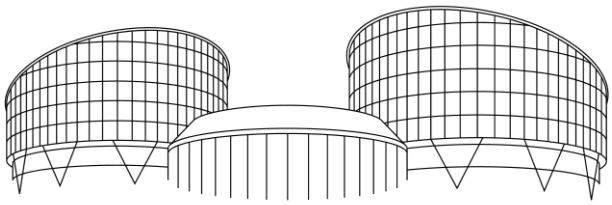

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF S.A. v. SWEDEN

(Application no. 66523/10)

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 S.A. 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. 66523/10) 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, Mr S.A. ("the applicant"), on 12 November 2010. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr K. Hellström, legal adviser to the Swedish red Cross in Malmö. The Swedish Government ("the Government") were represented by their Agent, Mr A. Rönquist, of the Ministry for Foreign Affairs.

3. The applicant alleged that he would be killed or ill-treated if returned to Iraq due to honour-related issues.

4. On 16 November 2010 the President of the Section to which the case had been allocated decided to apply Rule 39, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings that the applicant should not be deported to Iraq until further notice.

5. On 12 September 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is an Iraqi national who was born in 1979. He is currently in Sweden.

7. On 18 January 2008 the applicant applied for asylum in Sweden. Before the Migration Board (*Migrationsverket*), the applicant submitted that he is a Sunni Muslim from Nasriya, located in the Thi-Qar district in Southern Iraq. He had been in a relationship with a woman who was a Shiah Muslim. He had asked her family for permission to marry her on three occasions in 2007, but had been refused because he was a Sunni Muslim. After his first proposal, two of the woman's cousins had assaulted him and warned him against proposing again. In late 2007 the couple had decided to elope. They had travelled to Baghdad, where they had stayed with a relative of the applicant for one week. They had falsely told their families that they had married and the woman had returned to her parents' house, after having been promised that the family would allow the marriage. Meanwhile, the applicant had returned home with his brothers. Some days later, four unidentified persons had shot at their house, but had left after the applicant's brother had fired back. The next day the applicant had driven past the woman's house, and had discovered that she had been killed. Her hair and her hand with the engagement ring had been hung on the front door of her house, as a sign that the family had cleansed their honour. The woman had been killed by her father and two of her cousins. Of the woman's cousins one was involved with the Badr Organisation and another with the Al Daawa party, and they had requested the militias to harass the applicant. His family's house had been visited daily by the woman's relatives, and they had left a threatening letter stating that they wanted his head. They had also entered his family's house to look for him. The applicant had left the region after a few days in hiding. In 2008, his father had received a threatening letter, urging him to surrender the applicant or else leave his home. His mother had been shot and killed by relatives of the woman in January 2009. The shot had been aimed at another relative, but had hit her instead. Their house had subsequently been burnt down.

8. On 22 June 2009 the Migration Board rejected the applicant's claim for asylum and ordered his deportation to Iraq. It noted that the first shooting at the applicant's home had been perpetrated by unknown persons. The Board further held that the applicant's claim that the woman's family had been responsible for the shooting was mere speculation on his part. The threatening letter addressed to his father was unsigned, while the one addressed to the applicant had not been submitted to the Board. It had not been made probable that the death of the applicant's mother was connected to him. The Board also noted that the police had contacted the woman's

family regarding the incidents, and that they had denied involvement. The woman's family had, according to the applicant's own statements, "washed away their shame" by killing the woman, and the Board therefore presumed that the family considered their honour to be restored. The Board further highlighted that the applicant had been offered protection by his own family and clan. Furthermore, he had been able to live in Baghdad for a certain period of time without being subjected to threats or violence.

9. The applicant appealed and added the following. His family had reported the events to the police, but the investigation had not led to any results. Members of his family, still residing in the area, had on several occasions noticed cars circling their house at night. Their neighbours had been asked about the applicant's whereabouts, and had been told to pass on the message that his mother's death was not enough, and that nothing short of the applicant's death would wash away the shame of the woman's family. The woman's family had also announced that they would kill the applicant's family if they could not find him. He had been in touch with the *mukhtar*, the village chief, who had told him that mediation had failed and advised him not to return.

10. The Migration Board contested the appeal and contended that the applicant could hardly be said to have damaged the honour of the woman's family – if any honour was offended it was his own family's. If the woman's family was indeed persecuting him, this should be considered as pure revenge. If that were the case, the applicant should be able to avail himself of the authorities' protection. The Migration Board noted that there was no information regarding the police investigation, but it could be assumed that it would be duly carried out. According to the Board, internal relocation was an option.

11. On 21 January 2010 the Migration Court (*Migrationsdomstolen*) in Stockholm upheld the Migration Board's decision. The court held that what the applicant had been subjected to was normally a matter for the domestic authorities. According to the court, there was no indication that the domestic authorities lacked the willingness or ability to protect their inhabitants. Therefore, the applicant was not considered to be in need of international protection.

12. On 17 March 2010 the Migration Court of Appeal (*Migrations-överdomstolen*) refused leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Aliens Act

13. 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).

14. 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).

15. 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.

16. 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).

17. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This is the case where new circumstances have emerged which indicate that there are reasonable grounds for believing, *inter alia*, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced (Chapter 12, section 18). If a residence permit cannot be granted under this criterion, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the

basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, sections 1 and 2, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not having done so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, section 19).

18. 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.

B. Case-law on honour-related violence

19. On 9 March 2011 the Migration Court of Appeal delivered a judgment concerning an alleged risk of honour-related crimes (MIG 2011:6). The applicants, a young couple from the Kurdish parts of Iraq, claimed to have had an illicit relationship which had resulted in their being persecuted by the woman's family. Their applications for asylum had been rejected by the Migration Board and granted on appeal by the Migration Court. The Migration Court of Appeal granted the Board leave to appeal.

20. The appellate court upheld the Migration Court's judgment. It considered that the applicants had made probable that they would be subjected to honour-related violence or other forms of abuse upon return. It further considered that, while there was a possibility to receive protection in the Kurdish region against honour-related crimes, country information revealed that the situation was very fragile, making it impossible to draw any general conclusion as to whether the authorities were able to provide effective protection. For instance, effective protection could be difficult to get if the persons making the threats belonged to a powerful clan with influence at governmental level. Having had regard to the applicants' personal circumstances, the alleged persecutors' influence in Iraqi society and the lack of effective protection, the Migration Court of Appeal concluded that the applicants would in all likelihood be unable to receive sufficient protection in the Kurdish region. The court further observed that, according to country information, the only possible protection for men would be temporary detention.

III. RELEVANT INFORMATION ABOUT IRAQ

A. Honour crimes

21. 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. In regard to honour violence, it sets out the following (at p. 37):

> "So-called "honour crimes" – that is, violence committed by family members to protect the family's honour – reportedly remain of particular concern. Most frequently, women and girls and, to a lesser extent, men and boys, are killed or subjected to other types of violence such as mutilations, because they are judged to have transgressed cultural, social or religious norms bringing shame to their family. "Honour crimes" are said to occur for a variety of reasons, including adultery, loss of virginity (even by rape), refusal of an arranged marriage, attempt to marry someone against the wishes of the family or making a demand for a divorce. Even the suspicion or rumour that any of these acts have been committed can reportedly result in "honour crimes". ...
>
> The Iraqi Penal Code contains provisions that allow lenient punishments for "honour killings" on the grounds of provocation or if the accused had "honourable motives". ... "Honour crimes" are reported to be frequently committed with impunity, given the high level of social acceptance of this type of crime, including among law enforcement officials. "Honour crimes" are reported to be committed in all areas of Iraq, though there is generally more information available in the Kurdistan Region, where the KRG [the Kurdistan Regional Government] has taken steps to combat the practice. Importantly, the KRG has introduced legal amendments to the Iraq Penal Code, effectively treating "honour killings" on the same level as other homicides."

The UNHCR Guidelines further stated that, for men at risk of "honour crimes", there are no protection facilities in the Kurdistan Region other than detention or prison (p. 38).

22. The UK Border Agency *Iraq Operational Guidance Note* of December 2011 stated the following regarding honour crimes in central and southern Iraq (at paras. 3.9.6 and 3.9.8):

> "The Iraqi Penal Code (Law No. 111 of 1969) contains provisions that allow lenient punishments for honour killings 'on the grounds of provocation or if the accused had honourable motives'. ...
>
> ...
>
> The police forces are tribally-based, however when it comes to issues related to honour crimes especially, there are efforts to try and break with how such cases are typically dealt with. On the other hand, there is a lot of tolerance towards the concept of honour and a widespread understanding in society of the male responsibility in preserving a family's honour."

23. As regards honour crimes in the Kurdistan Region, the Border Agency stated (para. 3.9.10):

> "The legal position in the Kurdistan Region of Iraq is different to south and central Iraq. In 2002, Kurdish Region government passed a law to abolish reduced penalties for the murder of a female family member by a male relative on grounds of family shame and dishonour. This law sets the Kurdish region apart from many other countries in the Middle East and North Africa, where penal laws still permit mitigated sentences and exemptions for men who murder in the name of 'honour'. In the Kurdish region honour killings are now punished as harshly as other murders and are not viewed differently under the law."

24. The Border Agency summarised (paras. 3.9.15 and 3.9.16):

> "Women fearing 'honour killing' or 'honour crimes' in either central or southern Iraq or in the Kurdistan Region of Iraq are unlikely to be able to access effective protection. Each case must be considered on its own merits to assess whether internal relocation would be possible for the particular profile of claimant, but in general an internal relocation alternative is unlikely to be available for lone women.
>
> Honour crimes might not always be gender-related and there might be cases where men are as likely as women to be victims for committing certain acts which have brought shame on their family. If in such a case internal relocation is considered unduly harsh then Humanitarian Protection might be appropriate."

B. Tribal structure

25. The UK Border Agency *Iraq Operational Guidance Note* of 12 February 2007 set out the following regarding the tribal structure in Iraq:

> "Iraq is a largely tribal society with at least three-quarters of the Iraqi people belonging to one of the country's 150 tribes. Tribes are regional power-holders and therefore if there is a localised tribal dispute the individual should be able to relocate to escape the problem. However UNHCR noted in October 2005 that within the Iraqi context and with the exception of the capital city of Baghdad, cities are constituted of people belonging to specific tribes and families. Any newcomer, particularly when he/she does not belong to the existing tribes and families, is liable to be subject to discrimination. However tribes do appear to have limited influence in Baghdad. Though relocation by persons of a certain tribe may cause resentment and discrimination on the part of the receiving tribe, such relocation is not considered unduly harsh."

C. Sectarian violence

26. The UNHCR Guidelines set out the following regarding sectarian violence in Iraq (at pp. 25-26):

> "While open sectarian violence between Arab Sunnis and Arab Shi'ites ended in 2008, armed Sunni groups continue to target Shi'ite civilians with the apparent aim of reigniting sectarian tension. Sectarian-motivated violence includes: mass-casualty attacks targeting Shit'ite civilians and pilgrims; threats against Sunnis in Shi'ite majority areas and Shi'ites in Sunni majority areas; as well as targeted killings of both Sunni and Shi'ite clerics and scholars. Baathist ties and/or purported engagement in terrorism are often equated to sectarianism by the Iraqi Government and the ISF [international security forces]. Many individuals accused of Ba'athist ties and/or terrorism and thus perceived to be engaged in sectarianism are of Sunni background.
>
> ...
>
> During the period of heightened sectarian violence in 2006 and 2007, the social and demographic make-up of many areas were altered as Sunni and Shi'ite armed groups sought to seize control and to cleanse "mixed" areas of the rival sect. This occurred principally in Baghdad, Iraq's most diverse city, but also in the mixed towns and villages surrounding it. During that period, many members of both sects were internally displaced or fled abroad. To date, most of Baghdad's formerly mixed

neighbourhoods remain largely homogenized, preventing many from returning to their former areas of residence. In only a few neighbourhoods of Baghdad do members of both sects live side by side. Most returnees have returned to areas under the control of their own community. The recent political crisis, combined with a series of attacks by Sunni armed groups targeting Shi'ite neighbourhoods and pilgrims, has deepened sectarian tensions. Anecdotal evidence from UNHCR protection monitoring activities suggests that some Sunnis are leaving mixed and predominantly Shi'ite neighbourhoods in Baghdad fearing retaliation. While previously many Iraqi Sunnis fled to Syria and Jordan to escape sectarian violence, reportedly most now seek to relocate within Iraq given tightened visa requirements in these countries and the ongoing violence in Syria.

Both Sunnis and Shi'ites living in or returning to areas in which they would constitute a minority may be exposed to targeted violence on account of their religious identity. Both Shi'ites in Sunni-dominated neighbourhoods and Sunnis in Shi'ite-dominated neighbourhoods have reportedly been subjected to threatening letters demanding that they vacate their homes. In cases where individuals do not comply, there are reports of violence or harassment, including killings."

27. In a recent country guidance determination, *HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)*, of 13 November 2012, the UK Upper Tribunal (Immigration and Asylum Chamber) stated the following (at para. 297):

"... We observe that although the May 2012 UNHCR Guidelines emphasise the harm caused by the ethno-sectarian conflict between different communities, especially that between Sunni and Shi'a, they do not state there is a need for international refugee protection purely because a person is a Sunni or Shi'a and we do not consider that the evidence shows that there is a real risk of Article 15(c) [of the Refugee Qualification Directive 2004/83/EC] harm arising solely because a person is a Sunni or Shi'a civilian. And even where concern is expressed about both Sunnis and Shi'as living in or returning to areas in which they would constitute a minority, the substance of what UNHCR is saying is not that Sunni Arabs living in majority Shi'a areas and Shi'a Arabs living in majority Sunni Arab areas "will" be at Article 15(c) risk but simply that "they may be exposed to targeted violence on account of their religious identity". In our judgement the other evidence relating to Sunnis and Shi'as reveals a similar picture. However, whilst for the above reasons we find the evidence as a whole insufficient to establish Sunni or Shi'a identity as in itself an "enhanced risk category" under Article 15(c), we do accept that depending on the individual circumstances, and in particular on their facing return to an area where their Sunni or Shi'a brethren are in a minority, a person may be able to establish a real risk of Article 15(c). (They may, of course, also be able to establish a real risk of persecution under the Refugee Convention or of treatment contrary to Article 3 of the ECHR)."

D. The possibility of internal relocation

28. As regards the possible internal flight or relocation alternatives (IFA/IRA) in southern and central Iraq, the 2012 UNHCR Guidelines stated, *inter alia*, the following (at pp. 53 and 55):

"As indicated in these Guidelines, persecution primarily emanates from a range of non-state actors. Armed groups reportedly have operatives in many parts of the country and, as a result, a viable IFA/IRA will likely not exist for individuals at risk of

being targeted by such groups in southern and central Iraq. As reported throughout these Guidelines, armed groups are present in many parts of the country and have demonstrated mobility in accessing areas where they do not have strongholds. The mobility and reach of armed groups should not be underestimated in determining the relevance of an IFA/IRA. Persons seeking to relocate to other areas in central and southern Iraq may be at risk of facing renewed violence given the high levels of violence prevailing in many areas. UNHCR protection monitoring shows that lack of physical safety remains a concern for both IDPs [internally displaced persons] and returnees, particularly in the central governorates. Reports have been received of returnees being targeted because they do not belong to the majority sect in their area of return. In some cases, these attacks have been fatal. The presence of IDPs can at times result in tensions with host communities that consider them a destabilizing factor.

Generally, protection by national authorities will not be available given that the national authorities have as yet limited capacity to enforce law and order. Members of the ISF and the judiciary are themselves a major target of attacks and are reportedly prone to corruption and infiltration.

...

For categories of individuals who fear harm as a result of traditional practices and religious norms of a persecutory nature – such as women and children with specific profiles, victims of trafficking, and LGBTI individuals – and for whom internal relocation to another part of central and southern Iraq may be relevant, the endorsement of such norms by large segments of society and powerful conservative elements in the Iraqi public administration as well as the continued presence of armed groups with extremist or highly conservative leanings militate against the availability of an IFA/IRA in southern and central Iraq.

...

Common ethnic or religious backgrounds and existing tribal and family ties in the area of relocation are crucial when assessing the availability of an IFA/IRA, as these generally ensure a certain level of community protection and access to services. ... Further, an IFA/IRA to an area with a predominantly different ethnic or religious demography may also not be possible due to latent or overt tensions between groups. This can be particularly the case for Sunnis in predominantly Shi'ite areas, and vice versa, especially if the demographic make-up of the areas has changed as a result of previous sectarian violence."

The UNHCR summarised the situation in the southern and central parts of Iraq thus (at p. 56):

"Reports of insecurity, problematic living conditions and lack of documentation in southern and central Iraq militate against the availability of an IFA/IRA. Further, relocation to an area with a predominantly different ethnic or religious demographic is not reasonable due to latent or overt tensions between ethnic or religious groups. This can be particularly the case when considering relocation of Sunnis to predominantly Shi'ite areas or vice versa."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

29. The applicant complained that the enforcement of the deportation order would be in violation of Articles 2 and 3 of the Convention, which, in relevant parts, reads as follows:

> **Article 2**
>
> "1. Everyone's right to life shall be protected by law. ..."
>
> **Article 3**
>
> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

30. The Government contested that argument.

31. The Court finds that the issues raised in the present case under Articles 2 and 3 of the Convention are indissociable and will therefore examine them together (see, among others, *D. v. the United Kingdom*, 2 May 1997, § 59, Reports of Judgments and Decisions 1997-III, and *F.H. v. Sweden*, no. 32621/06, § 72, 20 January 2009).

A. Admissibility

32. 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

33. The applicant maintained that the enforcement of the deportation order would be in violation of Articles 2 and 3 of the Convention, since he would risk being subjected to "honour crimes" in Iraq on account of his relationship with the woman in question.

34. Referring to country information, he claimed that honour killings were on the rise in Iraq. Moreover, he stated that the Iraqi police force suffered from corruption, resulting in clans and militias being able to influence the police. In response to the Government's reliance on the Kurdish region as a possible internal flight alternative, the applicant stressed that country information strongly indicated that he would not be able to enter that region. He further held that he would not be able to avail himself

of any other internal flight alternative. In that connection, he pointed to country information indicating that documents were needed in order to relocate from one part of Iraq to another and, moreover, that there was a requirement to obtain permission from the council or security office in the relocation area. According to the applicant, his contact with the local authorities would lead to his being found by the woman's family.

35. The applicant maintained that the woman's family belonged to a powerful clan with connections and the means to trace him wherever in Iraq he might be. In that connection, he stated that his closest family had been forced to leave Iraq due to constant threats.

(b) The Government

36. The Government considered that the situation in Iraq did not, in itself, suffice to establish that a return of the applicant would entail a breach of Article 3 of the Convention.

37. The Government pointed out that the applicant had not invoked any evidence to substantiate that there was a connection between the shooting against his family's house and the letter containing threats against his father, on the one hand, and the death of the woman, on the other. Nor did the circumstances of the case reveal such a connection or any other facts to substantiate that the applicant would run a personal risk of ill-treatment if returned to Iraq. Hence, in the Government's view, the applicant had not substantiated that he would run the risk of being subjected to treatment in violation of Articles 2 or 3 of the Convention upon return to Iraq.

38. In the event that the Court were to find that the applicant would run certain personal risks of having his rights according to Articles 2 or 3 of the Convention violated upon return to Iraq, the Government considered that the applicant had the opportunity to turn to the authorities for protection.

39. The Government further noted that the applicant had claimed that he had tried to resolve the matter through mediation. However, he had failed to submit any evidence thereof which, in the Government's view, should have been possible. Moreover, they observed that the applicant had not claimed that he had turned to the Iraqi authorities for help, although it would be possible for persons subjected to honour-related threats to obtain protection by doing so. Thus, in the Government's view, the applicant had not substantiated that the Iraqi authorities were unable to obviate the risk he allegedly would face upon return by providing him with appropriate protection.

40. In any event, the Government maintained that the applicant had the possibility of internal relocation. In that connection, they stressed that the applicant is a man, born in 1979, and that no information had emerged concerning his health or any other circumstances to indicate that he was not fit for work. Moreover, the Government were of the opinion that the applicant's claim that the woman's family was well-respected in the

political sphere in Iraq was rather vague and insufficient to demonstrate that the family has the information and resources necessary to locate the applicant in other parts of Iraq than his home region. In addition, no other circumstances had emerged indicating that he would not be safe in central Iraq or the Kurdistan Region. In that connection, the Government took the view that the applicant would be able to gain admittance to both central Iraq and the Kurdistan Region.

2. The Court's assessment

(a) General principles

41. 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-...).

42. 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).

43. 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).

44. 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).

45. 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).

(b) The risk facing the applicant upon return

46. Turning to the circumstances of the present case, the Court first notes that the applicant was heard by both the Migration Board and the Migration Court, that his claims were carefully examined by these instances and that they delivered decisions containing extensive reasons for their conclusions.

47. 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, § 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 2 or 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. It must therefore be determined whether the applicant's personal situation is such as to expose him to a real and personal risk of treatment contrary to Article 2 or 3 if sent back to Iraq.

48. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. It accepts that, as a general principle, the national authorities are best placed to assess the credibility of the case since it is they who have had an opportunity to see, hear and assess the demeanour of the individuals concerned (see *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010). In this respect, the Court notes that the Migration Court did not question the applicant's story as such. The Court finds no reason to hold differently.

49. The Court considers that the events that led the applicant to leave Iraq, in particular the killing of the woman and the subsequent threats made against him, strongly indicate that he would be in danger upon return to his home town, all the more so considering the numerous commentators stressing the gravity of honour-related violence in Iraq (see country information above). In the Court's view, there is a real risk that the woman's relatives would try to seek revenge in order to uphold their perception of honour, if the applicant were to be returned to his home town.

50. The question therefore arises whether the applicant can be expected to avail himself of the authorities' protection. In this connection, the Court notes that the Government stressed that the applicant had not put forward any evidence to support his claim that he had tried to resolve the matter via mediation. However, this cannot be decisive for the Court's assessment because it cannot reasonably be held against the applicant that he did not avail himself of private mediation as a way of solving the conflict. What can be expected of him is to have turned to the authorities if indeed that option was reasonable. Here, the Court notes that, according to the applicant, his family did report the incident to the police, but the investigation did not lead to any results.

51. The Court does not find that the evidence supports the Government's point of view that it would be possible for the applicant to receive protection from the authorities in his home region. On the contrary, the above mentioned country information indicates that persons who are at risk of being subjected to honour-related crimes in Iraq might not receive effective protection from the authorities. For example, the Iraqi penal code allows for lenient punishments for "honour killings" and such crimes are reported frequently to be committed with impunity, given the high level of social

acceptance of this type of crime, including among law enforcement officials.

52. Against this background, there is a real risk that the applicant would be unable to avail himself of the authorities' protection in his home town.

(c) The possibility of internal relocation

53. 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).

54. The Government pointed to the Kurdistan Region as a possible internal flight alternative. The applicant, who is neither a Kurd nor a Christian and, apparently, does not have any connections in the region, disputed that he would be able to enter that region. While not disregarding the obvious difficulties for people involved in honour-related conflicts in the KRI, the Court considers that it is not necessary to examine whether the applicant would be able to settle in that region since, as will be elaborated below, it is of the opinion that he would be able to relocate to other regions in Iraq.

55. To begin with, the Court notes that the incidents involving the applicant date back several years. Whilst acknowledging the possible long duration of conflicts such as the present one, the Court nevertheless finds it reasonable to assume that the passing of time has to some degree reduced the threat against the applicant.

56. More importantly, the Court is not convinced that the material before it supports the applicant's claim that the woman's relatives have the means and connections to find him wherever in Iraq he might be sent. The same holds true for his claim that he would be forced to submit documents to local authorities which would inevitably lead to his being found. Here, the Court first observes that the available general information suggests that tribes and clans are region-based powers. Thus, in many cases, a person who is persecuted by a family or clan can be safe in another part of the

country. In this connection, it is also of importance to note that the influence and power of the tribes and clans differ. One factor possibly weighing against the reasonableness of internal relocation is that a person is persecuted by a powerful clan or tribe with influence at governmental level. However, if the clan or tribe in question is not particularly influential, an internal flight alternative might be reasonable in many cases. As regards the family in question, there is no evidence to support the applicant's claim that it is powerful and has links to the authorities and militia. The applicant has not put forward any documentary evidence to support his claim in this regard, nor has he given any detailed information regarding the woman's relatives and their alleged position in Iraqi society.

57. The Court has had further regard to the fact that the applicant is a Sunni Muslim. As noted above (§ 47), the general situation of instability and violence in Iraq is not of such severity that it may be said that the applicant would be exposed to a real risk of ill-treatment simply by being returned there. Furthermore, while acknowledging the problem of sectarian violence in Iraq (see, for instance the UNHCR Guidelines, § 26 above), there is no indication that it would be impossible or even particularly difficult for Sunni Muslims – comprising a sizeable group, reportedly making up one third of the country's population – to find a place to settle where they would constitute a majority or, in any event, be able to live in relative safety. Consequently, the fact that the applicant is a Sunni Muslim would not as such expose him to a real risk of treatment contrary to Article 2 or 3 of the Convention.

58. Internal relocation inevitably involves certain hardship, not least in a tribal-based society such as Iraq. Nevertheless, having regard to what has been stated above, there is no indication that the applicant would be unable to find a relocation alternative outside his home region where the living conditions would be reasonable for him. In this connection, the Court notes that he is a relatively young man without any apparent health problems.

(d) Conclusion

59. Thus, the Court concludes that substantial grounds for believing that the applicant would be exposed to a real risk of being subjected to treatment contrary to Article 2 or 3 of the Convention if deported to Iraq have not been shown in the present case. Accordingly, the implementation of the deportation order against him would not give rise to a violation of these provisions.

II. RULE 39 OF THE RULES OF COURT

60. The Court points out 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 referral 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.

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds* by five votes to two that the applicant's deportation to Iraq would not be in violation of Article 2 or 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
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 joined by Judge Zupančič is annexed to this judgment.

M.V.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE JOINED BY JUDGE ZUPANČIČ

Although the applicant is not a member of the Christian minority in Iraq, nevertheless, for the same reasons of principle as those 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 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 have been established in this case.

The majority accepts that, in view of the passage of time since the date of the attacks upon the applicant, it would be 'reasonable' to assume that the applicant is no longer at the same risk of ill-treatment by members of his former fiancée's family (§36). The perpetrators of the crimes visited upon the applicant's fiancée cannot be considered as 'reasonable' people and, to my mind, it cannot be assumed that the passage of time has abated their desire for revenge.

Furthermore, apart from the personal threat to the individual it is clear on the evidence adduced that he will not be accepted in the Kurdish region. As noted in §35 of the Court's Judgment in *MYH and Others v Sweden* there is confirmation from the Joint Finnish/Swiss Fact-Finding Mission that "s*ingle male Sunni Arabs without a sponsor in the KRG area are refused*".

The applicant being a single male Sunni without a sponsor clearly comes within this category. The question arises as to the precise place of safety to which it is proposed to deport him. The guarantees required under the Court's case law on internal flight options necessitate that the place of safety be identified by the deporting State so that the risks in terms of transit thereto and admittance and settlement therein may be assessed.

The majority refers only to the fact that there is no indication that it would be impossible for him "*to find a place to settle*" (§58) outside his home region. When the life and safety of a person is at risk, such vagueness is unacceptable, particularly given the current situation in Iraq. Absent knowledge of the proposed place of safety, the Court is precluded from being assured that the guarantees as to the applicant's safe transit, actual admittance and capacity to settle in the proposed relocation area have been met.