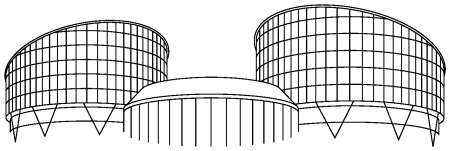

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF A.A.M. v. SWEDEN

(Application no. 68519/10)

JUDGMENT

STRASBOURG

3 April 2014

FINAL

03/07/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of A. A. M. v. Sweden,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Vincent A. De Gaetano,
André Potocki, *judges,*
Johan Hirschfeldt, ad hoc *judge,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 4 March 2014, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 68519/10) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iraqi national ("the applicant") on 15 November 2010. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr C.-O. Lindberg, a lawyer practising in Lund. The Swedish Government ("the Government") were represented by their Agents, Ms C. Hellner and Ms H. Lindquist, of the Ministry for Foreign Affairs.

3. The applicant alleged that his deportation to Iraq would involve a violation of Article 3 of the Convention.

4. On 15 February 2011 the President decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be deported to Iraq until further notice.

5. On 18 May 2011 the application was communicated to the Government.

6. The judge elected in respect of Sweden, Mrs Helena Jäderblom, withdrew from the case (Rule 28). The President of the Section accordingly appointed Mr Johan Hirschfeldt to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1977 and originates from Mosul.

8. The applicant applied for asylum in Sweden on 24 November 2008. He stated in essence the following in support of his application. He is formally a Sunni Muslim, but does not practise and considers himself to be an atheist. He had a shop in Mosul where he had rented out computer games and game consoles. In early August 2008 he had employed a young woman who did not wear a veil. After a few days, on 7 August, two masked men claiming to be members of Tahtim al-Jihad, an Iraqi branch of al-Qaeda, had entered the shop. They had told him that hiring a woman without a veil was against Islam and had required that she leave her job immediately. The applicant had refused their demand and had stated that "if this is Islam, then I am not a Muslim". The woman had quit her job the following day. Still, three days later the applicant had received a letter with a bullet, stating that he had to excuse himself before the emir within five days or else he would be considered to have left Islam and could be killed. The applicant had refused to apologise. Some days later he had received a death threat and had been shot at. Soon thereafter, his shop had been destroyed by a bomb. Through a friend, whose brother had worked for the police, the applicant had been informed that the police were looking for him because they believed that the applicant had destroyed the shop himself to cover up for hiding weapons for terrorists there. His parents' neighbour had later told him that both the police and al-Qaeda had come to the parents' apartment to look for him on several occasions. The applicant had then fled to Dahuk in the Kurdistan Region, as al-Qaeda was less dominant there. Nothing had happened to him in Dahuk. After a month there, he had left Iraq on 26 September 2008. The applicant claimed that he risked being sentenced to death if he returned to Iraq, since he had uttered an unacceptable religious opinion in front of local al-Qaeda representatives and since he was wanted by the police for alleged cooperation with terrorists. Both al-Qaeda and the police were allegedly searching for him all over Iraq.

9. On 29 July 2009 the Migration Board (*Migrationsverket*) rejected the application and ordered the applicant's deportation to Iraq. The Board questioned the applicant's allegations that al-Qaeda had been searching for him in his parent's home and that he was sought by the police for having hidden weapons for terrorists in his shop, because he had submitted this information only very late in the proceedings. In any event, noting that the police accusations were false, the Board did not consider that the risk of being prosecuted could be characterised as persecution that would justify the grant of asylum. However, it accepted the applicant's claim that his life had been threatened by al-Qaeda and that he would thus face a real risk of

persecution upon return to Mosul. The Board went on to examine the possibility of internal flight and found that the applicant had not made it plausible that he was at risk in all parts of Iraq. He was not considered in need of protection in relation to areas of the country where al-Qaeda was not strong. The Board noted that, while al-Qaeda retained a strong presence in Mosul, the security situation in the Kurdistan Region was stable and displaced persons could gain entrance there without a sponsor. Having regard to the general situation and the applicant's personal circumstances – including his gender, age, health, religion and ethnicity –, it further found that he could reasonably relocate to the Kurdistan Region, even if he would lack a social network there. That finding was supported by the fact that he had already stayed in Dahuk for a month without encountering any problems.

10. The applicant appealed, reiterating the claims he had made to the Migration Board.

11. On 2 December 2009 the Migration Court (*Migrationsdomstolen*) upheld the decision of the Board, agreeing generally with its conclusions.

12. In his appeal to the Migration Court of Appeal (*Migrations-överdomstolen*), the applicant submitted a copy of an Iraqi document, purporting to be a warrant for his arrest.

13. On 16 April 2010 the Migration Court of Appeal refused the applicant leave to appeal.

14. Subsequently, in May 2010, the applicant claimed that there were impediments to the enforcement of his deportation order. He added the following to his story. His family had previously collaborated with Saddam Hussein and the new al-Maliki government therefore considered them to be supporters of Saddam Hussein. Several of the applicant's relatives had been arrested in recent months and were being kept in a secret prison run by the government.

15. On 16 June 2010 the Migration Board rejected the petition, finding that no new circumstances justifying a reconsideration had been presented.

16. On 11 August 2010 the Migration Court upheld the decision of the Board. It noted, *inter alia*, that the applicant's allegation that he was wanted by the police had been examined earlier in the proceedings and that the arrest warrant presented later thus did not constitute a new fact which gave reason to grant him a new examination of his case. The applicant did not appeal against the Migration Court's judgment.

17. In October 2010 the applicant lodged a further petition for reconsideration, claiming that new important facts had emerged in his case. The petition was rejected on 1 November 2010 by the Migration Board, which noted that the applicant had not presented anything concrete in support of it. No appeal was made against this decision.

18. Another petition for reconsideration was submitted later. The applicant now stated that he had been wrongly convicted of terrorism and

sentenced *in absentia* to ten years' imprisonment. He submitted two documents in Arabic, allegedly a copy of an arrest warrant and a copy of the judgment convicting him.

19. On 22 November 2010 the Migration Board rejected the petition, again finding that no new circumstances had been presented which justified that the case be reconsidered. It noted that the documents submitted were copies and of a very simple nature and that handwritten text had been added to the judgment. It thus considered that their value as evidence was very low.

20. On 21 December 2010 the Migration Court upheld the decision of the Board and on 21 January 2011 the Migration Court of Appeal refused leave to appeal.

21. The applicant submitted a fourth petition for reconsideration in February 2011. It was rejected by the Migration Board on 9 February 2011 and by the Migration Court on 15 February 2011. The applicant did not appeal against the Migration Court's judgment.

22. A fifth petition was lodged by the applicant in October 2011. It was rejected by the Migration Board on an unknown date and by the Migration Board on 25 November 2011. On 16 December 2011 the Migration Court of Appeal refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

23. The basic provisions applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the Aliens Act (*Utlänningslagen*, 2005:716).

24. An alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden (Chapter 5, section 1 of the Act). The term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country (Chapter 4, section 1). This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, section 2).

25. Moreover, if a residence permit cannot be granted on the above grounds, such a permit may be issued to an alien if, after an overall

assessment of his or her situation, there are such particularly distressing circumstances (*synnerligen ömmande omständigheter*) to allow him or her to remain in Sweden (Chapter 5, section 6). Special consideration should be given, *inter alia*, to the alien's health status. According to the preparatory works (Government Bill 2004/05:170, pp. 190-191), life-threatening physical or mental illness for which no treatment can be given in the alien's home country could constitute a reason for the grant of a residence permit.

26. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, section 1). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, section 2).

27. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has acquired legal force. This is the case where new circumstances have emerged which indicate that there are reasonable grounds for believing, *inter alia*, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced (Chapter 12, section 18). If a residence permit cannot be granted under these criteria, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, sections 1 and 2, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not having done so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, section 19).

28. Matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances: the Migration Board, the Migration Court and the Migration Court of Appeal.

III. RELEVANT INFORMATION ABOUT IRAQ

A. General human rights situation

29. On 31 May 2012 the United Nations High Commissioner for Refugees (UNHCR) issued the latest *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq* (hereafter "the UNHCR Guidelines"). They contain the following account (at p. 8):

"[A]rmed groups opposed to the Iraqi Government remain active and capable of disrupting the security environment with regular mass casualty attacks, often directed at Shi'ite civilians, reportedly aiming to reinvigorate sectarian violence. Armed groups are also thought to be responsible for targeted attacks on government and security officials, politicians, tribal and religious leaders, and members of religious and ethnic minorities, among others. Occasionally, local cells manage to coordinate attacks across the country. The number of civilian casualties, though less than at the peak of violence in 2006 and 2007, remains nonetheless significant with around 4,000 civilians killed in both 2010 and 2011, respectively. At least 464 civilians were killed in January 2012, in what appeared to be a surge in mass casualty attacks. Shi'ite civilians have been the most affected. After a short lull in violence, several major attacks across central Iraq were again reported in late February, March and April 2012.

These casualty figures are indicative of the significant risks still faced by Iraqi civilians. The number of civilian deaths from suicide attacks and car bombs decreased in 2011 compared to previous years, to an average of 6.6 per day. While these attacks still account for the highest number of civilian deaths each month, the number of civilians killed from gunfire/executions rose to an average of 4.6 per day in 2011. This suggests that an increasing number of Iraqis, especially government and security officials, are being individually targeted. Violence is mostly concentrated in the predominantly Sunni or mixed central governorates of Al-Anbar, Baghdad, Diyala, Ninewa, Kirkuk, and Salah Al-Din, but occasionally moves into the mainly Shi'ite governorates further south. Armed Sunni groups such as Al-Qa'eda in Iraq and Ansar Al-Islam are thought to be responsible for most of the violence. Shi'ite armed groups have to a large extent been integrated into the ISF [Iraqi security forces] and the political process, though they reportedly maintain their independent military capabilities and at times threaten to use it to further their political agendas. Armed groups target civilians on the basis of their (imputed) political views, religion, ethnicity, social status or a combination of reasons. As a result of the weak law enforcement and justice system, persons at risk of persecution are reportedly unable to find protection or judicial redress. Observers mention undue political influence, the lack of trained legal professionals and corruption as further obstacles to the administration of justice, including in the Kurdistan Region. Legal professionals continue to work in a very difficult security environment, and remain a target of armed groups. Crime is widespread and some armed groups reportedly engage in extortion, kidnappings and armed robberies to fund their other, politically – or religiously, or ideologically – motivated activities, conflating acts of persecution and criminality. Consequently, the line between persecution and criminality appears to be increasingly blurred."

The UNHCR Guidelines also describe al-Qa'eda in Iraq (at p. 10):

"Al-Qa'eda in Iraq, a radical Salafi organization, has reportedly been the main proponent of the Sunni insurgency since 2003 and is widely blamed for widespread attacks against the MNF-I [Multi-National Forces in Iraq] / USF-I [United States Forces in Iraq], the ISF and the (mainly Shi'ite) civilian population. Since 2006, Al-Qa'eda in Iraq has claimed to operate under the umbrella of the Islamic State of Iraq. According to US officials, the group has between 800 and 1,000 members in Iraq. It is claimed to be most active in the governorates of Al-Anbar, Baghdad, Diyala, Kirkuk, Ninewa (with Mosul being its major urban stronghold) and Salah Al-Din. But it is also present in Babel and Kerbala, and even further south, as evidenced by occasional attacks for example in Kut, Basrah or Nasseriyah. Unlike other armed groups, Al-Qa'eda in Iraq has reportedly deliberately targeted Iraqi civilians at large, in particular

> Shi'ites, apparently with the aim of (re)igniting violence among Iraq's ethnic and religious groups. Al-Qa'eda in Iraq claims responsibility for continuous attacks against the Shi'ite population and their places of worship – including the attack on the Al-Askari shrine in Samarra in February of 2006, which led to widespread sectarian violence between Sunni and Shi'ite armed groups in 2006 and 2007. Al-Qa'eda in Iraq has also claimed responsibility for attacks against the USF-I, the Iraqi Government, including its political, administrative and security representatives, and anybody considered to be collaborating with either the Government or the USF-I. Persons involved in fighting or openly criticizing Al-Qa'eda in Iraq risk being killed. As a result of diminished popular support, opposition from the Sahwa forces, increased USF-I/ISF offensives as well as high-profile arrests of leaders, the group was weakened and no longer holds territorial control of vast areas in central Iraq. Over time, Al-Qa'eda in Iraq is said to have transformed into a mainly "home-grown" terrorist group made up of Iraqi fighters, including those whose views are said to have radicalized after years in detention. Nonetheless, Islamic State of Iraq / Al-Qa'eda in Iraq remains capable of launching major attacks, including multiple coordinated attacks across the country, and has reportedly resurfaced in former strongholds. While Al-Qa'eda in Iraq originally fought to expel the MNF-I/USF-I from Iraq, it is said to have shifted its focus to combat the Iraqi Government, which it considers to be controlled by Shi'ite Iran. Al-Qa'eda in Iraq is reported to finance its activities through extortion, kidnappings for ransom and other criminal activities, especially since funding from abroad has reportedly slowed. Al-Qa'eda in Iraq professes to pursue a long-term goal of establishing a Sunni Islamic state based on Shari'a law, including by targeting Shi'ites and Sunnis participating in the political process, members of religious minorities, as well as women and men for their behaviour or dress, or professions considered to be "un-Islamic". Al-Qa'eda in Iraq is also thought to engage in forcible recruitment, including of women and children, as suicide bombers or for other tasks."

30. In its *Report on Human Rights in Iraq: July – December 2012*, published in June 2013, the Human Rights Office of the United Nations Mission for Iraq (UNAMI) gave, *inter alia*, the following summary (at p. vii):

> "Violence and armed violence continued to take their toll on civilians in Iraq. According to the Government of Iraq, 1,704 civilians were killed and 6,651 were injured in the second half of 2012, resulting in a total of 3,102 killed and 12,146 injured for 2012. According to UNAMI, 1,892 civilians were killed and 6,719 were injured in the last six months of 2012, resulting in a total of at least 3,238 civilians who were killed and 10,379 who were injured for the year. These figures indicate that the trend of recent years of a reduction in the numbers of civilian casualties has reversed and that the impact of violence on civilians looks set to increase in the near to medium future. Terrorists and armed groups continued to favour asymmetric tactics that deliberately target civilians or were carried out heedless of the impact on civilians.
>
> Political instability and regional developments continued to impact negatively on the security situation in Iraq, with its concomitant toll on civilians. Although the Government takes the impact of violence on civilians extremely seriously and has taken measures to enhance security, more needs to be done to ensure the proper coordination of financial, medical and other forms of support for the victims of violence."

31. The UK Border Agency *Iraq Operational Guidance Note* of December 2012 describes the general security situation thus (at pp. 21-22):

> "3.6.2 The security situation in Iraq continues to affect the civilian population, who face ongoing acts of violence perpetrated by armed opposition groups and criminal gangs. In particular, armed groups continue to employ tactics that deliberately target crowded public areas and kill and maim civilians indiscriminately. While some attacks appear to be sectarian in nature, frequently targeting religious gatherings or residential areas, others seem random, aimed at creating fear and terror in the population at large and casting doubt over the ability of the Government and Iraqi security forces to stem the violence. Assassinations also persist across the country, targeting, inter alia, Government employees, tribal and community leaders, members of the judiciary and associated persons.
>
> 3.6.3 Apparently making use of the political wrangling which has followed the elections for Iraq's Council of Representatives (CoR) held on 7 March 2010, armed Sunni groups (such as Al-Qaeda in Iraq) have stepped up attacks since December 2011. These attacks have been carried out primarily against Shi'ite civilians in what appears to be an effort to stir sectarian tensions and undermine confidence in the ISF and, ultimately, the Iraqi Government. The political stalemate also comes at an uncertain period in the wider region: the repercussions of ongoing unrest and tensions in Syria and Iran, with which Iraq shares porous borders and political and economic ties, are not yet known. Iraq's political difficulties have also reportedly increased tensions with neighbouring Turkey."

32. In a recent country guidance determination, *HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)*, delivered on 13 November 2012, the UK Upper Tribunal (Immigration and Asylum Chamber) reached, *inter alia*, the following conclusions (at p. 2):

> "ii. As regards the current situation, the evidence does not establish that the degree of indiscriminate violence characterising the current armed conflict taking place in the five central governorates in Iraq, namely Baghdad, Diyala, Tameen (Kirkuk), Ninewah, Salah Al-Din, is at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat.
>
> iii. Nor does the evidence establish that there is a real risk of serious harm under Article 15(c) [of the Refugee Qualification Directive 2004/83/EC] for civilians who are Sunni or Shi'a or Kurds or have former Ba'ath Party connections: these characteristics do not in themselves amount to "enhanced risk categories" under Article 15(c)'s "sliding scale" ..."

B. Possibility of internal relocation to the Kurdistan Region

33. In his report of 16 February 2011, the Representative of the (United Nations) Secretary-General on the human rights of internally displaced persons, Mr Walter Kälin, noted the following (at para. 65) after a visit to Iraq in September/October 2010:

> "In the Kurdistan Region of Iraq, the Representative acknowledges that KRG [Kurdistan Regional Government] has received and provided safety to IDPs [internally displaced persons] from all over Iraq regardless of their origin,

particularly in the aftermath of the sectarian violence in the country [in] 2006. Stronger coordination and cooperation mechanisms between the Central Government and KRG are necessary however, to address the situation of IDPs in this region, including vulnerable groups, as well as a number of administrative and financial assistance issues, such as difficulties in transferring PDS cards [Public Distribution System food ration cards] and receiving pensions, which are adversely affecting the rights and standard of living of IDPs. As well, while improved social, security, and economic conditions prevail in this region, continued cross border attacks continue to cause periodic displacement of its border populations. The Representative believes that stronger cooperation between the Government of Iraq and KRG, as well as concerted diplomatic efforts and border dialogues with relevant neighbouring countries, must be undertaken in order to prevent and raise awareness of the impact of cross-border attacks on civilian populations."

34. The UNHCR Guidelines contain the following observations (at pp. 48-51):

"A large number of persons from the central governorates have found refuge in the three northern governorates since 2006. Commensurate with the sharp decrease in new displacements generally, the flow of new arrivals has decreased significantly; however, only a few of those previously displaced have to date returned to their places of origin. The influx of IDPs has had an important impact on the host communities, including increasing housing and rental prices, additional pressure on already strained public services and concerns about security and demographic shifts. At the same time, the three northern governorates have also benefited from the migration of professionals bringing skills and disposable incomes that boost the local economy. Unskilled IDPs have provided a source of affordable labour for the construction industry.

The KRG authorities continue to implement stringent controls on the presence of persons not originating from the Kurdistan Region. Depending on the applicant, particularly his/her ethnic and political profile, he/she may not be allowed to relocate to or take up legal residence in the three northern governorates for security, political or demographic reasons. Others may be able to enter and legalize their stay, but may fear continued persecution as they may still be within reach of the actors of persecution or face undue hardship. Therefore, despite the hospitable attitude of the KRG authorities towards a considerable number of IDPs, the availability of an IFA/IRA [internal flight/relocation alternative] must be carefully assessed on a case-by-case basis ...

...

Since the fall of the former regime, the KRG authorities are very vigilant about who enters the Kurdistan Region and have introduced strict security measures at their checkpoints. However, there are no official and publicly accessible regulations concerning procedures and practices at the entry checkpoints into the Kurdistan Region. An *ad hoc* and often inconsistent approach can be expected in terms of who is granted access, varying not only from governorate to governorate, but also from checkpoint to checkpoint. The approach at a particular checkpoint may be influenced by several factors including the overall security situation, the particular checkpoint and its staff, the instructions issued on that day and the particular governorate where the checkpoint is situated. UNHCR has repeatedly sought to obtain information and clarification from the KRG authorities on checkpoint practices and entry/residence in the Kurdistan Region, without success. Therefore, persons seeking to relocate to the Kurdistan Region depend on informal information with regard to entry procedures.

Individuals/families wishing to enter the Kurdistan Region can seek to obtain a tourist, work or residence card. The tourist card, which is commonly given to persons from central and southern Iraq who seek to enter the Kurdistan Region, allows the holder to stay for up to 30 days. Depending on the person's profile, but also the checkpoint and the officer in charge, persons seeking to enter as tourists may be required to produce a sponsor. Arabs, Turkmen and Kurds from the disputed areas are usually requested to have a sponsor, while Kurds (not from the disputed areas) and Christians are able to enter without a sponsor.

Alternatively, persons who have a proof of employment (letter of appointment) can obtain a work card, which is valid for 10-15 days and is, in principle, renewable. Persons seeking to stay more than 30 days should in principle obtain a residence card. Long-term stays always require a sponsor. UNHCR is not aware of any IDPs who have received the residence card.

The sponsorship process lacks clarity and there is no uniform procedure in place. In some cases, the sponsor is required to be physically present at the checkpoint to secure the person's entry. In other cases, it seems to suffice that a person seeking to relocate to the Kurdistan Region produces a letter notarized by a court clerk attesting to the person's connection to the sponsor. In some cases, the officer at the checkpoint will simply make a phone call to the sponsor to verify the acquaintance. Iraqis without sufficiently strong ties to the Kurdistan Region and who, therefore, are unable to find a sponsor, may be denied entry into the Kurdistan Region. There are reportedly also different requirements as to the nature of the sponsor.

UNHCR is aware of individuals who have been refused entry into the Kurdistan Region. Arabs, Turkmen and certain profiles of Kurds will likely face extensive questioning and may be denied entry at the checkpoint, mostly due to security concerns. In particular, single Arab males, including minors, are likely either to be denied entry into the Kurdistan Region or to be allowed entry only after a lengthy administrative procedure and heavy interrogation. Checkpoints reportedly maintain "blacklists" of individuals banned from entering the Kurdistan Region, including those considered a security risk, but also those who have previously overstayed or did not renew their residence permits. Christians, especially those who fled due to targeted attacks, reportedly do not face difficulties in entering the Kurdistan Region.

Persons not originating from one of the three northern governorates intending to remain in the Kurdistan Region for more than 30 days must approach the neighbourhood security station (*Asayish*) in the area of relocation to obtain a permit to stay ("information card" or *karti zaniyari*). As with the entry procedures, there are no official rules or regulations concerning the issuance of information cards. Generally, in all three governorates, a sponsor is required in order to obtain the information card. This means that those that were able to enter without a sponsor are, at this stage, obliged to find a sponsor. Families, provided they have a sponsor from the governorate concerned and the necessary personal documentation, are usually able to secure the information card. Single people apparently face more difficulties. Persons who do not have a sponsor will not be able to regularize their continued stay and may be forced to leave.

Persons fleeing persecution at the hands of the KRG or the ruling parties will almost always not be able to find protection in another part of the Kurdistan Region. Persons fleeing persecution at the hands of non-state actors (e.g. family/tribe in the case of fear from "honour killing" or blood feud) may still be within reach of their persecutors. The same applies for persons fearing persecution by armed Islamist groups."

35. As regards the acquisition of identity documents, the UK Border Agency maintained (*Iraq Operational Guidance Note* of December 2011, para. 2.4.5):

> "It is not necessary for an individual to return to their registered place of residence to transfer documents to a new area of Iraq. It is possible for example to apply at a registration office in Baghdad, to have documents transferred from elsewhere in Iraq. However the MoDM [Ministry of Displacement and Migration] have said that in practice this does not happen because it is now safe enough for someone to return to their registered place of residence to arrange to transfer documents. The processes and procedures were the same throughout governorates across south and central Iraq."

Disagreeing with the UNHCR as to the possibility of internal relocation for Iraqi asylum seekers, the Border Agency further stated (para. 2.4.14):

> "We do not however accept UNHCR's conclusions on internal relocation from the central governorates and consider that there is likely to be considerable scope for internal relocation that achieves both safety and reasonableness in all the circumstances. We consider UNHCR's position is tied in with general policy considerations (e.g. about managing the rates of return) deriving from their general and Iraq-specific remit; we do not consider that in the light of the evidence taken as a whole that mere civilian returnees are at real risk of persecution under the Refugee Convention or of serious harm under either the [EU] Qualification Directive or Article 3 [of the European Convention on Human Rights] currently."

In its December 2012 note (at para. 2.4.17), the Border Agency added the conclusions drawn by the UK Upper Tribunal (see the following paragraph).

36. In a country guidance determination, *MK (documents – relocation) Iraq CG [2012] UKUT 00126 (IAC)*, delivered on 25 April 2012, the UK Upper Tribunal (Immigration and Asylum Chamber) concluded, among other things, the following (at para. 88):

> "Entry into and residence in the KRG can be effected by any Iraqi national with a CSID [Civil Status ID], INC [Iraqi Nationality Certificate] and PDS, after registration with the Asayish (local security office). An Arab may need a sponsor; a Kurd will not.
>
> Living conditions in the KRG for a person who has relocated there are not without difficulties, but there are jobs, and there is access to free health care facilities, education, rented accommodation and financial and other support from UNHCR."

37. The findings in *MK* were endorsed in a recent country guidance determination, *HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)*, of 13 November 2012. Having particular regard to the Danish/UK report extensively quoted below (at § 39), the Upper Tribunal stated (at para. 348):

> "Taking the evidence as a whole, we consider that if anything, it tends to show that no-one needs a sponsor, rather than, as was concluded in MK, that a Kurd will not and an Arab may. By needing a sponsor we refer not only to entry but also to residence in the KRG. ..."

On the issue of identity documents, it further noted (at para. 358):

> "... [In *MK*] the Tribunal commented that there was nothing to show that it was, or perhaps ever had been, the case that a central register in Baghdad had been kept. [F]urther evidence [now presented] requires us to modify that position. Given the current state of the evidence in this regard, we consider that we can add to the guidance in MK by noting the existence of the Central Archive retaining civil identity records on microfiche, providing a further way in which a person can identify themselves and obtain a copy of their CSID, whether from abroad or within Iraq."

38. The Finnish Immigration Service and the Swiss Federal Office for Migration published on 1 February 2012 the *Report on Joint Finnish-Swiss Fact-Finding Mission to Amman and the Kurdish Regional Government (KRG) Area, May 10-22, 2011* ("the Finnish/Swiss report"). In summarising the situation (at p. 3), it noted, among other things, the following:

> "At the time of the FFM [Fact-Finding Mission], there seemed to be little discrimination against ethnic or religious minorities. The flight of Christians from Central Iraq to the KRG area has continued since the bomb attack on a church in Baghdad in October 2010. Internally displaced persons (IDPs) and refugees are better off in the KRG area than in the rest of Iraq and generally felt safe in the region at the time of the FFM. At the same time, some suffer from poverty, remain unregistered, and lack access to proper housing, education, health care, and employment."

It further stated (at pp. 49-50):

> "Interviewed sources confirmed that the KRG is open and liberal toward religious minorities and normally also toward ethnic minorities. The areas controlled by the KRG can be considered safe for minorities. In the Iraqi Kurdish areas, a majority of Kurds live close to minorities such as Christians, Arabs, Turkmen, Yazidis, Fayli Kurds, Shabak, Kakai, and Mandaeans / Sabaeans. Fayli Kurds, Yazidis, Kakai, and Shabak are perceived as Kurds and therefore are generally not persecuted, but they can be under social pressure for assimilation."

On the subject of entry procedures at the KRG area border, the report gave the following account (at pp. 59-60):

> "The fact-finding mission learned that there have been no relevant, recent changes to KRG entry and screening procedures. UNHCR Iraq in Erbil indicated that there are no government statistics available on who has entered the KRG area and who has been denied access. There are four main entry checkpoints to the KRG area, which are controlled by the KRG Security Protection Agency. The checkpoints apply basically the same entry procedures.
>
> At the same time, some international organizations, NGOs, and the UNHCR claimed that the guidelines on entry practices are not consistent between the three northern governorates of the KRG or between checkpoints leading to a single governorate. There are also no published instructions or regulations on entry procedures, as these would be against the Iraqi Constitution. According to the UNHCR, entry often depends on the commander on duty and the commander's daily instructions at the checkpoint. The procedures can be tightened or relaxed according to the current security situation in the area.
>
> Several NGOs and the UNHCR have surveyed IDPs at different times concerning entry procedures to the KRG region at different checkpoints. A comparison of the results shows differences in entry practices between governorates and time periods. For instance, the surveys show that the need for a sponsor / guarantor has essentially

ceased at a Dohuk governorate entry checkpoint, but that even at one checkpoint congruency can lack at different times.

...

People who are denied entry to the KRG area are often not of Kurdish ethnicity. Kurds and Christians are generally allowed entry, whereas single male Sunni Arabs without a sponsor in the KRG area are refused. The UNHCR noted that female Arabs have also had trouble entering the KRG area. Single females are also at higher risk of harassment by authorities. However, a source mentioned that Arabs from Central and Southern Iraq who invest in the KRG area are welcomed to the region. According to another source, IDPs with money are able to move to Erbil and start a business.

Anyone wishing to enter the KRG area who does not originate from the region typically needs to know someone there (a so-called sponsor / guarantor) or have a letter of reference from an employer in the KRG area. A sponsor is needed if the person wants to stay in the KRG area for more than 10 days or wants to register and seek residency in the region. If someone enters the KRG area and subsequently commits a crime, his or her sponsor will be punished and may even face a prison sentence.

A member of the immediate family or some other relative often acts as the sponsor. An institution such as an university can also act as a sponsor. The fact-finding mission received conflicting information during interviews on whether or not a church can act as a sponsor. The policy applied to Christians was said to have been relaxed after the bomb attack at a church in Baghdad in October 2010. Christians may currently be able to nominate senior clerics as sponsors. The fact-finding mission heard that it is easier for Kurds originating outside the KRG area than for persons of other ethnicities to find a sponsor in the region."

39. Published in March 2012, the *Joint Report of the Danish Immigration Service / UK Border Agency Fact Finding Mission to Erbil and Dahuk, Kurdistan Region of Iraq (KRI), conducted 11 to 22 November 2011* ("the Danish/UK report") gave the following information:

"1.02 According to the Director of an international NGO in Erbil, all Iraqis irrespective of ethnic origin or religious orientation are free to enter KRI through the KRG external checkpoints by presenting their Iraqi Civil ID Card [and] there were thousands of persons of Arab origin living in KRI, many living with their families, whilst others had come to KRI for work, including individuals.

...

1.08 [The Director of the Bureau of Migration and Displacement (BMD) of the Ministry of Interior in Erbil explained that at] present approximately 40,000 IDP families from [southern and central] Iraq and the disputed areas reside in all three governorates of KRI, i.e. Erbil, Suleimaniyah and Dohuk governorates.

...

2.04 [The Head of the Private Bureau of General Security (Asayish)] explained that it was important the KRG authorities knew who was entering KRI and therefore the Asayish had good levels of cooperation with Iraqi intelligence, sharing details of persons who they were required to arrest and stop. In addition the Asayish maintained their own classified information on terrorist groups, such as Ansar-e-Islam or Al Qaeda in Iraq. [He] explained there were two security lists in operation, the "black list", which included persons who had an arrest warrant outstanding for their detention and a second list, i.e. the "stop list".

...

2.16 According to [the Head of Asayish,] at KRG external checkpoints, documents would be required to prove the identity of a person[. T]his could include their Civil ID Card, Nationality Card, passport or, if they worked for a government department, their departmental ID card. However[, he] further explained that a person would not necessarily be denied entry into KRI because he or she lacked some identification documents, as the system is computerised. [He] went on to explain that a person already on their database system would be logged with their photo and name recorded onto the system. Consequently such a person could even enter KRI with only a driving licence or a similar document which proved the individual's identity and Iraqi citizenship.

...

2.28 [The General Manager of Kurdistan checkpoints in the Kurdistan Regional Security Protection Agency, KRG Ministry of Interior, Erbil] explained [that] after a person had finished providing information about their identity to Asayish at the KRG external checkpoint, they would then undergo a second procedure at the checkpoint to apply for the appropriate entry card. There existed three entry cards: a Tourism Card, a Work Card, and an Information Card/Residency Card for those seeking to reside in KRI. Once the relevant card had been issued, the person would then be free to travel throughout KRI, including travel between the three KRI governorates, without being required to show any further form of documentation. [He] stated that this procedure made it easy for anyone to move freely within KRI.

...

2.30 During a visit by the delegation to the Mosul-Erbil checkpoint, ... [w]hen asked what would happen if a person did not have an address or know anyone in KRI, [the major who had overall operational responsibility for the checkpoint] explained that such a person would still be allowed to enter and the majority of those coming into KRI were migrant workers in search of employment with no reference in KRI.

2.31 PAO [Public Aid Organisation, the UNHCR Protection and Assistance Centre partner in Erbil] outlined the entry procedures at the KRG external checkpoints and noted that persons seeking to enter the KRI would be questioned and asked to provide their identification, usually a Civil ID Card or Nationality Card, after which they would obtain one of three cards for entry – a Tourism Card, valid for 1 day or up to 1 month and which was renewable; a Work Card valid for 10 – 15 days which was also renewable; or an Information Card/Residency Card for those seeking to reside in KRI. PAO did not know how long this card, issued at the checkpoint, would be valid for.

...

3.05 The Director of an international NGO in Erbil explained that whenever there are specific security concerns and/or threats of terrorist attacks the security and entry procedures will be adapted to the situation. Such procedures only related to security concerns and not to any other factor and these procedures are normal even in Europe.

3.06 When asked if there would be variations in applied entry procedures at KRG checkpoints, an international organization (A) stated that such variations are only related to security concerns and precautions and nothing else.

3.07 According to Harikar NGO, all entry procedures are only related to security considerations and nothing else. Harikar NGO emphasized that its cooperation with the Asayish is good and that the Asayish comply with the law, including the procedures applied at KRG checkpoints. Harikar NGO has not noticed any irregularities or arbitrary practices at the checkpoints.

3.08 [The Head of Asayish] clarified that the policy requiring a person to provide a reference at the KRG external checkpoint, i.e. before entry, existed when the security situation was more precarious, but was abandoned around two or three years ago. However[, he] added there may still be some instances in which a person was asked by Asayish at the checkpoint to make a telephone call to somebody they knew, to verify their identity.

3.09 During a tour of the Mosul-Erbil checkpoint [the major who had overall operational responsibility for the checkpoint] explained that there was no longer a requirement for a reference to be present at the KRG external checkpoint and [that] this procedure was abolished around four years ago.

...

3.11 The Director of an international NGO in Erbil explained that the former requirement that a reference should be present at the KRG checkpoint in order for a person to enter KRI has been abolished.

3.12 Harikar NGO stated that there is no requirement for a reference to be present at a KRG checkpoint in order for an Iraqi from outside KRI to enter.

...

4.01 [The Head of Asayish] explained that individuals not from KRI may be asked by the Asayish at the checkpoint to telephone an acquaintance in KRI, to verify their identity. When asked if an individual, not from KRI, and who knew no one in KRI would be able to pass through the KRG external checkpoint, [he] explained that this would depend on the individual and the circumstances of the case, but in some instances such a person would be viewed with suspicion. [He] confirmed however [that] such cases were very rare. Less than 30 persons per month across all the KRG external checkpoints, in all three governorates, may be denied entry purely on the grounds that they were considered suspicious for some reason; this included persons who had given inconsistent information when questioned. [He] clarified [that] this figure of "less than 30 cases per month" did not include persons denied entry because they did not have appropriate documentation, and only related to those who were denied entry because they were deemed suspicious for some reason.

...

4.34 When asked how persons without genuine identity documents would be treated by the KRG authorities when seeking to enter KRI, an international organization (B) explained that a Kurd without personal ID documents may be treated more sympathetically and be permitted entry because they would normally know someone in KRI who could identify him or her or they would have a known family/clan name which was recognised. With regard to Christians, the entry arrangements were significantly easier and such persons may even be able to enter KRI without providing any documentation at all. This was because Christians were not considered a terrorist threat to the region – the KRG authorities were very lenient towards Christians. However, the international organization (B) concluded that a person of Arab origin without genuine documents to identify themselves would not be permitted entry.

...

4.41 According to the Director of an international NGO in Erbil, all Iraqis irrespective of ethnic origin or religious orientation are free to enter KRI through the KRG external checkpoints by presenting their Iraqi Civil ID Card. The Director added that Iraqi Turkmen, Christians and Faili Kurds normally enter through these checkpoints without any difficulties. On the other hand Iraqis of Arab origin would normally be required to undergo greater scrutiny, requested to present their Civil ID

> Card at the checkpoint and explain the nature and intention of their visit to KRI. However, this procedure was unproblematic and did not require that a reference should be present at the checkpoint. According to [the Director] all persons would be required to routinely show their Civil ID Card at the entry checkpoint and persons of Arab origin faced no problems in staying in the KRI. However the same source clarified that persons of Arab origin would normally have their Civil ID Card photocopied as an extra security precaution. The Director emphasized that persons of Arab origin do not need a reference to be present at the checkpoint.
>
> ...
>
> 4.44 On the subject of entry procedures at KRG external checkpoints, PAO Erbil clarified that the situation for Christians entering through [Government of Iraq]/KRG checkpoints was one of "positive discrimination" and that such groups experienced no difficulties, neither in entrance nor in obtaining [an] Information Card which is an ID issued for all IDPs. Even if they don't have [a] sponsor, which is one of the requirements of obtaining this ID, the Ainkawa [a district within Erbil] Churches are taking the responsibility and became their sponsors.
>
> ....
>
> 8.19 [The Head of Asayish] explained [that] persons displaced by violence coming to KRI from the rest of Iraq would be required to apply for an Information Card at their neighbourhood Asayish in the same way as any other person applying for this card and there existed no special procedure to assist them. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained that his return to Iraq would involve a violation of Article 3 of the Convention. This provision reads as follows:

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

A. Admissibility

41. The respondent Government raised the issue whether the applicant had exhausted domestic remedies. They noted that he had petitioned the Migration Board for a reconsideration of his case on five occasions and had not appealed to the final instance on three of these occasions. In the Government's view, it could be questioned whether he had exhausted domestic remedies in regard to the circumstances invoked in these petitions.

42. The applicant submitted that he had not appealed against the Migration Court's judgments when these were based on evaluations of evidence since the Migration Court of Appeal did not accept such appeals, according to its rules. He maintained that he had fulfilled the requirement of exhaustion of domestic remedies.

43. The Court reiterates that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. For a remedy to be effective it has to be available in theory and in practice at the relevant time, meaning that it has to be accessible, capable of providing redress in respect of the applicant's complaints and offer reasonable prospects of success. Article 35 must also be applied to reflect the practical realities of the applicant's position in order to ensure the effective protection of the rights and freedoms guaranteed by the Convention (see *NA v. the United Kingdom*, no. 25904/07, 17 July 2008, § 88, with further references).

44. In the Article 3 context where an applicant seeks to prevent his or her removal from a Contracting State, a remedy will only be effective if it has suspensive effect. Conversely, where a remedy does have suspensive effect, the applicant will normally be required to exhaust that remedy. Judicial review, where it is available and where the lodging of an application for judicial review will operate as a bar to removal, must be regarded as an effective remedy which in principle applicants will be required to exhaust before lodging an application with the Court or indeed requesting interim measures under Rule 39 of the Rules of Court to delay a removal (ibid., § 90).

45. Turning to the present case, it is clear that the applicant exhausted all domestic remedies in the ordinary proceedings for asylum and a residence permit. Subsequent to his deportation order acquiring legal force, he asked the Migration Board on five occasions to reconsider his case, but did not, on three occasions, lodge appeals until the final instance. However, the lodging of the petitions – or, indeed, the potential appeals to the courts – had no automatic suspensive effect on the deportation order against the applicant, nor did the Board take a decision to suspend his deportation.

46. In these circumstances, appeals against the Migration Board's decisions not to reconsider the applicant's case could not be seen as an effective remedy in relation to the deportation order which had been issued and which was enforceable. Consequently, as he did appeal to the final instance in the ordinary proceedings, he must be considered to have met the requirements of exhaustion of domestic remedies.

47. The Government's objection under Article 35 § 1 of the Convention should accordingly be rejected. No other ground for declaring the application inadmissible has been invoked or established. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The applicant

48. The applicant essentially submitted the same claims and invoked the same circumstances as those presented before the Swedish authorities. He claimed that he had been wrongly convicted and sentenced to ten years' imprisonment *in absentia* for having aided terrorists, and that he risked being killed by al-Qaeda for having expressed unacceptable religious opinions. He maintained that the arrest warrant and the judgment, which he had presented to both the Swedish authorities and the Court, were genuine documents. He had not been able to submit them earlier in the Swedish proceedings, because he had no contact with family and friends in Iraq after his flight.

49. The applicant further claimed that it was not clear from the Government's observations whether the Swedish Embassy in Iraq, in its investigation of the documents mentioned, had actually visited the court in question.

50. Moreover, the applicant asserted that, at the interview with the Migration Board in December 2008, he had not had legal assistance and that, for this reason, what he had said at that interview should not be held against him. When asked if he or his family were members of the Ba'ath party, he had understood the word family as meaning his parents or brothers and sisters and the answer was, therefore, no. Later in the domestic proceedings, he had referred to other relatives as members of the Ba'ath party.

51. The applicant finally contended that there was no relevant internal flight alternative for him. He is Arab and speaks no Kurdish. To establish himself in the Kurdistan Region, he would further need a sponsor, which he does not have. He had only stayed in Dahuk while he was fleeing from persecution: this could not be considered a permanent or legal stay.

(b) The Government

52. The Government, while not wishing to underestimate the concerns that could legitimately be expressed about the current human rights situation in Iraq, maintained that this did not in itself suffice to establish that the forced removal of the applicant to that country would breach Article 3 of the Convention.

53. As to the present case, the Government first asserted that the Migration Board and the courts had made thorough assessments. In the proceedings, the applicant had been given many opportunities to present his case. The Migration Board had conducted three interviews with the applicant, the last one with the assistance of his legal counsel. He had been invited to submit written observations on the interviews. Moreover, having

regard to the expertise held by the migration bodies, the Government maintained that significant weight should be given to their findings.

54. In regard to the applicant's personal risks, the Government pointed out that the documents invoked by the applicant had been submitted only after his original request for asylum had been rejected by both the Migration Board and the Migration Court. Although the invoked arrest warrant had been issued on 18 August 2008 – approximately one month before the applicant left Iraq – a copy had not been submitted until 4 February 2010 during the proceedings before the Migration Court of Appeal. In a later reconsideration case, both the Migration Board and the Migration Court questioned the authenticity of the warrant and the judgment convicting the applicant, noting, *inter alia*, that handwritten text had been added to the judgment. The Government had requested the assistance of the Swedish Embassy in Baghdad in order to further evaluate the authenticity of the documents. The Embassy had visited the relevant court, the "Higher Judicial Council", and presented the documents. The court had verified that the documents, having regard to their content, terminology, structure and logos, were undoubtedly false, and had provided detailed information in these respects. Consequently, the Government contended that the documents in question had no value at all as evidence and that there were obvious reasons to question the credibility of the applicant's claim that he risked ill-treatment by Iraqi authorities on account of accusations and a conviction for terrorism-related crimes.

55. Further on the applicant's general credibility, the Government submitted that, in support of his first petition for reconsideration in May 2010, he had stated that his family were regarded by the present government as supporters of Saddam Hussein and that several of his relatives had been arrested in Iraq and were being kept in a secret prison. In contrast, during an interview at the Migration Board in December 2008, he had stated that neither he nor his relatives had been members of Saddam Hussein's Ba'ath party.

56. As regards the applicant's claim that he risked being killed by al-Qaeda in Iraq, the Government noted that the domestic authorities had not found reason to question this claim, although, the Government advanced, the above-stated circumstances reflected badly on the applicant's general credibility.

57. In any event, should the Court find that the applicant was at risk in regard to al-Qaeda, the Government asserted that there was an internal flight alternative. As concluded by the Migration Board, the al-Qaeda threat was limited to Mosul and some other parts of Iraq where al-Qaeda had a strong presence. In agreement with the Board, the Government thus considered that the applicant was able to relocate to the Kurdistan Region. Such relocation did not require a reference person and internally displaced persons in the

Kurdistan Region had the same rights as other residents, including access to health care, education and the labour market.

2. The Court's assessment

(a) General principles

58. The Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 67; *Boujlifa v. France*, judgment of 21 October 1997, *Reports* 1997-VI, p. 2264, § 42; and *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008-...).

59. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assesses the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (*H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, § 40).

60. The assessment of the existence of a real risk must necessarily be a rigorous one (*Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). 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. In this respect, the Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of

the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *Collins and Akaziebie v. Sweden* (dec.), no. 23944/05, 8 March 2007; and *Hakizimana v. Sweden* (dec.), no. 37913/05, 27 March 2008).

61. In cases concerning the expulsion of asylum seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention relating to the status of refugees. It must be satisfied, though, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other contracting or non-contracting states, agencies of the United Nations and reputable non-governmental organisations (*NA. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008).

(b) The general situation in Iraq

62. The Court notes that a general situation of violence will not normally in itself entail a violation of Article 3 in the event of an expulsion (*H.L.R. v. France*, cited above, § 41). However, the Court has never excluded the possibility that the general situation of violence in a country of destination may be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (*NA. v. the United Kingdom*, cited above, § 115).

63. While the international reports on Iraq attest to a continued difficult situation, including indiscriminate and deadly attacks by violent groups, discrimination as well as heavy-handed treatment by authorities, it appears that the overall situation has been slowly improving since the peak in violence in 2007. In the case of *F.H. v. Sweden* (no. 32621/06, § 93, 20 January 2009), the Court, having at its disposal information material up to and including the year 2008, concluded that the general situation in Iraq was not so serious as to cause, by itself, a violation of Article 3 of the Convention in the event of a person's return to that country. Taking into account the international and national reports available today, the Court sees no reason to alter the position taken in this respect four years ago.

64. However, the applicant is not in essence claiming that the general circumstances pertaining in Iraq would on their own preclude his return to that country. Instead, he asserts that this situation together with the threats received from al-Qaeda in Iraq and the Iraqi authorities' charges and

conviction against him for terrorism-related crimes would put him at real risk of being subjected to treatment prohibited by Article 3.

(c) The particular circumstances of the applicant

65. The Court first notes that the applicant was heard by the Migration Board, that his claims were carefully examined by both the Board and the Migration Court and that they delivered decisions containing extensive reasons for their conclusions. In particular, the Court reiterates that the Migration Board – with which the Migration Court agreed – questioned the authenticity of the arrest warrant and the judgment invoked by the applicant, *inter alia* because of their very simple nature, and considered them to be of very low value as evidence. More importantly, following the communication of the present case, the Swedish Embassy in Baghdad, at the request of the respondent Government, has had the documents examined by the relevant Iraqi court, which found them to be obvious falsifications, pointing out that they deviated from genuine documents in regard to their content, terminology, structure and logos. The applicant has maintained that the documents are genuine, without addressing the evidence presented by the Government. In these circumstances, the Court finds that the documents in question fail to substantiate the applicant's claim that he has been wanted and later convicted by the Iraqi authorities for trumped up charges of having aided terrorists. Moreover, having regard also to the possible inconsistencies in the applicant's statements concerning relatives' membership of the Ba'ath party and their arrests by the present Iraqi government, the Court considers that it has not been shown that he risks persecution or ill-treatment at the hands of that government or other Iraqi authorities.

66. What remains of the applicant's claims is the alleged threat coming from al-Qaeda in Iraq, which is based on the applicant having refused to apologise for having uttered unacceptable religious opinions before representatives of that organisation and for having had an unveiled woman in his employment. The Court reiterates that the Migration Board, while questioning the veracity of some details of the applicant's story, accepted his claim that his life had been threatened and that he would face a real risk of persecution by al-Qaeda. The Board concluded, however, that the risk was limited to areas of the country where al-Qaeda was strong. While the Court agrees with the Government that the applicant's general credibility is affected by what has been concluded above in regard to the documents invoked by him, the Court sees no reason to deviate from the Board's assessment as to the threat posed by al-Qaeda. Accordingly, although the incidents occurred in 2008, five years ago, the applicant may be considered to face a real risk of treatment contrary to Article 3 of the Convention at the hands of that organisation if he is returned to Mosul or to other parts of Iraq where it has a strong presence.

(d) The possibility of relocation to the Kurdistan Region

67. It remains to be determined whether the applicant would be able to relocate internally in Iraq to the Kurdistan Region.

68. The Court reiterates that Article 3 does not, as such, preclude Contracting States from placing reliance on the existence of an internal flight or relocation alternative in their assessment of an individual's claim that a return to the country of origin would expose him or her to a real risk of being subjected to treatment proscribed by that provision. However, the Court has held that reliance on such an alternative does not affect the responsibility of the expelling Contracting State to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3. Therefore, as a precondition of relying on an internal flight or relocation alternative, certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of his or her ending up in a part of the country of origin where there is a real risk of ill-treatment (*Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 266, 28 June 2011, with further references).

69. The three northern governorates – Dahuk, Erbil and Sulaymaniyah – forming the Kurdistan Region of Iraq, or KRI, are, according to international sources, a relatively safe area, where many internally displaced persons have been received, regardless of their origin (see, for instance, the report of the Representative of the UN Secretary-General, § 33 above). Most importantly for the applicant's situation, these three governorates are not among those where al-Qaeda has a noteworthy presence (cf. the UNHCR Guidelines, § 34 above).

70. As regards the possibility of entering the KRI, some sources state that the border checks are often inconsistent, varying not only from governorate to governorate but also from checkpoint to checkpoint (see the UNHCR Guidelines, § 34 above, and the Finnish/Swiss report, which appears to rely heavily on the UNHCR's conclusions in this respect, § 38 above). The UNHCR states that single Arab males are likely to be denied entry or to be allowed entry only after a lengthy administrative procedure and heavy interrogation and are usually required to have a sponsor in the region. In its recent country guidance determination in *HM and others* (§ 37 above), the UK Upper Tribunal reached a somewhat different conclusion, however; it considered the evidence to show that no-one, including Arabs, needed a sponsor to enter or to reside in the KRI. The Danish/UK report (§ 39 above) supports the latter conclusion; it presents evidence to the effect that the entry requirement of having a reference present at the checkpoints was abandoned several years ago. Moreover, several officials had testified to the Danish/UK fact-finding team that all Iraqis irrespective of ethnic origin or religious beliefs were free to enter the KRI. Thousands of persons

of Arab origin already lived there. Arabs would normally be required to undergo greater scrutiny than, for instance, Christians, but the procedure was said to be unproblematic and appeared to focus on the entrant having proper identification papers.

71. Moreover, there does not seem to be any difficulty to obtain identity documents in case old ones have been lost. As concluded by the UK Border Agency (§ 35 above) and the UK Upper Tribunal in the mentioned case of *HM and others*, it is possible for an individual to obtain identity documents from a central register in Baghdad, which retains identity records on microfiche, whether he or she is applying from abroad or within Iraq.

72. The Court further notes that there are regular flights from Sweden to the airports in Erbil and Sulaymaniyah without stopovers in Baghdad or other parts of Iraq. The applicant would thus be able to arrive in the Kurdistan Region without having to go through the southern or central parts of the country.

73. Internal relocation inevitably involves certain hardship. Various sources have attested that people who relocate to the Kurdistan Region may face difficulties, for instance, in finding proper jobs and housing there, not the least if they do not speak Kurdish. Nevertheless, the evidence before the Court suggests that there are jobs available and that settlers have access to health care as well as financial and other support from the UNHCR and local authorities. In any event, there is no indication that the general living conditions in the KRI for an Arab Sunni Muslim settler would be unreasonable or in any way amount to treatment prohibited by Article 3. Nor is there a real risk of his or her ending up in other parts of Iraq.

74. In conclusion, therefore, the Court considers that relocation to the Kurdistan Region is a viable alternative for an Arab Sunni Muslim, such as the applicant, fearing persecution or ill-treatment in other parts of Iraq. The reliance by a Contracting State on such an alternative would thus not, in general, give rise to an issue under Article 3 of the Convention.

(e) Conclusion

75. Having regard to the above, the Court concludes that, although the applicant may face a real risk of being subjected to treatment contrary to Article 3 of the Convention at the hands of al-Qaeda if returned to Mosul or other parts of southern and central Iraq where that organisation has a strong presence, he may reasonably relocate to the Kurdistan Region, where he will not face such a risk. Neither the general situation in that region nor any of the applicant's personal circumstances indicates the existence of said risk. Moreover, the fact that the applicant entered the Kurdistan Region in late August 2008 and thereafter stayed in Dahuk for a month before leaving for Sweden attests that he will be able to enter and reside in that region.

Consequently, his deportation to Iraq would not involve a violation of Article 3, provided that he is not returned to parts of the country situated outside the Kurdistan Region.

II. RULE 39 OF THE RULES OF COURT

76. The Court recalls 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 reference 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.

77. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above § 4) must continue 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

1. *Declares*, unanimously, the application admissible;

2. *Holds*, by six votes to one, that the implementation of the deportation order against the applicant would not give rise to a violation of Article 3 of the Convention, provided that he is not returned to parts of Iraq situated outside the Kurdistan Region;

3. *Decides*, unanimously, 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 deport the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 3 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Mark Villiger
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) separate opinion of Judge de Gaetano;

(b) dissenting opinion of Judge Power-Forde.

M.V.
C.W.

SEPARATE OPINION OF JUDGE DE GAETANO

1. I have voted with the majority in this case, namely that there would be no violation of Article 3 of the Convention in the event that the applicant were deported, provided, however, that he is not returned to parts of Iraq situated outside the Kurdistan Region of that country (see point 2 of the operative part of the judgment).

2. My vote necessarily assumes and presupposes that the respondent Government, being fully aware of the case-law of the Court, intend to comply in good faith with the same. Indeed, in their memorial of 14 October 2011, the respondent Government, referring to the internal relocation alternative it was proposing to the Court, and referring in particular to *Salah Sheekh v. the Netherlands* (no. 1948/04, 11 January 2007), expressly noted (and I quote from paragraph 55 of the memorial): "However, as a precondition for relying on an internal flight alternative, certain guarantees have to be in place: the person expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise."

3. The Court has accepted this alternative as proposed by the respondent Government (see paragraphs 57 and 67 to 75). In doing so, and in my understanding, the Court has also accepted the implied undertaking of the respondent Government that they will ensure that all three conditions mentioned above – safe travel *and* admittance to the Kurdistan Region, and the real possibility of settling there – are in place *before* the applicant is put on one of the flights indicated in paragraph 72.

4. The same considerations apply, *mutatis mutandis*, to my vote in *W.H. v. Sweden* (no. 49342/10).

DISSENTING OPINION OF JUDGE POWER-FORDE

1. I voted against the dispositive provision insofar as Article 3 is concerned. The provision in question refers to only one of three guarantees required under the Court's case law as preconditions for reliance upon 'internal relocation' as a safe alternative for an asylum seeker whom a respondent state wishes to deport. The relevant principles were articulated in *Salah Sheekh v. the Netherlands* and confirmed in *Sufi and Elmi v. the United Kingdom*.[1] As a precondition for relying on an internal flight alternative, the following guarantees must be in place: -

(i) the person to be expelled must be able to travel safely to the area concerned;
(ii) he or she must be able to gain admittance to the area concerned; and
(iii) he or she must be able to settle in the area concerned.

2. As noted in *M.Y.H. and Others v. Sweden,*[2] for this Court to require that 'guarantees' be in place before deportations can proceed on the basis of internal relocation, is to set a high threshold of evidence in terms of a returnee's future safety. 'Guarantees' are not synonymous with nor can they be satisfied by mere likelihoods, chances or positive indications. This is rightly so given the seriousness of what is in issue in forcibly returning a person with a clear history of persecution in his home country to a different region therein. It is entirely appropriate that the Court should and has set the bar at the level of 'guarantee.'

3. In support of its position, the majority refers to a number of published reports on the situation in Iraq. In view of the volatile and rapidly changing security situation in the region such reports are at risk of becoming quickly outdated. It is the situation that prevails at the date of deportation that is relevant for the purposes of an assessment under Article 3 of the Convention.

4. The majority relies, in particular, on information contained in the March 2012 Report of the Danish-UK immigration authorities (§ 39). This Report was based on a fact finding mission that described the situation as it was in Iraq in November 2011—well over two years ago. The joint authorities then reported that an Arab's need to provide a reference person at the KRG checkpoint arose '*when the situation was more precarious*' and that the requirement to have such a reference person '*was abandoned two or three years ago*.' Given the date of the fact-finding mission, one can only deduce that the practice was, allegedly, abandoned in or about 2008/2009 when the 'more precarious' situation of previous years had eased somewhat.

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[1] *Salah Sheekh v. the Netherlands*, no. 1948/04, 11 January 2007 and *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, 28 June 2011

[2] See dissenting opinion in *M.Y.H. and Others v. Sweden*, no. 50859/10, 27 June 2013

5. However, as of today, instability and insecurity have, once more, taken hold in major parts of Iraq. It is common knowledge that the situation in the country has deteriorated significantly during the last 12 months. 2013 was the worst year for civilian casualties since the height of the war in 2006.[3] Given the rapid escalation in violence and the general volatility in Iraq today, the situation as it stands can only be considered as being, once again, 'precarious.' Thus, to my mind, the fact that the 'sponsor' requirement may have been abandoned by the Kurdish authorities during comparatively safer times, is a rather fragile basis on which to conclude that a person with this applicant's profile would have little difficulty in gaining admission to the Kurdistan region today.

6. Indeed, on the procedures for entry into the KRG area, the Finnish-Swiss immigration authorities noted in a joint Report of February 2012 that the 'sponsor' requirement had *not* been abandoned for a particular category of persons. On the basis of their own fact-finding mission, those authorities noted that (as of May 2011) 'single male Sunni Arabs' who are without a sponsor are *refused* entry into the KRG area (§ 38).

7. In view of the foregoing, the probability of this applicant being granted permission to enter and remain in the Kurdistan region in the absence of any sponsor or reference person can hardly be considered as 'guaranteed'. Absent persuasive evidence, I cannot share the majority's confidence as to his future prospects of relocating safely in that region. There is simply insufficient material before this Court for me to conclude that as of March 2014 this single, male, Sunni, Arab will arrive safely at the KRG border, will be able to enter Kurdistan without a sponsor or reference person and will be able to settle there in safety.

8. The majority, for its part, 'notes' that there are regular flights from Sweden to Erbil and Sulaymaniyah without stop-overs in Baghdad or other parts of Iraq (§ 72). To my mind, merely noting the general regularity of flights is hardly sufficient to establish that this Court's specific legal requirements have been met.

9. Treatment that violates Article 3 is always suffered by an individual, by a specific person. Where a real risk of such treatment has been established, it is incumbent on States to ensure that measures aimed at preventing it are also 'specific' to the person concerned. Generalizations are not enough. The guarantees required to be in place prior to deportation in order to ensure that this particular applicant will be protected against treatment prohibited by Article 3 have not been established in this case.

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[3] https://www.iraqbodycount.org/database/