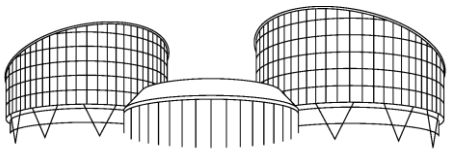

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF B.K.A. v. SWEDEN

(Application no. 11161/11)

JUDGMENT

STRASBOURG

19 December 2013

FINAL

19/03/2014

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 B.K.A. v. Sweden,

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

Mark Villiger, *President,*
Ann Power-Forde,
Ganna Yudkivska,
André Potocki,
Paul Lemmens,
Helena Jäderblom,
Aleš Pejchal, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 19 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 11161/11) 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 22 December 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 Ms M. Engström, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ms H. Kristiansson, 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 30 June 2011 the President of the Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be deported to Iraq for the duration of the proceedings before the Court.

5. On 14 March 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant, who was born in 1984, is a Sunni Muslim from Baghdad.

7. The applicant arrived in Sweden on 4 September 2008. In support of his application for asylum, he stated in essence the following. He risked persecution in Iraq because he had worked as a professional soldier during the regime of Saddam Hussein and because he was involved in a blood feud after he had accidentally shot and killed a relative. He claimed to have served as a private in *Fedayeen*, a paramilitary group loyal to Saddam Hussein and the Ba'athist government, from January 2002 to March 2003. He had at the same time held a medium-level position in the Ba'ath party. Following the fall of the Saddam Hussein regime, former members of *Fedayeen* had tried to recruit him to a new militia. When he had refused to join, he had been called a traitor and had received threatening letters. From January 2004 he had also been sought after frequently by the Iraqi authorities, the American troops and the Badr militia on account of his former membership in *Fedayeen*. He had left the family home to escape capture and had lived in different places in Baghdad, until August 2004 with an aunt and then until November 2005 with an uncle. Many members of *Fedayeen* had been killed after the regime change. When an acquaintance of his brother's had been killed, the applicant had realised that he also risked the same fate. Then a cousin had been killed in the applicant's family's home after the applicant had received a threatening letter containing a bullet. The applicant had therefore left Baghdad in November 2005 and had fled to Mandali in the Diyala governorate to live with another uncle. In February 2006 American troops and the Badr militia had raided the uncle's home, asking for the applicant. In Mandali he got into a fight with a distant relative in November 2006 and accidentally shot him when a warning shot had ricocheted. The man had later died from his injuries, and the dead man's family had sworn to kill the applicant in revenge. The applicant had immediately left for Syria together with his younger brother. In January 2008, they had been joined there by his wife, whom he had married in Mandali in May 2006. Soon thereafter she, as well as the brother, had returned to Iraq and he no longer had any contact with her. He knew, however, that she was pregnant. The applicant had remained in Syria until he travelled to Sweden. In addition to the wife and younger brother, who had returned from Syria, his mother, another brother and a sister were also living in Iraq. The applicant had heard that his mother and sister were moving around in the country. He did not know the whereabouts of the two brothers, nor did he know anything about his father, who had left the family following his parents' divorce in 1991 and who had held a high position in the Ba'ath party at least until that year.

8. On 18 June 2009 the Migration Board (*Migrationsverket*) rejected the application for asylum and ordered the applicant's deportation to Iraq. The Board did not question that the applicant had been a member of *Fedayeen* and the Ba'ath party. However, it had regard to country information, which indicated that former party members were no longer persecuted but were

offered to get their old jobs back. The Board noted that, except for the alleged threatening letters, which had not been submitted to the Board, the applicant had lived for many years in Baghdad and Mandali without anything having happened to him. It also noted that the situation in Iraq had improved since the applicant had left the country. In regard to his claim that he was sought after by the Iraqi authorities and the American troops, the Board stated that the competent authorities were free to investigate whether he had committed any crimes during his time in *Fedayeen* or whether he held important information. Finally, the Board, noting that it had not been shown that the applicant had reported to Iraqi authorities that he had received threats on account of the alleged blood feud, considered that this was a local conflict with relatives in Mandali and held therefore that he should be able to return safely to, for instance, Baghdad.

9. The applicant appealed to the Migration Court (*Migrationsdomstolen*) which held an oral hearing in the case on 18 May 2010. At the hearing the applicant made, *inter alia*, the following additional submissions. *Fedayeen* had fought against the American invasion of Iraq and many Americans had died during the fighting. *Fedayeen* was therefore generally hated by the Americans but also by the Iraqi population who saw it as an oppressor organisation. He had served as bodyguard for a colonel and had in that capacity accompanied him at visits to Saddam Hussein. After the fall of the regime of Saddam Hussein, the applicant and his colleagues had been attacked in their homes by American troops and the Badr militia. He could not seek protection from the Iraqi authorities, as he was wanted by the present government due to his former membership of *Fedayeen* and the Ba'ath party. Furthermore, an uncle of the applicant's, who lived in Sweden, had made a visit to Iraq in November 2009 and had then been brutally assaulted by relatives of the man that the applicant had accidentally killed. These relatives had even threatened to kill the applicant's son, who was with the applicant's wife in Syria. The applicant had heard that he was wanted by the Iraqi police in relation to the relative's death. He could not move to another part of Iraq, because the authorities there would soon find out about his background and arrest him. Moreover, as a Sunni Arab, there was no possibility for him to move to the Kurdistan Region.

10. On 3 June 2010 the Migration Court upheld the decision of the Board, generally agreeing with its conclusions. The court considered the applicant's story to be coherent and detailed and did not find any reason to question it. As regards the threats emanating from Iraqi authorities, the American troops and the Badr militia, the court took into account that he had not held a prominent position in either the Ba'ath party or *Fedayeen* and that a long time had passed since his departure from Iraq. Referring to country information, according to which former Ba'ath party members were no longer persecuted or systematically attacked, the court concluded that it was not plausible that there was a remaining personal threat against the

applicant on account of his previous political activities or work. Similarly, it noted that the threatening letter from the group established by former *Fedayeen* members had been received more than four years earlier and that there was no indication that this group had a remaining interest in him. With respect to the blood feud, the court noted that the relatives of the killed man had threatened to kill the applicant and his son, had approached the applicant's family and written a threatening message on the wall of the family's previous home and had assaulted his uncle. According to the court, this indicated that the applicant risked treatment upon return of a kind that placed him in the category of "an alien otherwise in need of protection" under Chapter 4, section 2 of the Swedish Aliens Act (see further below, at § 13). As the shooting had occurred in the Diyala governorate, where the relatives of the killed man lived, and the subsequent events had taken place in Baghdad, the court found that the applicant was at risk in both the Diyala governorate and Baghdad. Nevertheless, in assessing whether there was an internal relocation alternative for him, the court had regard to country information and found that he would be able to safely relocate to the Sunni-dominated Anbar governorate where many internally displaced Sunni Arabs had settled. It noted that the applicant had not made it plausible that the threat posed by the relatives extended to that province or that he was at risk there for any other reason. It also took into account that the applicant was a young and healthy man who was fit to work.

11. On 6 July 2010 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

12. 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).

13. 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).

14. 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.

15. 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).

16. 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

17. 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."

18. 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."

19. The UK Border Agency *Iraq Operational Guidance Note* of December 2012 described 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."

20. In a 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. The specific situation of certain groups, in particular former members of the Ba'ath party and the previous regime's armed forces

21. The UNHCR Guidelines contain the following account in regard to former members of the Ba'ath party and persons with similar affiliations (at p. 18):

"After the fall of the previous regime in 2003, persons affiliated or associated with the former regime, through membership in the Ba'ath Party or as a result of their functions or profession, were subjected to systematic attacks mainly by armed Shi'ite groups. Today, members of the former Ba'ath Party or the former regime's armed forces or security and intelligence services are reportedly no longer systematically

singled out for attack by armed groups. They may still be targeted in individual cases, although the exact motivation behind an attack may not always be known. Many former Ba'athists have found new identities as politicians, academics, tribal leaders, or members of the current ISF. It is difficult to determine if attacks against them are motivated by their role under the former regime or by the person's present profile. ..."

22. The UK Border Agency *Iraq Operational Guidance Note* states as follows (at pp. 32-33):

"3.8.2 De-ba'athification is the name given to a number of processes initiated by the Coalition Provisional Authority (CPA) shortly after the fall of Iraq's Ba'athist regime. One was the complete dissolution of the Iraqi army as well as certain organisations (mostly security-related) that were either notorious for their role in enforcing Ba'ath party rule, or whose resources might offer the party a means to return to power. These organisations included the Iraqi army, the intelligence services, the Olympic committee and others, dissolved by CPA order in May 2003. The other process was the dismissal of many thousands of civil service employees from their positions. This process was initiated by the Coalition Provisional Authority, but later continued and was controlled by Iraq's Higher National De-ba'athification Commission (HNDBC). The assumption underpinning De-ba'athification procedures was that the elite of the Ba'ath party could not have achieved their level without committing acts that seriously violated human rights standards or were deeply corrupt."

It goes on to summarise the findings in a report of the Danish Immigration Service, "Security and Human Rights in South/Central Iraq":

"3.8.3 A report of a Danish Immigration Service fact finding mission published in September 2010 noted that previous affiliation to the Ba'ath party could add to a person's insecurity. However, being targeted solely with reference to former Ba'athist association is not likely as everyone employed by the previous regime had to be a member of the Ba'ath party. Senior members who were genuinely at risk have either fled abroad, for example to Syria, or have already been dealt with harshly by the government. However, as of today former membership of the Ba'ath party is not a determining factor when it comes to the question of whether or not a person would be targeted.

3.8.4 The same report also recorded that other sources stated that senior Ba'ath party members are targeted especially in south Iraq and some central parts. However, such a person would need to be well-known to others and other factors such as having occupied a particular exposed position are likely to have influence the risks as well. It was added that most senior Ba'ath members left Iraq. On the other hand, accusing a person of being a former Ba'ath member remains a favourite accusation. This can be problematic as a person wrongly accused may not be able to rectify such claims before action is taken against him."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. 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

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The applicant

25. The applicant submitted essentially the same claims and circumstances as those presented before the Swedish authorities. Reiterating that he had held a medium-level position in the Ba'ath party, he claimed that members holding lower positions had been killed over the years. Allegedly, the particular level of his positions in the Ba'ath party or *Fedayeen* did not have a great impact on the future risk facing him. While he had received an Iraqi passport in July 2010, he pointed out that he had issued a power of attorney to a friend in Iraq to obtain it for him. Now, after having read a Migration Board report which stated that personal attendance at an embassy was required both when applying for an Iraqi passport and when collecting it, the applicant concluded that his passport had most likely not been issued by the proper authorities. The applicant further asserted that the threats against him were still valid and included also those emanating from the Americans; he stated that, although many American soldiers had withdrawn from Iraq, there were still American officers in the country giving orders to the government. Acknowledging that several years had passed since he received the threatening letter from the *Fedayeen* group, the applicant believed that there was still a potential threat from his former colleagues, although he was not sure to what degree since he had not been contacted by them while he had been living in Sweden.

26. In regard to the blood feud originating in the applicant's accidental killing of a relative, he claimed that he could not seek protection from the Iraqi authorities as they refused to get involved in cases concerning blood

feuds. Furthermore, a blood feud lasted for a lifetime and did not become less serious with time.

27. Finally, the applicant submitted that he could not relocate in Iraq, since he would have to register at the new place and thus his background would become known. Moreover, he would not be safe in Anbar governorate as one of his brothers had been killed 25 kilometres from Anbar in April 2012. The applicant's family suspected that the murder was part of the blood feud. Also, in the summer of 2012, his wife had obtained a divorce from him. The divorce had been arranged by her relatives in what the applicant believed was an attempt to save her, their son and her relatives from the blood feud.

(b) The Government

28. 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 there would breach Article 3 of the Convention.

29. 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 assisted by legal counsel and had been given many opportunities to present his case. The Migration Board had conducted three interviews with him in the presence of an interpreter and – at the final interview – his counsel. The Migration Court had held an oral hearing, where the applicant was assisted by his counsel and an interpreter. Moreover, having regard to the expertise held by the migration bodies, the Government maintained that significant weight should be given to their findings.

30. In regard to the applicant's personal risks, the Government noted that the national authorities had found no reason to question his statements as such. However, as concluded by these authorities, the applicant had not held any high positions in the Ba'ath party or *Fedayeen*. Moreover, when applying for a work permit in Sweden, he had submitted an Iraqi passport issued in July 2010. Thus, the applicant had felt secure enough to apply for a passport from the Iraqi authorities and had also had one issued for him. In the Government's view, this was a strong indication that the current authorities had no special interest in the applicant, neither due to his affiliation with the former regime nor for any other reason. Furthermore, following the withdrawal of the American troops, a potential threat from the Americans was no longer relevant. Referring to country information, the Government also pointed out that members of the former Ba'ath party and regime were no longer systematically targeted and that it was only party members who had held senior positions that could be at risk in southern Iraq and certain central parts of the country. Taking into account these

circumstances as well as the long time that had passed since the applicant had left Iraq, the Government asserted that he had failed to demonstrate that there was still an individual threat against him.

31. Turning to the alleged risks associated with the blood feud, the Government asserted that the possible police investigation against him for the accidental killing of a relative was no ground for protection, as it was a duty of the Iraqi authorities to investigate and possibly prosecute a potentially criminal act. Again, the passport issued in July 2010 strongly indicated that the authorities had no special interest in the applicant. The Government further submitted that a long time had passed since the relatives threatened the applicant or his family and that, in addition, the applicant could turn to the Iraqi authorities for protection against threats. The new allegations about his brother's death and his own divorce had not been substantiated and, in any event, the conclusions drawn by the applicant from these events were vague and speculative.

32. On the possibilities of internal relocation, the Government pointed out that there was nothing in the applicant's story that suggested that there was a threat against him in other parts of Iraq than Diyala or Baghdad. As a young man fit for work, he would be able to provide for himself even in an area of Iraq where he lacked a social network. In reply to a question posed by the Court, the Government, noting that Anbar governorate is a predominantly Sunni Arab area, held that it would be possible for him to gain admittance and settle there. Further, no reasons had emerged why his wife and child should not be able to reunite with him there.

2. The Court's assessment

(a) General principles

33. 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-...).

34. 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).

35. 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).

36. 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

37. 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).

38. 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.

39. 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 his former service in *Fedayeen* and membership of the Ba'ath party as well as the blood feud with some relatives would put him at real risk of being subjected to treatment prohibited by Article 3.

(c) The particular circumstances of the applicant

40. 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 Migration Court considered that the applicant's story was coherent and detailed and did not find any reason to question it. Consequently, as the national authorities had the benefit of seeing and questioning the applicant, the Court accepts his statements as to the incidents that had taken place and the threats directed against him and his family.

41. However, in regard to the possible consequences of the applicant's former membership of the Ba'ath party and *Fedayeen*, the Court first notes that these date back more than ten years. While persons with such affiliations were systematically attacked and killed by armed groups in the years following the fall of the Saddam Hussein regime, international sources

indicate that this is no longer the case (see §§ 21 and 22 above). Individuals with such profiles may still be at risk today, but it appears that this is so only in certain parts of Iraq and only if some other factors are at hand, such as the individual having held a prominent position in either organisation. The applicant has himself stated that he served as a private in *Fedayeen* and held a medium-level position in the Ba'ath party. Having regard to this, the long time that has passed since he left these organisations and the fact that neither he nor his family has received any threats because of this involvement for many years, the Court finds that it has not been shown that he risks ill-treatment in Iraq at the hands of former members of the organisations in question. Furthermore, there is no indication that the American military or the Badr militia should have a remaining interest in him. Nor is there any such indication in relation to the authorities of the present Iraqi government. In the latter respect, the Court additionally notes that the applicant applied for a passport to those authorities and had one issued in July 2010. Notwithstanding the possibility that the passport was obtained via a friend and the applicant's speculation that it was not issued by the proper authorities, the Court agrees with the Government that the fact that the applicant actually applied for it to the Iraqi authorities indicates that he did not perceive them as a great threat.

42. Turning to the relatives' blood feud against the applicant, the Court notes that the applicant's submissions are unsubstantiated and, as far as the new statements on events in 2012 are concerned, rather speculative. Acknowledging, however, that it may be very difficult to obtain evidence in such matters, the Court accepts the risk assessment made by the Migration Court and therefore concludes that he may face a risk of retaliation and treatment contrary to Article 3 from these relatives upon return to certain parts of Iraq, at least in Baghdad and Diyala where the events have taken place.

(d) The possibility of internal relocation

43. It remains to be determined whether the applicant would be able to relocate internally in Iraq.

44. 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).

45. The Court notes that the Migration Court and the Government have found that the threats against the applicant were geographically limited to Diyala and Baghdad and that he would be able to settle in another part of Iraq, for instance in Anbar governorate, which is the largest province in the country. In his reply to the Government's observations in the case, the applicant has claimed that he would not be safe in Anbar as his brother was killed 25 kilometres away from Anbar in April 2012. However, this claim remains unsubstantiated and, in any event, the circumstances of the killing and its possible links to the applicant are unknown. No other concerns with regard to a possible relocation to Anbar governorate have been alleged by the applicant. Moreover, while the Court acknowledges that internal relocation inevitably involves certain hardship, there is no indication that the general living conditions in Anbar governorate would be unreasonable for the applicant or in any way amount to treatment prohibited by Article 3.

(e) Conclusion

46. Having regard to the above, the Court concludes that, although the applicant would face a real risk of being subjected to treatment contrary to Article 3 of the Convention if returned to Baghdad or Diyala, he may reasonably settle in, for instance, the Anbar governorate, where it has not been shown that he will face such a risk. Neither the general situation in that governorate nor any of the applicant's personal circumstances indicates the existence of said risk.

Consequently, his deportation to Iraq would not involve a violation of Article 3.

II. RULE 39 OF THE RULES OF COURT

47. 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.

48. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above paragraph 4) must continue in force until the present judgment becomes final or until the Court takes a further decision in this connection.

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;

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 19 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Power-Forde is annexed to this judgment.

M.V.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE

For the reasons set out in my opinion in the case of *M.Y.H. and Others v. Sweden* (no. 50859/10, 27 June 2013), I voted against the majority view that Article 3 would not be breached in the event that the deportation order made in respect of the applicant were executed.

The Court accepts that the applicant, in this case, may face a risk of retaliation and treatment contrary to Article 3 from his relatives if he were to be returned to certain parts of Iraq, particularly, Baghdad and Diyala (§ 42) and a possible relocation to Anbar governorate is considered.

My dissent is based on the failure of the majority to test whether the requisite guarantees, as required by the Court's case law prior to a deportation based on internal flight options, were established in this case. The Court's case-law on internal flight relocation is clear. The relevant principles are articulated in *Salah Sheek v. the Netherlands*[1] and have been confirmed, more recently, in *Sufi and Elmi v. the United Kingdom*.[2] The Court considers that, as a precondition for relying on an internal flight alternative, certain guarantees have to be in place. These include: (i) that the person to be expelled must be able to travel safely to the area concerned; (ii) that the person concerned must be able to gain admittance to the area concerned; and (iii) that the person concerned must be able to settle in the area concerned. Furthermore, such guarantees must be in place at the point when the assessment of risk under Article 3 is being made by the Court.[3]

One need go no further than the first guarantee, namely, that of 'safe travel', to see that there is no mention anywhere in the judgment as to how the Government proposes to have the applicant travel to the area concerned. A consideration of the transit risks is all the more important having regard to the recent escalation in violence in Iraq. As in *M.Y.H. and Others v. Sweden*, this case raises a serious question concerning the application of the Convention and, in particular, the quality of the guarantees that must exist as a precondition for a state's reliance upon internal flight relocation as a means of circumventing the absolute nature of the prohibition contained in Article 3 of the Convention.

[1] *Salah Sheekh v. the Netherlands*, no. 1948/04, §§ 141-142, 11 January 2007.
[2] *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, 28 June 2011.
[3] *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007