

## **UK - NA (Sudan) v Secretary of State for the Home Department, 01 November 2016**

**Country of Decision:**

United Kingdom

**Country of Applicant:**

Iran

Sudan

**Date of Decision:**

01-11-2016

**Citation:**

NA (Sudan) and MR (Iran) v Secretary of State for the Home Department [2016] EWCA Civ 1060

**Court Name:**

Court of Appeal (Civil Division)

**Keywords:**

Dublin Transfer

Inhuman or degrading treatment or punishment

Medical Reports/Medico-legal Reports

Personal circumstances of applicant

Reception conditions

Return

Vulnerable person

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**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1] > [Article 3](#) [2]European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [3]European Union Law > [EN - Dublin III Regulation, Council Regulation \(EC\) No. 604/2013 of 26 June 2013 \(recast Dublin II Regulation\)](#) [4]

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**Headnote:**

The Court of Appeal concluded that to send a refugee who has a residence permit in Italy and an asylum seeker back to the country would not violate Article 3 ECHR.

The court further constrained the decision in *Tarakhel* to families with minor children.

### **Facts:**

NA is a member of an ethnic minority group in Darfur. Whilst in Sudan she was beaten and raped by militia from another ethnic group. She arrived in Italy by boat on 30 April 2011 and was accommodated in a tent. On January 24<sup>th</sup> 2012 she was issued with an Italian residence permit valid for 5 years. She was then moved to an old school building where the conditions were poor and she received little to no support. After a year at the accommodation centre NA and others were told to leave and were left with no support from the authorities. Whilst living on the streets she was twice raped. NA was subsequently smuggled to the UK in a lorry. She has been diagnosed with PTSD and is at risk of suicide. She also refuses to give consent for her medical records to be transferred to the Italian authorities.

MR claims to have been beaten by the police whilst in detention in Iran. He was forced to leave Iran in 2012 after an incident where he burned a copy of the Koran. He arrived in Italy but made no application for asylum and came to the UK, concealed in a lorry on 15 February 2013. His application for asylum was rejected on the basis that he could safely be returned to Italy.

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### **Decision & Reasoning:**

The court gave a summary of the general principles obtained from domestic and ECtHR case law:

1. The fundamental question is whether 'substantial grounds have been shown for believing that the person concerned faces a real risk of being subject to torture or to inhuman or degrading treatment or punishment in the receiving country?' (*MSS* adopting the test in *Soering v UK*)
2. Whether the threshold of 'inhuman or degrading treatment?' is crossed is 'relative?' and requires an assessment of 'all circumstance of the case?' but the anticipated treatment relied on must attain a 'minimum level of severity?.'
3. The decision maker in considering that question ought to start with a 'significant evidential presumption that member states will comply with [their obligations under the convention] (NS (Afghanistan); EM (Eritrea)) but that presumption is rebuttable (EM (Eritrea) and there is no requirement that the risk which he alleges is the result of 'systemic?' defects (EM (Eritrea))

In relation to 'systemic defects?' Underhill LJ pointed out that in practice the claimant will need to show that such defects are 'widespread?' [para 108]

The court also held that the situation in Italy is not comparable to the in Greece and that a general ban on returns to Italy cannot be justified.

NA's appeal was based on 5 grounds, all of which were rejected by the Court of Appeal.

1. The appellant argues that the effect of the decision in *Tarakhel* is that it would be unlawful to return NA as a vulnerable person without obtaining specific assurances that they would be suitably accommodated. The court ruled that the reasoning in *Tarakhel* does not go further than to the particular case with which it was concerned - namely families with minor children. It held that the problems of accommodating a family together might reasonably be thought to be substantially greater than those of finding accommodation for a single vulnerable person. In the case of Italy therefore, returns are only prohibited for claimants with minor children.

2. Grounds 2-4 were criticisms of the lower court's assessment of the evidence about the risks faced by vulnerable BIPs and asylum seekers if returned to Italy. The court examined the evidence and concluded that the conditions for BIPs returned to Italy under the Dublin Regulation were not such that there was a real risk that NA would suffer inhuman or degrading treatment if returned. The question the court had to ask was whether NA would receive support and whether there was a serious risk that if she were returned she would not be accommodated in a System for Protection of Asylum-Seekers and Refugees (SPRAR). .

3. The 5th ground of appeal is based on the contention that Lewis J in the lower court failed to give effect to the authorities about the application of article 3 where a mentally ill person is removed from the UK. The appellant's submission was that NA's refusal to transfer medical records to the Italian authorities would mean that no records of her mental health would be available to the Italian authorities. The court ruled that her refusal is not a certainty and that such refusal will not deprive her of her right to treatment as the Respondent will be responsible to notify the Italian authorities of her vulnerability. The return would therefore, not be in breach of her article 3 rights.

In relation to MR's appeal the court held that the primary difference between the two cases was that MR was an asylum-seeker and as a result there was no danger that he would not be referred to an NGO for appropriate advice and support. Asylum seekers who are peculiarly vulnerable are typically accommodated in SPRARs and so following the court's conclusions in NA's appeal the appropriate accommodation will be available for MR if required.

The Secretary of State is able to return both appellants to Italy.

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**Outcome:**

Appeal denied.

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**Subsequent Proceedings :**

This case follows on from similar conclusions reached by the High Court in R (on the application of Bassil Abdu Adam) v Secretary of State for the Home Department and R (BG) v Secretary of State for the Home Department.

**Observations/Comments:**

This case summary was written by Jowita Mieszkowska, BA Jurisprudence, University of Oxford.

**Attachment(s):**



[NA\(Sudan\) EWCA Civ 1060.docx\[5\]](#)

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**Other sources cited:**

AIDA Country Report: Italy, 2015

UNCHR 2012 and 2013 Reports ?Recommendations on Important Aspects of Refugee Protection in Italy?

2012 Council of Europe's Commissioner for Human Rights (Nils Muizniek's) Report.

Brunswick Report 2012 (Report from Dr Judith Gleitze director of Borderline Europe)

Dublin II National Report on Italy 2012

Swiss Refugee Council 2013 Report

MEDU Report 16 December 2014

Amnesty International UK's Refugee Programme Report (Tom Southerden)

Two reports by Ms Leo of the Rome Bar (15 September 2014 and 18 March 2015)

### **National / Other Legislative Provisions:**

[UK - Asylum and Immigration \(Treatment of Claimants](#) [6]

[etc.\) Act 2004 \(c.19\) Sch.3 para.5](#) [7]

[UK - Human Rights Act 1998 \(c.42\) s.1](#) [8]

[s.6](#) [9]

[UK - Nationality](#) [10]

[Immigration and Asylum Act 2002 \(c.41\) s82 and s92](#) [11]

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### **Links:**

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

[3] <https://www.asylumlawdatabase.eu/node/353>

[4] <https://www.asylumlawdatabase.eu/node/4037>

[5]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/NA%28Sudan%29%20EWCA%20Civ%2010>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/uk-asylum-and-immigration-treatment-claimants>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/etc-act-2004-c19-sch3-para5>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/uk-human-rights-act-1998-c42-s1>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/s6>

[10] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7523>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/immigration-and-asylum-act-2002-c41-s82-and-s92>