020 a member of the Sovereignty Council announced that all those who were subject to arrest warrants by the International Criminal Court (ICC) for allegedly committing war crimes, crimes against humanity and genocide in the Darfur conflict, including former President Omar Al-Bashir, must be surrendered to the International Criminal Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

37. The admission, residence and expulsion of aliens are regulated by the Aliens Act 2000. Further rules are laid down in the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*), the Regulation on Aliens 2000 (*Voorschrift Vreemdelingen 2000*) and the Aliens Act 2000 Implementation Guidelines (*Vreemdelingencirculaire 2000*). The General Administrative Law Act applies to proceedings under the Aliens Act 2000, unless otherwise indicated in the latter Act.

38. Section 13 of the Aliens Act 2000 provides that an application for a residence permit shall be granted only if:

a) international obligations require this;
b) the presence of the alien would serve a genuine interest of the Netherlands, or
c) urgent reasons of a humanitarian nature require this.

39. A general overview of the relevant domestic law and practice as regards asylum proceedings has been set out in *X v. the Netherlands* (no. 14319/17, §§ 34-40, 10 July 2018), and the domestic policy in respect of Sudanese asylum-seekers as of 13 June 2018 has been set out in *A.S. v. the Netherlands* ((dec.), no. 20102/13, 20 November 2018).

40. The official country report (*ambtsbericht*) on Sudan released on 7 October 2019 by the Netherlands Ministry of Foreign Affairs states, in so far as relevant, as follows:

> "The presidential elections in Sudan were scheduled for 2020. President Bashir began his last term of office in 2015. In 2018 the governing party National Congress Party (NCP) and party leader Bashir themselves took steps to re-elect him. A proposal for constitutional changes that were necessary for this was submitted to Parliament for approval. In April 2019 Bashir was deposed and a Transitional Military Council (TMC) came to power. ...
>
> On 1 January 2019 22 civilian groups and opposition parties, led by the Sudanese Professionals Association (SPA), signed the Declaration for Freedom and Change. In the declaration, the parties asked Bashir to resign. ... The signatories to the Declaration for Freedom and Change came to be known later that year as the Forces for Freedom and Change (FFC). The FFC is a broad alliance of political and social

organisations including the Sudan Call Alliance, National Consensus Forces, the Unionist Association and the SPA. ...

The SPA, a collection of unions of doctors, lawyers and teachers, took on the organisation of the demonstrations and encouraged citizens to continue the demonstrations ...

From December 2018 to July 2019 the SPA and the FFC encouraged citizens to participate in protests against Bashir, and later against the TMC. In response to the protests, [in December 2018 and February 2019] the security forces arrested various members of the opposition, including party leaders from the Sudanese Congress Party and the Sudanese Communist Party. ...

As of mid-April the TMC and the members of the FFC held weeks of talks about a possible transfer of power to a civilian-led transitional government. Among other things, the FFC demanded the appointment of a civilian government and security services reforms. Negotiations stalled because no agreement could be reached on the precise distribution of power between the military and the civilian opposition in a transitional body. ...

The seizure of power by the TMC and the absence of an agreement on a civilian government led to a new stimulus among protesters. ... Despite the intervention of the security services, demonstrations continued throughout the country under the leadership of the SPA, but also led by neighbourhood (resistance) committees. ...

Also as a result of mediation by the African Union (AU) and Ethiopia, the FFC and the TMC signed a political agreement on 17 July 2019 on the division of power in a transitional government. On 17 August 2019 both parties signed a constitutional declaration. Over a period of three years and three months the transitional government will prepare elections that will lead to a civilian government. The agreement stipulates that a sovereignty council will play the role of head of State and will consist of five civilian and five military members [and one civilian 'selected by agreement' between the FFC and the TMC]. ...

According to a source, around one million Darfuris are living in Khartoum and the surrounding area. Most Darfuris live in poor neighbourhoods of Khartoum where other non-Arab Sudanese are also living, such as the Nuba and other tribes from the Two Areas [South Kordofan and Blue Nile]. Darfuris and people from the Two Areas who can afford it live in better neighbourhoods of the city, including the city centre.

Despite systematic discrimination, Darfuris and people from the Two Areas were reasonably able to manage by themselves in everyday life in Khartoum in 2017 and 2018. For example, students from Darfur continued to study at university in Khartoum, despite regular arrests of Darfurian students during protests and public rallies. Darfur people are not really discriminated against by other citizens, but by the NISS [National Intelligence and Security Service], the public order police who extort them, and some other authorities. It is unclear how the situation of people from Darfur in Khartoum has developed in 2019 since the TMC has taken over power and the presence of RSF [Rapid Support Forces] in Khartoum has increased."

As regards returnees, this official country report states:

"3.4.3 At-risk groups

Various sources reported that a returnee stands out to the security services if he/she falls into different categories to which the security services pay more attention. This could include political activists, human rights defenders, citizens who participate in demonstrations, students and citizens belonging to tribes associated with the conflict

> areas. ... According to Amnesty International, expelled Sudanese citizens who were accused or suspected of activities for the opposition were at risk of becoming victims of serious human rights violations. Citizens hailing from conflict areas such as Darfur, Blue Nile, South Kordofan and the Nuba Mountains were also at increased risk, according to Amnesty, even if they had lived in Khartoum or other conflict-free areas for a long time....
>
> Sudanese citizens who returned to Sudan and travelled with a laissez-passer or were forcibly returned were interviewed for longer than other travellers upon their arrival in Khartoum. The security services checked whether the person actually had Sudanese nationality. According to Amnesty International, persons travelling with temporary travel documents or with an escort were more quickly considered to be rejected asylum seekers and/or persons with a political profile. According to Amnesty International, these Sudanese citizens were therefore more at risk upon their return. While answering questions in [the Netherlands] Parliament in February 2019, the Ministry of Justice and Security indicated that there was no reason to follow the recommendations of Amnesty International and alter the procedure for removal to Sudan."

41. In an amendment (WBV 2020/1) of the Aliens Act 2000 Implementation Guidelines of 12 January 2020, the asylum policy in respect of Sudan was changed. Under the new policy, only the following persons are considered as belonging to an "at-risk" group (as regards this category, see *A.S.N. and Others v. the Netherlands*, nos. 68377/17 and 530/18, § 57, 25 February 2020 (not final)):

- those who have been active in the field of human rights;
- those who are (alleged) supporters of an armed opposition group. A person is in any event regarded as an (alleged) supporter of an armed opposition group if he/she belongs to:
  - a non-Arab population group, hails from Darfur and had normal residence there before arriving in the Netherlands; or
  - a non-Arab population group from the Nuba mountains and had normal residence there before arriving in the Netherlands.

42. Under the new policy, there is no longer considered to be an exceptional situation as referred to in Article 29(1)(b) of the Aliens Act 2000 in Sudan. Under the former policy, and in respect of persons hailing from Darfur and from South Kordofan (including Abyei) and Blue Nile, the general situation in those areas was considered such that removal was to be regarded as entailing a real risk of suffering serious harm, that is, the situation referred to in Article 29(1)(b) of the Aliens Act 2000.

II. OTHER MATERIALS

43. On 4 March 2009 the ICC issued an arrest warrant for Sudan's then President Omar Al-Bashir on charges of war crimes and crimes against humanity in Darfur. On 12 July 2010 the ICC issued a second arrest warrant

against Omar Al-Bashir for genocide committed against the Massalit, Fur and Zaghawa ethnic groups.

44. In August 2016 a joint report entitled "*Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum*" was released by the Danish Immigration Service and United Kingdom Home Office following a joint fact-finding mission to Khartoum, Kampala and Nairobi conducted in March 2016. The report focuses on the situation of persons from Darfur and the Two Areas (South Kordofan and the Blue Nile State) in Khartoum, including the treatment of such persons upon their arrival at Khartoum International Airport, their treatment by the authorities in Khartoum, the prevalence of societal discrimination, and living conditions in Khartoum. Its executive summary reads:

> "Sizeable populations from Darfur and the Two Areas reside in Khartoum. There are two main drivers behind the immigration of persons from these areas to Khartoum: the security situation in Khartoum and the socio-economic factors.
>
> Persons with a political profile returning to Sudan may be questioned and/or arrested upon arrival at Khartoum International Airport (KIA) depending on the person's profile. Seeking asylum abroad would not in itself cause persons from Darfur and the Two Areas problems with the authorities upon return except returnees from Israel. Neither would returnees face severe difficulties with the authorities because of staying abroad for a longer period or travelling with emergency papers. A person's ethnicity would not generally affect the treatment, he or she would receive on arrival at KIA.
>
> The National Intelligence and Security Service (NISS) acts with impunity. Persons from Darfur and the Two Areas with a political profile are at risk of being targeted by the NISS and its affiliated militias in Khartoum, particularly student activists and persons with an affiliation to rebel groups. The Darfuri and Two Areas communities in Khartoum are monitored by the NISS, principally to identify those with a political profile. Activists at most risk are likely to be those from the Darfuri African tribes of Fur, Masalit and Zaghawa, and persons from the Nuba Mountains.
>
> Persons from Darfur and the Two Areas have access to documents, housing, education and healthcare in Khartoum. However, the quality of these services is low in the poor neighbourhoods surrounding Khartoum where a majority of these persons live. The main factor regarding access to housing and services is the person's financial resources. There is in practice limited humanitarian assistance provided in Khartoum to those displaced by violence elsewhere in Sudan. Most Darfuris and persons from the Two Areas work in the informal sector as their access to employment in a number of sectors, particularly the public sector, is limited due to discrimination as well as the general adverse economic conditions in Sudan. Those working illegally, for example women selling tea without a licence, are at risk of arrest and prosecution under Public Order laws as well as harassment and extortion by the police.
>
> Persons from Darfur and the Two Areas, and in particular those of African descent, may experience societal discrimination in Khartoum.
>
> It is possible to travel by road and air between Khartoum and Darfur as well as Khartoum and the Two Areas. A person has to go through checkpoints controlled by different actors (the government, rebel groups and local armed groups). Access to certain parts of the Two Areas is restricted.

> In general, Khartoum is a safe place for persons fleeing from a private conflict in their local areas. However, the level of security depends on individual circumstances, particularly whether the other party in the conflict has connections with the authorities."

45. According to the Swedish Migration Board Country Information Service's (Lifos) report of 6 December 2016 on the security situation in Darfur and the situation for internally displaced persons in Khartoum, a person's cultural affiliation and skin colour are of importance in Sudanese society. Reports from several sources state that people are discriminated against in society because of their ethnicity. The ethnic group to which a person belongs affects the understanding of that person's political affiliation. Human rights activists, political opponents to the regime, leaders in civil society, students, lawyers and journalists risk intimidation by the authorities. They can be arrested and detained by the National Intelligence and Security Service (NISS) without charge or trial. People from some non-Arab groups can be perceived as being affiliated with rebels, and people from Darfur with a political profile can also be at risk in Khartoum.

46. The United Kingdom Home Office Country Policy and Information Note "*Sudan: Non-Arab Darfuris*", released in August 2017, states, *inter alia*, as follows:

> "3.1.1 The security, human rights and humanitarian situation in Darfur continues to be poor. Non-Arab Darfuris in the Darfur region are likely to face human rights violations which amount to serious harm or persecution.
>
> 3.1.2 Existing case law has found that non-Arab Darfuris as an ethnic group are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan, including to Khartoum.
>
> 3.1.3 The Home Office view is, however, that there is cogent evidence indicating that non-Arab Darfuris are not generally at risk of persecution or serious harm solely on the grounds of their ethnicity in Khartoum. This evidence provides strong grounds to depart from the existing case law of AA and MM.
>
> 3.1.4 Rather, a person's non-Arab Darfuri ethnicity is likely to be a factor which may bring them to the attention of the state and, depending on other aspects of their profile and activities, may lead to a risk of serious harm or persecution in Khartoum.
>
> 3.1.5 Darfuris in Khartoum face discrimination in accessing public services, education and employment, experience forced eviction, societal harassment from other Sudanese, and do not have access to humanitarian assistance. However in general such treatment is not so severe that it is likely to amount to persecution but each case will need to be considered on its individual facts.
>
> 3.1.6 All returns are to Khartoum. It will generally be reasonable for a person, including those not previously resident in Khartoum, to return to that city but each case will need to be considered on its individual facts. If the person is able to demonstrate a risk of persecution or serious harm from the state in Khartoum, internal relocation to another part of Sudan will not be reasonable. ...
>
> 7.1.6 The UK-DIS FFM [the UK Home Office-Danish Immigration Service fact-finding missions to Kenya, Uganda and Sudan] report, based on a range of sources, noted:

> 'A number of sources stated that they had no information to indicate that failed asylum seekers / returnees from Darfur or the Two Areas would generally experience difficulties on return to Khartoum International Airport (KIA), or they did not consider that claiming asylum overseas would put such a person at risk per se. Western Embassy (C) noted that they had monitored the forced return of two persons from Europe in 2015 and had no reason to believe that they experienced any difficulties or mistreatment, although the source acknowledged that they were not present throughout the arrival procedure. The diplomatic source mentioned that they had experience of a very few rejected asylum seekers being deported from Switzerland and Norway. According to the source it was unclear whether these returnees could get support upon return to Sudan. However the source added that those sent back from Norway had not faced any problems upon return. ...' ...
>
> 7.1.10 The British Embassy in Khartoum observed in September 2016: 'As reported in our letter of February 2015 ... it remains the case that neither we nor our international partners are aware of substantiated cases of returnees, including failed asylum seekers, being mistreated on return to Sudan.' ..."

47. A report released by the Asylum Research Centre on 13 September 2018 entitled "*Sudan: Query Response, The situation in Khartoum and Omdurman – An update*" states, in so far as relevant, as follows:

> "According to a 2015 country study published by the US Library of Congress 'In Sudan, men and women aged 18-30 are subject to compulsory military service for a period of two years'.
>
> The US Central Intelligence Agency's (CIA) World Factbook stated that 'Sudan has both compulsory and voluntary military service with a 1 to 2 year service obligation for people ages 18-33. A requirement that completion of national service was mandatory before entering public or private sector employment has been cancelled (2012).'
>
> In a query response dated October 2016, the Immigration and Refugee Board of Canada noted with regard to ... the possibility of being exempted from military service ... the provisions of the National Service Act section on Applications for Pardon or Postponement, stating that 'The Director is the authority to decide [sic] on applications for full exemption, partial or temporary. The Minister decides on postponement. Sudan Ambassadors and counsellors abroad has [sic] the authority for temporary decisions on applications for postponement of service for those residents abroad, and they have to notify the Administration immediately (Sudan 1992)'.
>
> Regarding punishment for refusing or evading military service the Immigration and Refugee Board of Canada query response provided the following information:
>
> > 'The National Service Act 1992 states that
> >
> > 28.1 Whoever contradicts this Act shall be punished by imprisonment [for a] period not exceeding three years, or shall be fined, or with both penalties. ...
> >
> > 28.3 Any person subject to do the service shall be punished with imprisonment for a period of not less than two years and not exceeding three years who does not present himself for recruitment, or tries to avoid service through deceit, or by inflicting any harm to himself. (Sudan 1992, Art. 28.1). ...'
>
> 2.2. Darfuri

No COI [Country of Origin Information] published between 19 August 2015 – 9 July 2018 on forced recruitment of Darfuri in Khartoum or Omdurman was found amongst the sources consulted. ...

2.7. Returnees

No COI published between 19 August 2015 – 9 July 2018 on the forced recruitment of returnees in Khartoum or Omdurman was found amongst the sources consulted."

48. As regards the treatment of non-Arab Darfuris in Khartoum, the executive summary of the United Kingdom Home Office Country Policy and Information Note "Report of a fact-finding mission to Khartoum, Sudan; conducted between 10 and 17 August 2018", published in November 2018, states:

"People from the 'periphery' of Sudan – Darfur, South Kordofan, Blue Nile, etc – generally experience discrimination from riverine Arab groups. Darfuris do not appear to experience a greater degree of discrimination than other groups. However, Darfuris who are affiliated with the ruling National Congress Party are likely to face less discrimination and difficulties, and have better opportunities.

The degree and nature of discrimination an individual may face is likely to depend on a combination of factors based on their background, experiences and activities. Darfuris who have an actual or perceived association with or involvement in an activist or rebel group are likely to attract the interest of the security forces. The government is particularly suspicious of members of the Zaghawa, Fur and Maasalit, given that these tribes are most closely linked with the rebel groups in Darfur.

Darfuris do not generally face direct societal discrimination from other Sudanese or are treated differently from other groups, although tribes appear to generally favour their own group.

While arrests of individual Darfuris occur and larger numbers may be arrested during demonstrations, there are not wide-scale arrests of Darfuris based on ethnicity alone as was the case in 2008 following the JEM attack on Omdurman. However, if arrested, Darfuris may face racial abuse and ill-treatment by the police and the National Intelligence and Security Service (NISS), and are likely to be treated worse than other Sudanese groups once in detention.

Generally family members of a person of interest would not face arrest, but may be harassed.

The government does not generally tolerate opposition activism, particularly when manifest in protests. Darfuri students are the most politically restive Darfuri group and may be perceived to support rebel groups by the government: 10s-100s have been arrested in recent years.

While there is no single profile of Darfuri who is at risk from the state, Darfuris, particularly students, who participate in some form of activism, especially if linked to rebel groups, are likely to come to the interest of the security forces. Not all Darfuris, however, oppose or are perceived to oppose the government.

While Darfuri students face discrimination, harassment, intimidation and, in some circumstances, arrest and ill-treatment, significant numbers continue to attend universities in Khartoum and elsewhere in Sudan.

Darfuris face obstacles in accessing services, including healthcare, accommodation, education and work in the government sector. Although many of the difficulties are

also experienced by other groups because of the prevailing poor economic situation, under-resourced public services and the government favouring its supporters. Many, but not all, Darfuris are poor, have menial jobs and live in the shanty towns surrounding Khartoum, which lack basic services and where forced eviction may occur. Darfuris who are able to obtain or have government positions, may face discrimination in obtaining promotion; those in business must pay 'extra' levies; while those in the security forces are likely to remain in the lower ranks.

The government introduced a biometric civil registration database in 2011 and claims to have captured the personal data of 80% of the Sudanese population. Individuals must be registered on the database to obtain an ID number and card, which enables access to various government and public services such as schooling and bank accounts, and is necessary to vote. Not all Darfuris have an ID number (and therefore access to an ID card). Some Darfuris, including those who have migrated to Khartoum, may face difficulties in obtaining an ID number as 2 male witnesses (relatives or tribal elders) are usually required to demonstrate identity and in some cases, where nationality is in dispute or there are no close relatives, 4 witnesses.

All Sudanese are required to undertake national service which is usually for 1 or 2 years, depending on whether the individual is a graduate or not. It may be possible to defer national service in some circumstances. Darfuris may not obtain such good placements as other Sudanese; are more likely to remain in the lower ranks; and are unlikely to be deployed to 'sensitive' areas. Failure to complete national service may result in restrictions on access to education, jobs and travel out of Sudan, but is unlikely to lead to more severe punishments, such as imprisonment."

As regards returnees to Sudan, the executive summary states:

"At least 4 western European states, plus the UK, have enforced returns of unsuccessful asylum seekers to Sudan since 2017.

The International Organization for Migration (IOM) has facilitated the voluntary return of over 150 individuals to Sudan from a number of European Union states plus Switzerland since 2016; most are likely to have been unsuccessful asylum seekers. The IOM has also facilitated the voluntary return of Sudanese from other countries in the region, most of whom are not likely to have been unsuccessful asylum seekers. A number of the returnees from Libya are known to have been from Darfur.

All the western states, including the UK, consulted plus the IOM were not aware of verified evidence of ill-treatment of returnees to Sudan. A number of the civil society sources interview considered that returnees would have problems on arrival, including arrest and detention. However, only one source claimed to have had direct contact with 2 individuals returned from Jordan and Belgium respectively who alleged ill-treatment on return."

49. In respect of the treatment of non-Arab Darfuris in Sudan, the UK Home Office Country Policy and Information Note "*Sudan: Non-Arab Darfuris*", issued in November 2019, states as follows:

"2.4.1 In the country guidance case of AA (Non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 (18 December 2009), heard 4 November 2009 and promulgated on 18 December 2009, the Upper Tribunal (UT) found that '[a]ll non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan'.

2.4.2 The UT in the country guidance case of MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC), heard 7 October 2014 and promulgated 5 January 2015, found that '"Darfuri" is to be understood as an ethnic term relating to origins, not as a geographical term. Accordingly, it covers even Darfuris who were not born in Darfur' (paragraph 14). Thus, persons who are ethnic non-Arab Darfuri in origin, regardless of whether they have lived in Darfur or elsewhere in Sudan, would be at risk on return to Khartoum. The Tribunal in MM also found that there was, at the time of the hearing, no new, cogent evidence indicating that non-Arab Darfuris were not at risk of persecution in Sudan (paragraph 13).

2.4.3 The reported case of AAR & AA (Non-Arab Darfuris - return) Sudan [2019] UKUT 282 (IAC), was heard between 12 and 14 February 2019 and followed by a post-hearing case management review (CMR) on 10 July 2019, promulgated on 7 August 2019 but not published until 17 September 2019. In that case the UT was to issue country guidance on the question of 'whether the guidance given in AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC) requires revision in the light of the current country evidence including consideration of internal relocation of non-Arab Darfuris to Khartoum' (paragraph 2). However, the substantive hearing and subsequent CMR occurred during a period of nationwide social and political unrest which the, then, government attempted to suppress using violent means. The demonstrations resulted in, first, the ousting of President Omar Al-Bashir in April 2019, and, eventually the creation of a transitional civilian-military government in July 2019 (see paragraphs 21 to 25 of AAR and AA and Political context: December 2018 – August 2019).

2.4.4 In light of the unstable and changeable country conditions, the UT in AAR and AA held a CMR on 10 July 2019 after which it concluded that:

> '... in light of the volatility of the situation in Sudan, the absence of the cogent evidence needed to set aside existing Country Guidance and in light of AAR and AA having waited for an extensive period of time for a final determination of their protection claims, the respondent conceded that a further delay was not appropriate and that the appeals should be determined on the basis of the existing Country Guidance cases. The respondent accepted that this meant that the appeals had to be allowed where the appellants' profiles as Darfuris brought them within the ratio of AA (Sudan) and MM (Sudan). The Tribunal allows the asylum appeals of AAR and AA on that basis.' (paragraph 29)

2.4.5 The UT went on to observe:

> 'The answer to the Country Guidance question that was originally asked in these appeals is as follows. The situation in Sudan remains volatile after civil protests started in late 2018 and the future is unpredictable. There is insufficient evidence currently available to show that the guidance given in AA (non-Arab Darfuris - relocation) Sudan CG [2009] UKAIT 00056 and MM (Darfuris) Sudan CG [2015] UKUT 10 (IAC) requires revision. Those cases should still be followed.' (paragraph 30)

2.4.6 During the course of AAR and AR the UT was presented with a considerable body of evidence about the situation of non-Arab Darfuris in Sudan generally and in Khartoum in particular (where the Home Office contended that there was not a general risk of persecution for non-Arab Darfuris but each case needed to be considered on its facts). However, the UT did not provide any analysis of this evidence in the determination but instead concluded that the ongoing political and social uncertainty meant it was unable to depart from the findings in AA and MM.

> 2.4.7 While the formation of the transitional government has brought some stability to the political and social situation, and signs of improvement in the human rights environment, there continues to be uncertainty about the future, and the degree and permanency of the changes (see Political context: December 2018 – August 2019). In this context and given the findings of the UT in AAR and AA, a person who is able to establish that they are a non-Arab Darfuri - regardless of their background, profile or where they lived in Sudan - is likely to be at risk of persecution.
>
> 2.4.8 However, the situation continues to change and it may be in due course that the human rights situation improves to the extent that it is possible to depart from the current case law, following careful analysis of available country information. ...
>
> 2.5.1 As the person's fear is of persecution at the hands of the state (or its proxies), they will not be able to obtain protection from the authorities. ...
>
> 2.6.1 As the person's fear is from the state (or its proxies), internal relocation will not be reasonable. As stated above, in AA, the UT found that: 'All non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan' ..."

As regards returnees, the information note further states:

> "No COI published between 10 July 2018 and 10 December 2019 on violence against returnees to Khartoum or Omdurman was found amongst the sources consulted."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicant complained that his removal to Sudan would violate his rights under Article 3 of the Convention, which reads:

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

A. Admissibility

51. The Government have not raised an objection as regards the admissibility of the application.

52. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

53. The applicant agreed with the Government that the general situation in Sudan was not of such a nature as to entail, in itself, any removal of a

Sudanese national to that country necessarily being in breach of the Convention. He further agreed that individuals who were perceived by the Sudanese authorities as opponents of the regime belonged to an "at-risk group", and that the burden of proof lay with him to demonstrate that he would be perceived as an opponent upon his return to Sudan. In relation to this point, the applicant submitted that it had been reported that the Sudanese authorities were likely to question returnees to Sudan upon their return, especially forcibly removed people and people travelling with an emergency travel document. Based on these reports, the applicant feared that, because of the likely investigation by the Sudanese authorities upon his return, he would – as a non-Arab person originating from Darfur – run a real and foreseeable risk of being subjected to treatment contrary to Article 3, as he would in all likelihood be considered an opponent of the regime.

54. As to his origins, the applicant stated that from the outset he had explained that he had travelled on an illegally obtained Chadian passport, whereas the language analysis had confirmed his claim that he was Sudanese and hailed from Darfur. He contested the grounds on which the domestic authorities had based their conclusion that he did not originate from Darfur. Further emphasising that the domestic authorities had found his claim that he had participated in a demonstration by Sudanese opponents in The Hague credible, the applicant argued that it was most likely that he would be perceived by the Sudanese authorities as a non-Arab person from Darfur, and that therefore he would be exposed to a real risk of being subjected to treatment in violation of Article 3 of the Convention if he were removed to Sudan.

(b) The Government

55. The Government submitted that a full assessment of the applicant's claims under Article 3 of the Convention in relation to Sudan had been made in the proceedings concerning his third asylum request. There were solid reasons as to why this had not been done in the proceedings concerning his first and second asylum applications, as he had entered the Netherlands holding an authentic Chadian passport, and it was only after the applicant had obtained a laissez-passer from the Sudanese authorities that it had been assumed that he also held Sudanese nationality.

56. The Government further submitted that, although the human rights situation in Sudan gave cause for concern, there was no reason to conclude that removal to Sudan would, in itself, involve a risk of treatment in breach of Article 3 of the Convention, and it was therefore for the applicant to make a persuasive case on the basis of personal facts and circumstances. In this connection, referring to *A.I. v. Switzerland* (no. 23378/15, 30 May 2017) and *N.A. v. Switzerland* (no. 50364/14, 30 May 2017), the Government pointed out that suspected members or supporters of rebel

movements, as well as individuals who opposed or were perceived to oppose the regime, had been designated as belonging to "at-risk groups".

57. After carefully assessing the applicant's submissions and accepting his non-Arab ethnicity, no credence had been given to the applicant's asylum statement, including his claim that he hailed from Darfur. The Government considered that there was nothing in the applicant's individual profile to suggest that he would attract the negative attention of the Sudanese authorities as a political dissident or a person suspected of having ties with armed rebels in Darfur. In addition, the Government were not of the view that it had been demonstrated that the applicant risked being forced to perform military service upon his return to Sudan.

58. The Government were therefore of the opinion that the applicant had not demonstrated the existence of a real and foreseeable risk that, if removed to Sudan, he would be subjected to treatment in breach of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

59. The applicable general principles are set out in, *inter alia*, *Saadi v. Italy* ([GC], no. 37201/06, §§ 124‑33, ECHR 2008), *R.C. v. Sweden* (no. 41827/07, §§ 48-51 with further references, 9 March 2010, *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, 23 March 2016, with further references), *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 79-90, 23 August 2016, with further references), *N.A. v. Switzerland* (cited above, §§ 41-42, with further references), and *A.I. v. Switzerland* (cited above, §§ 48-49, with further references).

(b) Application of the general principles to the present case

60. The issue before the Court is whether the applicant, if removed to Sudan, would face a real risk of being tortured or subjected to inhuman or degrading treatment or punishment as prohibited by Article 3 of the Convention.

61. Since the applicant in the instant case has not been deported – as a result of the indication by the Court of an interim measure under Rule 39 of the Rules of Court (see paragraph 22 above) – the material point in time for the assessment of the claimed Article 3 risk is when the Court considers the case (see *Saadi*, cited above, § 133). The Court will make a full and *ex nunc* evaluation where it is necessary to take into account information that has come to light after the final decision was taken by the domestic authorities (see, for example, *mutatis mutandis*, *Maslov v. Austria* [GC], no. 1638/03, §§ 87-95, ECHR 2008, and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 215, 28 June 2011).

62. 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 would be exposed to a real risk of being subjected to treatment contrary to Article 3. The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances. In this connection, and where it is relevant to do so, the Court will have regard to whether there is a general situation of violence existing in the country of destination (see *F.G. v. Sweden*, cited above, §§ 113-14 with further references, and *J.K. and Others v. Sweden*, cited above, § 86).

63. In examining this matter, the Court reiterates at the outset its considerations in respect of the general situation in Sudan as set out in the recent judgments of *N.A. v. Switzerland* (cited above, § 43) and *A.I. v. Switzerland* (cited above, § 50).

64. In addition, the Court notes that on 11 April 2019, after months of street protests against his rule, President Omar Al-Bashir was ousted by the Sudanese army, and that in August 2019 a transitional civilian-military government was created (see paragraphs 36, 40 and 49 above).

65. The Government submitted that the general situation in Sudan was not such as to entail, in itself, a risk of ill-treatment simply by virtue of an individual being returned there. The applicant does not dispute this, and in the light of the content of the case file, the Court sees no reason to come to a different conclusion. The Court therefore has to establish whether the applicant's personal situation is such that his return to Sudan would contravene Article 3 of the Convention.

66. In so far as the applicant claimed that he would be at risk of treatment prohibited by Article 3 on account of his being a person of non-Arab ethnic origin who originated from Darfur, the Court notes that the Deputy Minister, on the following grounds, found that the applicant had made implausible statements and had not satisfactorily established that he originated from the Sudanese part of Darfur and had lived there until his departure for the Netherlands: the applicant had entered the Netherlands holding an authentic Chadian passport; in his interviews with the Netherlands immigration authorities, he had given vague, incomplete and flagrantly incorrect answers on (geographical) questions relating to his alleged region of origin (see paragraph 27 above); the declaration of residence submitted by the applicant (see paragraph 12 above) could not be regarded as reliable evidence; and the language analysis test had unequivocally concluded that the applicant spoke Arabic, as this language was spoken in the Khartoum region (see paragraphs 7 and 31 above). The Court further notes that the Regional Court found plausible that the

applicant was a person of non-Arab origin who had lived in Khartoum for most of his life and not in Darfur (see paragraph 32 above).

67. The Court reiterates that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one, and it has accepted that, as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of asylum claimants, since it is they who have had an opportunity to see, hear and assess the demeanour of the individuals concerned (see *F.G. v. Sweden*, cited above, § 118, and *A.G. and M.M. v. the Netherlands* (dec.), no. 43092/16, § 28, 26 June 2018). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts (see *F.G. v. Sweden*, cited above, § 118).

68. In the present case, the Court observes that prior to the Deputy Minister taking his decision of 13 December 2016 – in the proceedings relating to the applicant's third asylum request – the applicant was again interviewed by the immigration authorities and was allowed to submit corrections and additions to the reports of those interviews which were drawn up, as well as to submit his comments on the Deputy Minister's intention to refuse his asylum application. The assessment conducted by the Deputy Minister was subsequently examined by the Regional Court of The Hague in appeal proceedings, which included an oral hearing, as well as by the Administrative Jurisdiction Division of the Council of State. The Court also notes that the applicant was assisted by a lawyer throughout the proceedings. The Court, reiterating that it is not its task to substitute its own assessment for that of the domestic courts, sees no grounds to depart from the conclusions drawn by the domestic authorities as to the lack of credibility of the applicant's asylum statements, in particular those regarding his geographical origin – conclusions which were reached following a thorough examination and were set out in decisions containing rational grounds that the Court has no reason to doubt.

69. In so far as the applicant claimed that in Sudan he would be at risk of treatment prohibited by Article 3 on account of his non-Arab ethnic origin, having regard to various recent international reports on the situation in the Khartoum region for persons of non-Arab origin according to which persons of non-Arab origin may experience discrimination in Sudanese society because of their ethnicity and may, on account of their non-Arab ethnicity, be associated with Darfuri rebel groups but that the extent of negative attention from the side of the authorities will depend on individual features of the person concerned and is not systematic (see paragraphs 40, 44 and 46-49 above), the Court observes that the situation for such persons is certainly not ideal, but cannot find that this situation can be regarded as so harrowing that it must be concluded that people of non-Arab ethnic origin are at risk of persecution or serious harm in Khartoum solely on the grounds of their ethnicity (see, *A.S. v. the Netherlands* (dec.), no. 20102/13, § 53,

20 November 2018, *W.M. v. the Netherlands* (dec.), no. 12708/16, § 25, 20 November 2018, and *A.I. v. the Netherlands* (dec.), no. 36196/16, § 35, 20 November 2018). It must therefore also be established whether other risk factors are present.

70. To the extent that the applicant argued that his removal to Sudan would expose him to a risk of forced recruitment, the Court finds that this claim has remained fully unsubstantiated. Furthermore, the Court has found no concrete indication in the contents of the case file indicating a negative interest in the applicant on the part of the authorities of Sudan, either at the material time or currently. As regards the applicant's participation in a demonstration by the Sudanese opposition held in The Hague on 28 January 2016, the Court also notes that this demonstration was directed against the former regime of Omar Al-Bashir, and not against the current government of Sudan. Consequently, this argument is no longer pertinent. Furthermore, unlike the situation in the cases of *N.A. v. Switzerland* and *A.I. v. Switzerland* (both cited above), there is no evidence before the Court of the applicant's involvement in any Sudanese political opposition or Sudanese opposition group abroad which would consequently cause him to fear ill-treatment by the current authorities upon his return to Sudan.

71. In these circumstances, the Court cannot but conclude that the applicant has failed to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if removed to Sudan, he would face a real risk of being subjected to treatment in breach of Article 3 of the Convention.

72. It follows that the applicant's removal to Sudan would not give rise to a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. The applicant also complained that, in respect of his complaint under Article 3, he did not have an effective remedy within the meaning of Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

74. The Government contested that claim.

75. The Court reiterates that this provision guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they are secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with an "arguable complaint" under the Convention and to grant appropriate relief (see, for instance, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 288, ECHR 2011).

76. The effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority. Nevertheless, its powers and the procedural guarantees which it affords are relevant in determining whether the remedy before it is effective. The expression "effective remedy" used in Article 13 cannot be interpreted as a remedy that is bound to succeed; it simply means an accessible remedy before an authority competent to examine the merits of a complaint (see, for instance, *M.R.A. and Others v. the Netherlands*, no. 46856/07, § 114, 12 January 2016).

77. Even assuming that the applicant has an arguable claim for the purposes of Article 13, he was able to have the negative decision on his asylum applications reviewed by the Regional Court of The Hague and subsequently the Administrative Jurisdiction Division, albeit unsuccessfully. The Court further notes that, both in the proceedings before the Regional Court and before the Administrative Jurisdiction Division, the applicant was given ample opportunity to state his case, to challenge the submissions by the adversary party and to submit whatever he found relevant for the outcome. The Court last notes that the applicant's arguments under Article 3 of the Convention were considered and determined in the domestic proceedings.

78. In these circumstances the Court is of the opinion that there has been no violation of Article 13 in conjunction with Article 3 of the Convention.

III. RULE 39 OF THE RULES OF COURT

79. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

80. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 3 above) should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the applicant's removal to Sudan would not be in violation of Article 3 of the Convention;

3. *Holds* that there has been no violation of Article 13 of the Convention taken together with Article 3;

4. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicant until such time as the present judgment becomes final or until further notice.

Done in English, and notified in writing on 2 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Jon Fridrik Kjølbro
Registrar	President