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

FIRST SECTION

# DECISION

Application no. 31827/18
K.S.
against Sweden

The European Court of Human Rights (First Section), sitting on 16 December 2020 as a Committee composed of:

Alena Poláčková, *President,*
Péter Paczolay,
Gilberto Felici, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 9 July 2018,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr K.S., is an Iraqi national who was born in 1953 and lives in Västerås. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4). He was represented before the Court by Ms M. Waltré, a lawyer practising in Stockholm.

2. The Swedish Government ("the Government") were represented by their Agent, Ms Helen Lindquist, of the Ministry for Foreign Affairs.

### I. THE CIRCUMSTANCES OF THE CASE

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

## A. First set of asylum proceedings

4. In 2007 the applicant applied for asylum in Sweden together with his wife and two children. They stated that they risked persecution upon return to Iraq on account of the applicant's involvement in a political organisation working for democracy. They submitted, *inter alia,* that the applicant's brothers had been arrested and that his bodyguards had been killed.

5. On 23 December 2008 the Migration Agency (*Migrationsverket*) rejected their request and ordered their deportation to Iraq. The Agency found that the applicant's story was vague and lacked detail. Furthermore, the applicant and his family had not been subject to any direct threats or violence and the applicant had not made probable that his brothers' arrest or the death of his bodyguards had any connection to him. Moreover, the Agency noted that the applicant had limited knowledge of the organisation in which he alleged that he had held a high position and that it was unlikely that the organisation, which allegedly was a target for the sitting regime, would have been able to operate openly in Baghdad in the way described by the applicant.

6. On 7 July 2009 the decision was upheld by the Migration Court (*Migrationsdomstolen*) and on 10 September 2009 the Migration Court of Appeal (*Migrationsoverdomstolen*) refused leave to appeal.

7. In 2010 the applicant requested that the enforcement of the deportation order be stayed and that he be granted a new examination. He submitted that the families of the murdered bodyguards wanted vengeance on him and his family. He also submitted that an arrest warrant had been issued against him. His request was rejected by the Migration Agency and the Migration Court rejected his appeal.

## B. Previous case before the Court

8. In 2011 the applicant and his family lodged an application with the Court, accompanied by a request for interim measures under Rule 39 of the Rules of Court. They claimed that they risked ill-treatment upon return to Iraq on account of the applicant's past political activities and on account of threats made to the applicant by the families of the bodyguards who had been murdered. The Court rejected the request for interim measures and, subsequently, declared the application inadmissible.

## C. Second set of asylum proceedings

9. On 21 September 2015, after his deportation order had become statute-barred, the applicant lodged a new request for asylum. He submitted the same grounds for asylum as in the previous proceedings and added that he also risked ill-treatment because he had worked for a government

authority under Saddam Hussein's regime. Furthermore, he stated that he risked ill-treatment because he was a Sunni Muslim and that he was particularly vulnerable since he had no network in Iraq and suffered from health problems. He claimed that he was suffering from diabetes and complications following a stroke.

10. On 4 August 2017 the Migration Agency rejected his request and ordered his deportation to Iraq. The Agency found that the prevailing security situation in Baghdad was not so severe that there were substantial grounds to believe that all civilians there would face a real and personal risk of being subjected to indiscriminate violence. The Agency further found that the applicant had not substantiated that upon return there he personally would face such a real risk of being subjected to indiscriminate violence.

In regard to the alleged risk of persecution because of his political activities and the alleged arrest warrant, the Agency found no reason to depart from its earlier conclusion. As to the risk of ill-treatment on account of his work for the previous regime, the Agency noted that he had not submitted that he had been persecuted because of this when the regime fell or that he had received any threats because of this. Therefore, he had not made probable that he risked persecution on this ground. In regard to the alleged threats from the families of the bodyguards, the Agency noted that it had previously found that the applicant had not shown that there was a connection between him and the murder of the bodyguards. The Agency further noted that it was unlikely that the families of the bodyguards would wait a year after the murder before issuing threats if they thought there was a connection. Therefore, he had not shown that he risked ill-treatment on account of this. The Agency also found that his Sunni religion was not, in itself or in combination with other circumstances, sufficient to show that he risked persecution, noting that he had not previously been subject to any individualised violence or threats on account of his religion.

As to his state of health, the Agency found that he had not substantiated that his medical condition was of a life-threatening nature or constituted a particularly serious disability. He had also not plausibly demonstrated that it would develop into a life-threatening condition upon return to Iraq. Therefore, the Agency concluded that the applicant's ill-health could not be considered to constitute such exceptionally distressing circumstances that would warrant the granting of a residence permit. The Agency also found that he could not be considered to be dependent on his son in Sweden in such a way that the enforcement of the expulsion order would be contrary to Article 8 of the Convention. The Agency balanced the applicant's living situation in Sweden against the situation in which he was expected to find himself upon return to Iraq and found that the living conditions he would encounter in Iraq could not be considered to constitute exceptionally distressing circumstances. The Agency concluded by stating that it could

not be considered to contravene Sweden's commitments under international conventions to deny the applicant a residence permit.

11. The applicant appealed to the Migration Court, maintaining his claims and adding certain information with regard to his state of health. He submitted, *inter alia,* a medical certificate dated 14 November 2017 stating that he had been treated for the following conditions: vascular dementia, hypertension, lipid disorder, diabetes mellitus type 2, cerebrovascular disease and transient ischemic attack. He submitted that he could not return to Iraq as all of his family members lived in Sweden and his son helped him obtain his medicine every week. He stated that his memory had been affected negatively and that he would not survive in Iraq without his family.

12. On 29 November 2017 the Migration Court rejected his appeal. The court found that he had not made probable that he risked ill-treatment because of his past political activities or from the relatives of the bodyguards. In regard to the risk of ill-treatment on account of his religion and his work under the previous regime, the court found that there were no concrete indications that there was an individual threat towards him for any of these reasons. Furthermore, the court found that country information did not give sufficient support for the conclusion that he would risk ill-treatment on these grounds. The fact that he had no network in Iraq did not change the court's conclusions in this regard.

Moreover, the court found that the applicant's state of health did not amount to such exceptionally distressing circumstances that would warrant the granting of a residence permit and that it would not contravene Sweden's commitments under international conventions to enforce the applicant's deportation order. Nor could it be considered that the applicant, during his period of residence in Sweden, had formed such an attachment to Sweden that an enforcement of the deportation order would be disproportionate under Article 8 of the Convention.

13. On 12 January 2018 the Migration Court of Appeal refused the applicant leave to appeal.

### D. Request to stay the enforcement of the deportation and to grant a new examination

14. On 18 April 2018 the applicant requested that the Migration Agency stay the enforcement of the deportation order and grant him a new examination on the ground that there were impediments to the enforcement of the deportation. He submitted mainly the following. His memory loss had increased rapidly during recent years after he suffered multiple strokes and transient ischemic attacks. A dementia investigation had been conducted, which showed moderate to severe vascular dementia. Since August 2017, his condition had further deteriorated. He was in need of daily support from his family. An enforcement of his deportation would thus pose a direct

threat to his life as he would not be able to recognise and respond to risks that he could encounter upon return, nor would he be able to cater for his basic daily needs on his own. His cognitive functions were now so poor that he would not even understand where he was going or why. Since he had no family left in Iraq there was no one to help him seek the help that he would need upon return. Furthermore, he had no family that could assist him upon arrival at Baghdad Airport. In support of his claims, the applicant submitted two new medical certificates, dated 30 November 2017 and 17 January 2018. In the latter medical certificate it was indicated that there was no further medical treatment available which could improve the applicant's dementia.

15. On 15 October 2018 the Migration Agency rejected his request, finding that no new circumstances had emerged that constituted impediments to the enforcement of the deportation order or reasons to grant a new examination.

The Agency found that the applicant had not presented any new circumstances which made it probable that he risked persecution or treatment contrary to Article 3 of the Convention upon return. Nor was there any reason to assume that the Iraqi authorities would not be willing to allow him entry upon his return. The applicant's medical condition was not, in itself, an impediment to the deportation since it was not of such a nature to make it impossible, in practice, to deport him. While serious ill-health may also constitute other special grounds for not enforcing the order, the Agency concluded that it did not follow from the medical certificates submitted that the applicant would be in need of medical treatment that did not exist in Iraq. Nor did the medical certificates show that his state of health had deteriorated to such an extent that there were reasons to make a different assessment than had been made in the previous proceedings in regard to his stated medical reasons for a residence permit.

Moreover, the Agency found that the general situation in Baghdad was not sufficiently serious, in itself, to prevent the applicant's deportation there and that his statements regarding the risks that he might face in Baghdad because of his ill-health were merely speculation, unsupported by any concrete circumstances. The fact that he had no relatives in Iraq had already been taken into account in the previous proceedings. His ill-health had also been assessed in the previous proceedings and, as had already been noted, his new submissions were not enough to justify departing from the earlier conclusions.

16. On 9 November 2018 the Migration Court rejected his appeal. The court agreed with the Agency that there were no new circumstances that could be deemed to amount to lasting impediments to the enforcement of the deportation order and stated that the applicant's cited state of health had not changed in such a way that an enforcement of the deportation would be contrary to Article 3 of the Convention.

17. Following the granting of Rule 39 under the Rules of the Court, the Migration Agency decided on 13 December 2018 to stay the enforcement of its decision to expel the applicant until further notice.

## II. RELEVANT DOMESTIC LAW

18. Under Chapter 5, section 6, of the Aliens Act (*utlänningslagen*, Act no. 2005:716), if a residence permit cannot be granted on any other ground, a residence permit may be issued in cases where an overall assessment of the alien's situation reveals such exceptionally distressing circumstances that he or she should be allowed to stay in Sweden. In making this assessment, particular attention is to be paid to the alien's state of health, their adaptation to Sweden and the situation in their country of origin.

19. At the end of 2015, the Government announced that Swedish asylum legislation needed to be changed for a limited period to bring it into line with the minimum level stipulated in EU law and international conventions. Thus, on 20 July 2016, the Act on Temporary Restrictions on Obtaining a Residence Permit in Sweden (*lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*, Act no. 2016:752, hereinafter "the Temporary Act") entered into force.

20. Under section 11 of the Temporary Act, residence permits on grounds of exceptionally distressing circumstances under Chapter 5, section 6, of the Aliens Act may only be granted if refusing entry to or expelling the person would contravene a Swedish obligation under a convention that has been transposed into Swedish legislation. Such a permit should be temporary and valid for thirteen months (section 12). If a new permit is granted, it should be valid for two years, with some exceptions.

## III. RELEVANT COUNTRY INFORMATION ON IRAQ

21. According to the most recent Home Office Country Policy and Information Note on Iraq: Security and Humanitarian Situation, of November 2018:

> "Security situation
>
> 2.3.32 Since 2014, security incidents, fatalities and injuries have significantly declined across all governorates. The number of security incidents are at the lowest for fifteen years. Since the summer of 2014, when Daesh captured Mosul (Iraq's second-biggest city), the six governorates worst affected by violence – Anbar, Baghdad, Diyala, Kirkuk, Ninewah and Salah al-Din – have overall seen consistent and significant decline in security incidents and civilian fatalities and injuries; the current numbers are typically tens of times lower than they were in mid-2014.
>
> 2.3.35 For the reasons given above, there are strong grounds supported by cogent evidence to depart from AA's assessment that any areas of Iraq engage the high threshold of Article 15(c). This is not to say that the security situation is no longer serious; it is that there is no longer a high level indiscriminate violence anywhere in

Iraq such that substantial grounds exist for believing that an applicant would, solely by being present there, face a real risk which threatens their life or person."

22. The UK Home Office Country Policy and Information Note on Iraq: Medical and healthcare issues, of May 2019 provides the following:

"1.1.2 A report produced by the World Bank Group in February 2017 entitled Iraq – Systematic Country Diagnostic' stated the following:

Iraq's health care capacity has been severely undermined by the effects of various wars, international sanctions, sectarian violence, political instability, and fiscal pressures.

Access to health services is limited, and geographical disparities are significant. In the public sector, health services are provided through a network of primary health care centers (PHCC) and public hospitals at very low charges. The PHCCs provide preventive and basic curative services. The main centers are located in urban areas with smaller centers in rural areas. Poor organization and shortages of staff and medications are significant impediments to delivering adequate services in the PHCCs. Despite this, the PHCCs are recognized as very important sources of health care provision, particularly for the poor.

For secondary and tertiary care, patients are referred from PHCCs to hospitals, although it is estimated that only about 40 percent of Iraqis have access to these referral services because of the inadequate number and uneven distribution of public hospitals. Secondary and tertiary care are also provided by small private hospitals. Since there are no health insurance schemes in Iraq, the costs of private health care must be met out-of-pocket, which is well beyond the reach of many Iraqis.

1.1.3 The December 2016 joint report produced by the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the High Commissioner for Human Rights (OHCHR) entitled 'Report on the Rights of Persons with Disabilities in Iraq' noted:

In its 2015 annual report, the Ministry of Health refers to a total of 2,680 Primary Health Care Centres, 1,330 main centres and 1,350 sub centres. These offer basic integrated and comprehensive services in the preventive and therapeutic fields. An additional 128 centres have been established following the implementation of a new family health care system in 2013. As for secondary and tertiary health care, focusing on curative services and rehabilitation, there are a total of 253 government hospitals, 119 private hospitals and 2,964,696 specialized centres, with a ratio of 8.5 physicians per 10,000 people.'"

# COMPLAINTS

23. The applicant complained that his deportation to Iraq would expose him to a real risk of being subjected to treatment prohibited by Article 3 of the Convention.

24. He further complained that his deportation would violate his right to family life as guaranteed by Article 8 of the Convention, since it would separate him from his children in Sweden, on whom he was dependent.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that his deportation to Iraq would expose him to a real risk of being subjected to treatment prohibited by Article 3 of the Convention, which reads as follows:

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

### A. Submissions by the parties

26. The Government noted that the applicant had previously, in 2011, lodged an application with the Court concerning the same matter. The Court had rejected the request for interim measures and, subsequently, had declared the application inadmissible. In view of this, the Government left it to the Court to decide whether some parts of the applicant's present complaint should be declared inadmissible on that ground.

27. As to the merits, the Government noted that the applicant primarily submitted that he would be at risk of ill-treatment in Iraq on grounds linked to his health. However, the medical certificates submitted did not show that the applicant would need medical treatment that was unavailable in Iraq. The applicant's state of health was not considered to be of a life-threatening nature or to constitute a particularly serious disability. This case differed from the *Paposhvili v. Belgium* case since it did not raise "serious doubts" regarding the impact of removal on the applicant as appropriate care was available for the applicant in Iraq. Therefore the national authorities had not been under an obligation to obtain guarantees from the Iraqi authorities that the applicant would actually receive appropriate treatment. Moreover, the applicant's relatives could support him from Sweden in financial and other ways.

28. The Government further maintained that all Iraqi people were entitled to health care. The mere circumstance of a person having a disability did not necessarily mean that a need for protection existed. The applicant's medical condition – vascular dementia – did not constitute a factor which in itself made the applicant particularly vulnerable. There was nothing in the current country of origin information to indicate that a person with the applicant's state of health would risk treatment constituting grounds for protection within the meaning of the Convention. In any event, the applicant's health would be taken into account at the time of his removal and the mode of removal would be chosen accordingly. This complaint should therefore be declared inadmissible for being manifestly ill-founded.

29. The applicant argued that his health had deteriorated after the termination of his last asylum proceedings. As concerned his current state of

health, the Government had not put any effort into the analysis of the applicant's situation upon return, nor made an accurate analysis of his health.

### B. The Court's assessment

30. The Court observes that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012, and *F.G. v. Sweden* [GC], no. 43611/11, § 111, 23 March 2016). However, expulsion 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 concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008, and *Tarakhel v. Switzerland* [GC], no. 29217/12, § 93, ECHR 2014 (extracts)).

31. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to Iraq, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 108, Series A no. 215, and *F.G. v. Sweden*, cited above, § 114).

32. As to the general human rights situation in Iraq, according to the most recent country of origin information (see paragraph 21 above), the situation is not of such a nature that there would be a violation of the Convention if the applicant were to return to that country (see also *J.K. and Others v. Sweden* [GC], no. 59166/12, § 110, 23 August 2016). The Court has therefore to establish whether the applicant's personal situation is such that his return to Iraq would contravene Article 3 of the Convention.

33. The Court acknowledges that, in principle, an applicant has to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *F.G. v. Sweden*, cited above, § 120, and *J.K. and Others v. Sweden*, cited above, § 91).

34. The Court notes that, in the present case, the applicant's complaints concerning alleged torture or ill-treatment by the Iraqi authorities or private parties were already declared inadmissible by the Court in 2011 (see paragraph 8 above). The applicant's current complaints in these respects are

thus essentially the same as those already examined by the Court and are to be rejected on this ground.

35. The applicant's current complaints under Article 3 of the Convention are more concentrated on his current health problems and the alleged lack of medical care and nursing in Iraq. The applicant argued that he was in need of daily support from his family as he was not able to cater for his basic daily needs on his own. Since he had no family left in Iraq, there was no one to help him seek the assistance that he would need upon return there. Furthermore, he had no family that could assist him upon arrival at Baghdad Airport. However, the Government considered that the applicant's state of health was not of a life-threatening nature, nor did it constitute a particularly serious disability. There were no "serious doubts" regarding the impact of removal on the applicant as appropriate care was available for him in Iraq.

36. The Court finds it established, on the basis of the medical certificates submitted to the case file, that the applicant suffers from vascular dementia which is worsening. The Government does not dispute that. Moreover, it appears from the medical certificate issued on 17 January 2018 that, according to a doctor specialising in dementia, there was no further medical treatment available which could improve the applicant's condition. It is thus not the alleged lack of medical care as such which is at stake in this case but rather the alleged lack of a proper long-term care facility in which the applicant could be placed in Iraq.

37. The Court agrees with the Government that there are both private and public care institutions in Iraq. This is confirmed by the recent country information cited above (see paragraph 22 above). In addition, it must also be possible for the applicant's relatives to hire external help to assist the applicant in his daily routines. This case therefore differs from the case *Paposhvili v. Belgium* in that in the present case no substantial grounds have been shown for believing that the applicant, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in Iraq or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy (see *Paposhvili v. Belgium* [GC], no. 41738/10, § 183, 13 December 2016).

38. The fact that the applicant needs assistance in his daily life does not show as such that there are substantial grounds for believing that he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if returned to Iraq (see *Senchishak v. Finland*, no. 5049/12, § 46, 18 November 2014). Even if the applicant's state of health may raise some doubts, it does not seem to act as a bar to removal in the applicant's case given that care institutions exist in Iraq and the applicant's transfer there can be organised in such a manner that he will be accompanied during the journey and upon arrival. As no further medical treatment capable of improving the applicant's health condition is available

anywhere, the applicant's removal from Sweden is not likely to cause any rapid deterioration of his health on account of any alleged lack of medical treatment in Iraq (see *A.S. v. Switzerland*, no. 39350/13, § 36, 30 June 2015). There are thus no such personal circumstances which would prevent the applicant's deportation to Iraq.

39. Furthermore, regard must also be had to the concrete enforcement of the applicant's removal. The Court notes that, according to information provided by the Government, the executing authority will examine, in the event of execution of the deportation order, whether the state of health of the deported person affects the deportation. In such cases the transportation can be, and has been, organised in another manner (see *S.B. v. Finland* (dec.), no. 17200/11, 24 June 2014). The Court is therefore assured that the applicant's health is taken into account at the time of his removal and that the mode of removal is chosen accordingly.

40. Having regard to all of the above, the Court concludes that there are no substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention if expelled to Iraq in the current circumstances. Accordingly, this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

41. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant further complained that his deportation would violate his right to family life as guaranteed by Article 8 of the Convention, since it would separate him from his children in Sweden, on whom he was dependent.

43. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

### A. Submissions by the parties

44. The Government noted that the applicant was divorced and that he had stayed in contact only with his adult son who was living in Sweden with his own family. The applicant did not currently reside at his son's address. Even assuming that the applicant was dependent on outside help in his daily life, it did not mean that he was necessarily dependent on his son or that

care in Sweden was the only option. Health care was available in Iraq and the applicant's son could support him financially and otherwise from Sweden. There were thus no such additional factors of dependence other than normal ties of affection between the applicant and his son and there was thus no family life between them within the meaning of Article 8 of the Convention.

45. Should the Court find otherwise, the Government maintained that the interference with the applicant's right to respect for family life was necessary in a democratic society. The applicant's son had previously been granted a residence permit on the basis of family ties to his wife. There were thus no grounds to prevent the applicant and his son from reuniting in the country of origin. The fact that the applicant had been in Sweden since 2007 was not decisive since he had been ordered to leave the country, with a final decision, already in 2009 and again in 2018. A fair balance was thus struck between the applicant's personal interests and the public interest. This complaint should therefore be declared inadmissible for being manifestly ill-founded.

46. The applicant did not submit any comments.

### B. The Court's assessment

47. The Court notes that, in the Convention case-law relating to expulsion and extradition measures, the main emphasis has consistently been placed on the "family life" aspect, which has been interpreted as encompassing the effective "family life" established in the territory of a Contracting State by aliens lawfully resident there, it being understood that "family life" in this sense is normally limited to the core family (see *Slivenko v. Latvia* [GC], no. 48321/99, § 94, ECHR 2003-X; and, *mutatis mutandis*, *Marckx v. Belgium*, 13 June 1979, § 45, Series A no. 311). The Court has, however, also held that the Convention includes no right, as such, to establish one's family life in a particular country (see, *inter alia*, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 68, Series A no. 94; *Gül v. Switzerland*, 19 February 1996, § 38, *Reports of Judgments and Decisions* 1996-I; and *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX).

48. The Court also reiterates the principle that relationships between parents and adult children do not fall within the protective scope of Article 8 unless "additional factors of dependence, other than normal emotional ties, are shown to exist" (see *Emonet and Others v. Switzerland*, no. 39051/03, § 35, 13 December 2007, and *Senchishak,* cited above, § 55). Therefore, the existence of "family life" cannot be relied on by applicants in relation to their elderly parents, adults who do not belong to the core family, unless the latter have been shown to be dependent on the members of their family (see *Slivenko*, cited above, § 97).

49. The Court finds it established in the present case that the applicant came to Sweden in 2007 together with his wife and two children, before which he lived in Iraq. Subsequently the applicant divorced his wife and his adult son and daughter established their own families. The family life between the applicant and his son had thus been interrupted when the son became an adult, moved to his own home and started his own family. According to the Government, the applicant is currently living at a different address to his son. The fact that the applicant has previously lived at the same address as his son does not create a relationship between the applicant and his son which could amount to "family life" within the meaning of Article 8 of the Convention. This issue cannot be decisive as the applicant was not lawfully resident in Sweden during this time and he must have been aware of his insecure situation created by the fact that his status was not regularised in Sweden (see *Senchishak,* cited above, § 56).

50. As to dependency, the Court notes that the applicant has had several medical issues since coming to Sweden in 2007. His legal status in Sweden was never regularised but final deportation orders were issued against him in 2009 and 2018 respectively. Even assuming that the applicant is dependent on outside help in order to cope with his daily life, this does not mean that he is necessarily dependent on his son who lives in Sweden, or that care in Sweden is the only option (see *Senchishak,* cited above, § 57). As mentioned above, there are both private and public care institutions in Iraq, and it should also be possible to hire external help. Moreover, as noted by the Government, the applicant's son can support him financially and otherwise from Sweden. With a view to the Court's case-law, the Court therefore considers that no "additional factors of dependence other than normal ties of affection" exist between the applicant and his son. A fair balance was thus struck between the competing interests at stake.

51. Accordingly, the complaint under Article 8 of the Convention must be rejected as being manifestly ill-founded and be declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 21 January 2021.

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| Renata Degener<br>Deputy Registrar | Alena Poláčková<br>President |