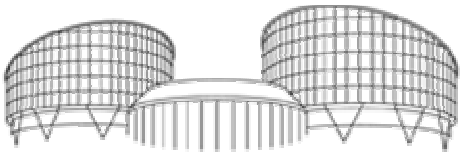

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF A.G.A.M. v. SWEDEN

(Application no. 71680/10 (/sites/eng/Pages/search.aspx#{"appno":["71680/10"]}))

JUDGMENT

STRASBOURG

27 June 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of A.G.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,
André Potocki,
Paul Lemmens,
Helena Jäderblom, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 28 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 71680/10 (/sites/eng/Pages/search.aspx#{"appno":["71680/10"]})) 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, who had been granted legal aid, was represented by Ms N. Norberg, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agents, Ms C. Hellner and 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 14 December 2010 the President of the Section to which the case had been allocated 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 20 September 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1968. He originates from Baghdad.

7. The applicant applied for asylum in Sweden on 5 November 2007. In support of his application, he submitted in essence the following. He is Christian and had been an active member of the Syrian-Orthodox Church. In Baghdad, he had lived with his wife and two children. In February 2007 his wife, who had worked as a university lecturer teaching Arabic, had received a threatening letter, demanding that she quit her job and stating that, as a Christian, she had no right to teach "the language of the Qur'an". She had not returned to work after receiving the letter. In April 2007 the applicant had been contacted by a man claiming to be a member of the Mujahedin. He had demanded a contribution of 10,000 U.S. dollars to help the group in its fight against the American troops. The applicant had responded that he did not have the money. One week later, the man had called again, saying that the applicant and his family had to convert to Islam if they did not pay the

amount. They had gone into hiding at a friend's home in another part of Baghdad for three weeks and had thereafter returned to their house. On the day of their return, 6 May 2007, three masked and armed men had tried to pull the applicant out of his car when he had been driving his son home. They had assaulted the applicant, taken his son and disappeared in a car. Three days later the son had been found on the street, strangled. The applicant had reported the murder to the police but had received no help as, according to the police, they could not even protect themselves. The applicant and his family had again moved in with friends in another part of the city. In June 2007 an unknown person had called the applicant, saying that he knew the applicant had a daughter and that she risked being subjected to the same treatment as his son. In September 2007 the family had fled to Syria. The applicant had returned to Iraq alone on 14 September 2007 and had left for Sweden on 25 October the same year. In August 2008 his wife had received a call from their previous neighbours, who had stated that the applicant and his family had been searched for at their house on several occasions. In October 2008 the family had been told that their house had been seized by the persons who had searched for them.

8. On 30 December 2008 the Migration Board (*Migrationsverket*) rejected the application. The Board pointed out that a year and a half had passed since the alleged incidents and that the security situation in Baghdad had improved during this period. It also stated that the threats against the applicant appeared to be limited to the area where the incidents had occurred and that the applicant could return to a different part of Baghdad.

9. The applicant appealed, adding that his wife had returned to Baghdad in April 2009 due to the precarious situation in Syria and that she had tried to return to her previous job. On 2 April 2009, however, she had been attacked and assaulted by two masked men, who had threatened to kill her as she had not obeyed their demand that she quit her job. She had reported the incident to the police but had received no help. She had then returned to Syria.

10. On 4 May 2010 the Migration Court (*Migrationsdomstolen*) upheld the decision of the Board. The court considered that the letter to the applicant's wife was clearly connected to her work and held that the applicant had failed to show that there was a connection between the letter, the kidnapping and death of his son in May 2007 and the assault of his wife in April 2009. The incidents rather seemed to be individual and separate acts of criminality related to the general security situation in Iraq at that time. Three years had passed since the initial incidents, during which time the level of sectarian violence had declined.

11. On 27 August 2010 the Migration Court of Appeal (*Migrations-överdomstolen*) refused leave to appeal.

12. In July 2010 the applicant's wife and his daughter, born in 2002, arrived in Sweden and applied for asylum. The wife essentially gave the same account of events as the applicant, adding that she had returned to Baghdad from Syria in search of a job for a second time in May 2010. She had then been kidnapped and raped by a group of men who had told her that this was her last warning. As she had been raped, it was excluded that her husband would want her back and the couple therefore intended to divorce.

13. On 22 September 2011 the Migration Board granted the wife and the daughter permanent residence permits in Sweden. The Board had regard to the incidents to which the wife had been exposed when returning to Baghdad on two occasions and concluded that, against the background of the serious violent conflict prevalent in the city, the wife would risk severe assaults if she returned there. Taking further account of her Christian beliefs and status as a single mother without a male network, it found that she had substantiated that she could not rely on the protection of the Iraqi authorities. The Board also considered that there was no reasonable internal flight alternative for her and the daughter.

14. On 15 December 2011 the Migration Board examined *ex officio* whether there were any impediments to the enforcement of the applicant's deportation order. It noted that a residence permit based on family ties could exceptionally be granted if the enforcement of a deportation order would have consequences for a child and it was clear that the family ties were so strong that the permit would have been granted if the application, as prescribed by the standard rules, had been lodged before the arrival in Sweden. It considered that this situation was not at hand in the applicant's case, as there was no information as to how the relation between the applicant and his wife and daughter would develop.

15. The applicant has thereafter made two requests for reconsideration, stating that, while he and his wife had been separated for a long time and had been in conflict, they had now decided to reunite. They had moved in with each other and the wife was pregnant with a child expected for October 2012.

16. On 8 May and 21 September 2012, respectively, the Migration Board again refused to reconsider the case. Taking into account the applicant's long separation from his wife and their ensuing conflict, it did not find the family ties to be strong enough to grant a residence permit based on an application lodged in Sweden.

II. RELEVANT DOMESTIC LAW

17. The basic domestic provisions applicable in the present case are set out in *M.Y.H. and Others v. Sweden* (no. 50859/10 (/sites/eng/Pages/search.aspx#{"appno":["50859/10"]}), §§ 14-19, 27 June 2013 – in the following referred to as "*M.Y.H. and Others*").

III. RELEVANT INFORMATION ABOUT IRAQ

18. Extensive information about Iraq can be found in *M.Y.H. and Others*, §§ 20-36.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

19. 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

20. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been invoked or established. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The applicant

21. The applicant claimed that, should he be returned to Baghdad or other parts of Iraq, he would face a real risk of being subjected to torture or other inhuman or degrading treatment. He pointed out that the Christian minority was still in a vulnerable position in southern and central Iraq and that the authorities there could not guarantee the safety for Christians.

22. The applicant referred to his statements made during the Swedish asylum proceedings. In his view, he had shown that he had been and further risked personal persecution and attacks due to his belonging to the Christian minority. He added that, while he had not been in Iraq since 2007, there was no indication that the threats against him were no longer relevant.

23. As regards internal relocation, the applicant submitted that the security situation in the Kurdistan Region had recently deteriorated. He also maintained that a reference person was required in order to settle in that region. He had no family or relatives there, and would thus not be able to present a reference to the Kurdish authorities. Consequently, relocation to the Kurdistan Region was neither possible nor reasonable for him.

24. The applicant also mentioned that, while he had been separated from and in conflict with his wife, they had recently reunited (thus, in early 2012) and were planning to live together.

(b) The Government

25. The Government acknowledged that country-of-origin information showed that the general security situation in the southern and central parts of Iraq was still serious and that Christians was one of the more exposed groups. Furthermore, recent information suggested that professionals such as academics, judges and lawyers, doctors and other medical personnel as well as athletes had been prime targets for various extremist groups. However, the Government maintained that there was no general need of protection for all Christians or for all members of other groups in Iraq and, that, consequently, assessments of protection needs should be made on an individual basis.

26. As to the applicant's personal situation, the Government submitted that the applicant had failed to substantiate that there was a connection between the threats he had received from the Mujahedin and the kidnapping of his son, on the one hand, and the threats and assaults to which his wife had been subjected, on the other. Taking into account also the five years that had passed since the applicant had left Iraq, the Government considered that it had not been established that he would run a personal risk of ill-treatment if returned to Iraq.

27. In any event, referring to international reports on Iraq as well as information obtained from the Migration Board, the Government contended that there was an internal flight alternative for the applicant in the three northern governorates of the Kurdistan Region. Allegedly, he would be able to enter without any restrictions or sponsor requirements into this region, which had been identified as the safest and most stable in Iraq, and he would be able to settle there, with access to the same public services as other residents. As to the applicant's personal circumstances in relation to the possibility to relocate internally, the Government stressed that he is an adult man, born in 1968, and that no information had emerged about his health or any other circumstances that indicated that he was not fit for work. Thus, he would be able to provide for himself, even in an area of Iraq where he lacked a social network.

28. The Government further asserted that the Migration Board and the courts had provided the applicant with effective guarantees against arbitrary *refoulement* and had made thorough assessments, adequately and sufficiently supported by national and international source materials. In the proceedings, the applicant had been given many opportunities to present his case, through interviews conducted by the Board with an interpreter present and by being invited to submit written submissions, at all stages assisted by legal counsel. Moreover, having regard to the expertise held by the migration bodies, the Government maintained that significant weight should be given to their findings.

2. The Court's assessment

(a) General principles

29. 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 (/sites/eng/Pages/search.aspx#{"appno":["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 (/sites/eng/Pages/search.aspx#{"appno":["37201/06"]}), §§ 124-125, ECHR 2008-...).

30. 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 (/sites/eng/Pages/search.aspx#{"appno":["46827/99"]}) and 46951/99 (/sites/eng/Pages/search.aspx#{"appno":["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 (/sites/eng/Pages/search.aspx#{"appno":["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).

31. 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 (/sites/eng/Pages/search.aspx#{"appno":["23944/05"]}), 8 March 2007; and *Hakizimana v. Sweden* (dec.), no. 37913/05 (/sites/eng/Pages/search.aspx#{"appno":["37913/05"]}), 27 March 2008).

32. 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 (/sites/eng/Pages/search.aspx#{"appno":["25904/07"]}), § 119, 17 July 2008).

(b) The general situation in Iraq

33. 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).

34. 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 is slowly improving. In the case of *F.H. v. Sweden* (no. 32621/06 (/sites/eng/Pages/search.aspx#{"appno":["32621/06"]}), § 93, 20 January 2009), the Court, having at its disposal information material upto 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.

35. However, the applicant did not only claim that the general situation in Iraq was too unsafe for his return, but also that his status as a member of the Christian minority would put him at real risk of being subjected to treatment prohibited by Article 3.

(c) The situation of Christians in Iraq

36. In the mentioned case of *F.H. v. Sweden*, following its conclusion that the general situation in Iraq was not sufficient to preclude all returns to the country, the Court had occasion to examine the risks facing the applicant on account of his being Christian. It concluded then that he would not face a real risk of persecution or ill-treatment on the basis of his religious affiliation alone. In so doing, the Court had regard to the occurrence of attacks against Christians, some of them deadly, but found that they had been carried out by individuals rather than organised groups and that the applicant would be able to seek protection from the Iraqi authorities who would be willing and able to help him (§ 97 of the judgment).

37. During the subsequent four years, attacks on Christians have continued, including the attack on 31 October 2010 on the Catholic church Our Lady of Salvation in Baghdad, claiming more than 50 victims. The available evidence rather suggests that, in comparison with 2008/09 (/sites/eng/Pages/search.aspx#{"appno":["2008/09"]}), such violence has escalated. While still the great majority of civilians killed in Iraq are Muslims, a high number of attacks have been recorded in recent years which appear to have specifically targeted Christians and been conducted by organised extremist groups. As noted by the UNHCR (see *M.Y.H. and Others*, § 25) and others, Christians form a vulnerable minority in the southern and central parts of Iraq, either directly because of their faith or because of their perceived wealth or connections with foreign forces and countries or the practice of some of them to sell alcohol. The UK Border Agency concluded in December 2011 that the authorities in these parts of the country were generally unable to protect Christians and other religious minorities (*M.Y.H. and Others*, § 26).

38. The question arises whether the vulnerability of the Christian group and the risks which the individuals face on account of their faith make it impossible to return members of this group to Iraq without violating their rights under Article 3. The Court considers, however, that it need not determine this issue, as there is an internal relocation alternative available to them in the Kurdistan Region. This will be examined in the following.

(d) The possibility of relocation to the Kurdistan Region

39. 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 (/sites/eng/Pages/search.aspx#{"appno":["8319/07"]}) and 11449/07 (/sites/eng/Pages/search.aspx#{"appno":["11449/07"]}), § 266, 28 June 2011, with further references).

40. 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. While there have been incidents of violence and threats, the rights of Christians are generally considered to be respected. As noted by various sources, large numbers of Christians have travelled to the Kurdistan Region and found refuge there.

41. 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 and the Finnish/Swiss report, which appears to rely heavily on the UNHCR's conclusions in this respect, *M.Y.H. and Others*, §§ 30 and 35 respectively). However, the difficulties faced by some at the KRI checkpoints do not seem to be relevant for Christians. This has been noted by, among others, the UNHCR. Rather, members of the Christian group are given preferential treatment as compared to others wishing to enter the Kurdistan Region. As stated by a representative of an international organisation and the head of Asaysih, the KRI general security authority, to investigators of the Danish/UK fact-finding mission, this is because

Christians are at particular risk of terrorist attacks in southern and central Iraq and as the Christians are not considered to pose any terrorist threat themselves (at 4.34 and 8.19 of the report, *M.Y.H. and Others*, § 36).

42. Moreover, while Christians may be able to enter the three northern governorates without providing any documentation at all (see Danish/UK report, at 4.34), in any event 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 (*M.Y.H. and Others*, § 31) and the UK Upper Tribunal in the recent country guidance case of *HM and others* (*M.Y.H. and Others*, § 34), 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. In regard to the need for a sponsor resident in the Kurdistan Region, the Upper Tribunal further concluded, in the case mentioned above, that no-one was required to have a sponsor, whether for their entry into or for their continued residence in the KRI. It appears that the UNHCR is of the same opinion as regards entry, although its statement in the Guidelines directly concerns only the requirements of a tourist (*M.Y.H. and Others*, § 30). The Finnish/Swiss report states that Christians may be able to nominate senior clerics as sponsors (*M.Y.H. and Others*, § 35); thus, they do not have to have a personal acquaintance to vouch for them.

43. 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 a Christian 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 the other parts of Iraq.

44. In conclusion, therefore, the Court considers that relocation to the Kurdistan Region is a viable alternative for a Christian 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.

(e) The particular circumstances of the applicant

45. It remains for the Court to determine whether, despite what has been stated above, the personal circumstances of the applicant would make it unreasonable for him to settle in the Kurdistan Region. In this respect, the Court first notes that the applicant's account was examined by the Migration Board and the Migration Court, which both gave extensive reasons for their decisions that he was not in need of protection in Sweden. The applicant was able to present the arguments he wished with the assistance of legal counsel and language interpretation.

46. As regards the suffering which the applicant and his family experienced in Iraq, the Court notes, without underestimating their serious nature, that they all occurred in Baghdad. It has not been shown that he would be at risk in the Kurdistan Region, and the applicant's misgivings as to the possibility for him to settle there are not supported by the information on the KRI available to the Court.

47. The Court notes that the applicant's wife and daughter have been granted permanent residence permits in Sweden and that the wife was expected to give birth to another child in October 2012. The applicant's deportation would inevitably separate the applicant from his wife and children, at least temporarily, but the applicant may apply for a residence permit based on family ties upon his return to Iraq. It should further be borne in mind that the applicant has not complained, at any stage of the proceedings in the present

case, of a violation of his right to respect for his family life. Should a future request for a residence permit based on family ties be rejected by the Swedish authorities, he is free to submit a new application to the Court under Article 8 of the Convention, supplying the Court with all the information necessary for it to examine whether his right under that provision has been respected.

(f) Conclusion

48. Having regard to the above, the Court concludes that, although the applicant, as Christian, belongs to a vulnerable minority and irrespective of whether he can be said to face, as a member of that group, a real risk of treatment proscribed by Article 3 of the Convention in the southern and central parts of Iraq, he may reasonably relocate to the Kurdistan Region, where he will not face such a risk. Neither the general situation in that region, including that of the Christian minority, nor any of the applicant's personal circumstances indicate 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

49. 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.

50. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see § 4 above) 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 five votes to two 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 27 June 2013, 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 separate opinion of Judge Power-Forde joined by Judge Zupančič is annexed to this judgment.

M.V.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE JOINED BY JUDGE ZUPANČIČ

For the reasons set out in my dissenting opinion in the case of *M.Y.H. and Others v. Sweden*, I voted against the majority in finding that Article 3 would not be breached in the event that the deportation order made in respect of this applicant were to be executed. My dissent was based on the failure of the majority to test whether the requisite guarantees required by the Court's case law prior to a deportation based on internal flight options, were established in this case.

However, apart from that question of principle in relation to internal flight options, I have serious doubts as to whether the applicant's deportation would, in any event, be in compliance with Article 3 of the Convention.

The applicant is a 45-year-old man from Baghdad who was and is an active member of the Syrian Orthodox church. He lived with his wife and two children in Baghdad. He has had a particularly severe history of suffering during the war in Iraq because of his religious belief. In February 2007 his wife received threatening letters warning her to leave her job teaching Arabic at an Iraqi university. His family was required to go into hiding. His son was abducted and strangled and his remains were dumped on a street. The police authorities were informed but little was done. A similar threat was then made on his daughter's life. Eventually, the applicant and his family fled to Syria in September 2007 and, thereafter, the applicant went to Sweden to seek asylum.

In the meantime, and having regard to the deteriorating situation in Syria, the applicant's wife returned to Baghdad in 2010 in search of work. She was kidnapped, attacked and raped by a group of men. She finally came to Sweden with her daughter where both of them were granted asylum.

Clearly, the applicant and his wife and daughter were separated for some time, not least, as a consequence of the legacy of war in their home country. However, it is equally clear that the applicant has since reunited with his wife and daughter and that they have been living together for some time. A third child has been born of their marriage in October 2012.

Having regard to what the applicant has already endured—the loss of his home, the death of his son, the flight of his family, the assaults upon his wife, the fracturing of their relationship and the ultimate reunification of his family—the suffering that would be imposed upon him by separating him, once again, from his family and his newborn child and by forcing him to return to Iraq—would, to my mind, cross the threshold of suffering required by Article 3.

I appreciate that the applicant's claim is not brought under Article 8 of the Convention. I also recognise that the threat under Article 3 must be assessed in terms of future risk. However, when assessing future risk one has to have regard to the individual circumstances of each case and to the level of suffering to which an individual has already been exposed. Such previous experience may be sufficient to break a person's moral or psychological resistance in the event that he or she is further exposed to additional suffering.

To my mind, given what this applicant has already endured it would be inhuman and degrading to separate him once again from his immediate family, which he has finally managed to hold together despite the trauma of war. The additional suffering that this would entail would be sufficient, to my mind, to break his moral and psychological resistance and would extend beyond the level permitted by Article 3 of the Convention.

The expulsion of a person on the basis that internal flight relocation is available may, in altogether different circumstances, be compatible with Article 3. However, having regard to the circumstances of this applicant's case, his expulsion to Iraq would not, in my view. be compatible with that Article of the Convention.

It is formalistic in the extreme to expect that the applicant should be forced to leave his wife and children, once again, purely for the purposes of travelling to the Kurdish region so that, from there, he may contact a Swedish Embassy and apply for family reunification.

Therefore, both for the reasons set out in my dissenting opinion in *M.Y.H. and Others v Sweden* and on the merits of this case, I consider that the applicant's removal to Iraq would violate Article 3.