



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

FIFTH SECTION

**CASE OF W.H. v. SWEDEN**

*(Application no. 49341/10)*

JUDGMENT

STRASBOURG

27 March 2014

*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 W.H. v. Sweden,**

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

Mark Villiger, *President*,

Boštjan M. Zupančič,

Ganna Yudkivska,

Vincent A. De Gaetano,

André Potocki,

Aleš Pejchal, *judges*,

Johan Hirschfeldt, *ad hoc judge*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 March 2014,

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

**PROCEDURE**

1. The case originated in an application (no. 49341/10) 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 27 August 2010. The President of the then Third Section acceded to the applicant’s request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms A.-P. Beier, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agents, Ms C. Hellner and Ms I. Kalmerborn, of the Ministry for Foreign Affairs.

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

4. On 30 August 2010 the President of the then Third Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicants should not be deported to Iraq before 29 September 2010. On 28 September 2010 this indication was prolonged until further notice.

5. On 7 March 2011 the application was communicated to the Government.

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

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1978. She is from Baghdad and is of Mandaean denomination. She was once married, but divorced her husband in 1999, after which she lived with their son, born in 1998, in Iraq while her former husband moved to the United States.

8. The applicant arrived in Sweden on 27 August 2007 and applied for a residence permit the following day and for asylum on 21 January 2008. She stated that she and her son had left Iraq on 25 July 2007 and had then stayed with relatives in Amman, Jordan, for a month. In Amman she had left behind her son, because she had not been able to afford his trip. Later, her former husband had come to Jordan and brought the son back with him to the United States. To the Swedish authorities the applicant submitted an Iraqi citizenship certificate, an identity card, divorce documents and a membership card for Mandaeans regarding her and her son.

9. Assisted by legal counsel, the applicant stated in essence the following in support of her application. Her main reason for leaving Iraq was the generally insecure situation for Mandaeans in Iraq, which had affected her and her family personally. Her fears had led to her son going to school only sporadically during the past year. Moreover, at the beginning of June 2007 her mother had received a threatening phone call from someone who had wanted to contact the applicant, presumably to forcibly remarry her with another man. If they did not comply, the applicant understood that her family would have to leave the neighbourhood. They had taken the threats very seriously and she had moved immediately with her son to her grandmother's house in the al-Dora neighbourhood of Baghdad, where they had stayed for a month. The applicant further stated that her only remaining relative in Iraq was her mother.

10. On 31 October 2008 the Migration Board (*Migrationsverket*) rejected the application and ordered the applicant's deportation to Iraq. The Board held that she had not proved her identity, but that she had made it plausible that she was from Iraq. It further considered that the situation in Iraq as such did not constitute grounds for asylum. While noting that Mandaeans were an exposed minority, their general situation did not suffice either for an individual be granted protection, but his or her personal circumstances would have to be assessed. The Board went on to state that the applicant had not submitted any written evidence in support of her allegations of persecution. Furthermore, she had received a threat on only one occasion and it had not been shown that the person threatening her had referred to her religious beliefs. Nor was there any other indication that she had been ill-treated on account of those beliefs or that she had received other threats before leaving Iraq. The Board then noted that the applicant's

brother, who had also applied for asylum in Sweden, had had his application rejected and his deportation to Iraq ordered and that, consequently, the applicant would likely not lack a male network upon return to Iraq. In conclusion, the Board found that she had not made it probable that she was at personal risk of being subjected to serious ill-treatment if she returned to Iraq.

11. The applicant's brother, who had arrived in Sweden on 18 December 2007, had his application for a residence permit rejected by the Migration Board on 2 October 2008.

12. The applicant appealed, adding the following to her story. Mandaean, being the smallest and most vulnerable minority in Iraq, were subjected to extortion, kidnappings and murder. Mandaean women and children had been forced to convert to Islam, often after having been assaulted and raped. The Mandaeans were not a large enough community to be able to protect and support each other and there was no particular region where they could settle safely. This was enough to show that she was in need of protection. The applicant asserted that the threat against her had to be seen against this background. Her whole existence had been marked by the threatening atmosphere and demands directed at non-Muslim women and in particular the Mandaeans. Her situation had been further aggravated by the fact that she is a single woman without a social network in Iraq. Her mother had had the intention of leaving the country as well, but the applicant had no information on her whereabouts. Furthermore, in Sweden the applicant had met a Muslim man from Iraq together with whom she now lived. This situation would never be accepted in Iraq. Also, when she had talked about her new relationship in Sweden, her family had reacted very negatively and had virtually frozen her out.

13. On 14 December 2009 the Migration Court (*Migrationsdomstolen*) upheld the decision of the Board. The court acknowledged the difficult situation for Mandaeans in Iraq and stated that, consequently, a lower threshold was applied in assessing the individual risks than in Iraqi cases in general. The general situation for Mandaeans did not suffice of itself to be granted protection, however; an assessment of the applicant's individual circumstances was necessary. In the absence of written evidence, the court went on to examine the statements made by the applicant. It considered that the threat received concerning forced marriage was primarily related to the general security situation in Iraq at the time. In the two years since the applicant had left the country, the security situation had improved. While the Mandaeans remained disadvantaged, there was no sign that she was still being searched for in Iraq. Nor was there anything to indicate that her mother's possible exile had been caused by continued threats. The court further found that the negative reaction of the applicant's family to her new relationship did not imply a need of protection. In that connection, it further noted that the asylum appeal lodged by her brother, who had not turned his

back on her, had been rejected on the same day. Thus, she could return to Iraq with him and thereby have a social network in the country.

14. On 16 February 2010 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused the applicant leave to appeal. On 25 February 2010 it refused leave to appeal also in the applicant's brother's case.

15. Subsequently, the applicant, as well as her brother, claimed that there were impediments to the enforcement of their deportation orders. Their petition mainly concerned the brother's period of active duty in the Iraqi army, during which he had gained knowledge of important people in the army and their illegal actions. This knowledge would put both the applicant and her brother at risk if they were returned. The applicant further claimed that her mother had been kidnapped.

16. On 8 May 2010 the Migration Board rejected the petition, finding that no new circumstances justifying a reconsideration had been presented. It considered that the claims made in relation to the brother did not in any way show that there were threats against him or the applicant. The allegation that the mother had been kidnapped was actually new, but it was unclear when this incident was supposed to have happened and there was nothing to conclude that the possible kidnapping had any personal connection to the situation of the applicant and her brother. The applicant did not appeal against the Board's decision.

17. On 23 August 2010 the applicant submitted a letter to the Migration Board, which was perceived by the Board as a new petition for reconsideration. The applicant stated that, if she were forced to return to Iraq, she would have to do so without her current partner or her brother, who were both in Sweden. Her partner had been issued a visa to Syria, as he was born in Damascus, and could not return to Iraq. Consequently, they would be separated, because she could not travel to Syria since she lacked a passport and would not be granted a visa. The applicant further asserted that she had no relatives in Iraq.

18. On 25 August 2010 the Migration Board decided not to reconsider the case. Although the fact that the applicant's partner had been granted a visa to Syria was considered to be new, the Board stated that this fact did not constitute a lasting impediment to the enforcement of the deportation order. The applicant did not appeal against the Board's decision.

19. The respondent Government have submitted the following notes to the Court, taken from the files of the Migration Board. The applicant's mother was living with relatives and friends in Baghdad. When the applicant left Iraq, her grandmother and cousins were living in the al-Dora neighbourhood of Baghdad. In Sweden, the applicant has been living in the same flat as her brother and her partner from October 2009 onwards. Her partner left Sweden in October 2010 to be reunited with his family in Syria, whereas her brother is still in Sweden. Furthermore, in reply to the Government's request for information in the case, the Migration Board had

stated that it was likely that the applicant had a large number of relatives left in Baghdad.

20. The applicant has given the following additional account to the Court. Following her divorce in 1999, she went to live with her parents and her brother. Her father, under whose protection she was living, died in 2005. Her grandmother, with whom she had briefly lived after the threatening telephone call, died in 2008. To her knowledge, she has no relatives left in Iraq, cousins or others. Several relatives are living abroad, in Sweden, France, the Netherlands, the United Kingdom, Spain and Canada. Her sister is living in Denmark. After the applicant and her brother had left Iraq, their mother went to live with a Christian family in Baghdad, from whom she rented a room. In the beginning of 2010, the applicant and her brother received information about their mother's disappearance. The family with whom the mother had lived called the applicant's uncle in Sweden and said that they did not think that she had left voluntarily. A police report, sent to the uncle only in 2012, states that the report was filed on 7 June 2011 by the mother's landlord, who had told the police that the mother had been missing since 5 December 2010. The applicant does not know why the landlord did not file a report earlier or why he did not state that her mother had been missing for several months before December 2010. The applicant is still unaware of what has happened to her mother following her disappearance. However, given the time that has passed without any contact with her, she assumes that she is dead. The applicant is still in a relationship with the man she met in Sweden, although he is now living in Syria. The people who disowned her because of that relationship were her relatives in Sweden, with the exception of her brother. The brother married a relative, who is a Swedish citizen, on 27 May 2012. He left Sweden and applied at the Embassy in Tehran for a Swedish residence permit based on his marriage. By a decision of 5 November 2013 the Migration Board granted him a residence permit until 5 November 2015.

## II. RELEVANT DOMESTIC LAW

21. 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).

22. 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).

23. 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.

24. 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).

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



26. 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.

27. A deportation or expulsion order may – save for a few exceptions of no relevance to the present case – be enforced only when it has acquired legal force. Thus, appeals to the courts against the Migration Board’s decision in ordinary proceedings determining the right to asylum and a residence permit have an automatic suspensive effect. If the alien subsequent to the ordinary proceedings having acquired legal force lodges a petition under Chapter 12, sections 18 or 19, it is up to the Board to decide whether to suspend the enforcement (*inhibition*) on the basis of the new circumstances presented. Accordingly, such a petition has no automatic suspensive effect, nor does an appeal to the courts against the Board’s decision taken under section 19 (no appeal lie against a decision pursuant to section 18).

### III. RELEVANT INFORMATION ABOUT IRAQ

#### A. General human rights situation

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

“Violence and armed violence continued to take their toll on civilians in Iraq. According to the Government of Iraq, 1,704 civilians were killed and 6,651 were injured in the second half of 2012, resulting in a total of 3,102 killed and 12,146 injured for 2012. According to UNAMI, 1,892 civilians were killed and 6,719 were injured in the last six months of 2012, resulting in a total of at least 3,238 civilians who were killed and 10,379 who were injured for the year. These figures indicate that the trend of recent years of a reduction in the numbers of civilian casualties has reversed and that the impact of violence on civilians looks set to increase in the near to medium future. Terrorists and armed groups continued to favour asymmetric tactics that deliberately target civilians or were carried out heedless of the impact on civilians.

Political instability and regional developments continued to impact negatively on the security situation in Iraq, with its concomitant toll on civilians. Although the Government takes the impact of violence on civilians extremely seriously and has taken measures to enhance security, more needs to be done to ensure the proper coordination of financial, medical and other forms of support for the victims of violence.

...

Women continue to suffer from domestic and other forms of violence, and to face discrimination and other barriers in accessing economic, social and educational opportunities. The law continues to permit ‘honour’ as a mitigating factor in crimes of violence committed against women and family members. There is still no effective system of shelters and coordinated care for the victims of domestic violence, and

services available to victims remain inadequate. The family protection bill remains stalled in the Council of Representatives. Women's representation at a senior level in political, governmental and judicial institutions remains low at the federal, governorate and district levels.

...

Iraq's various ethnic and religious groups continued to be targeted by violence. In particular, members of the Turkmen community were subjected to various acts of violence, including kidnapping, murder, harassment, and other threats. Members of religious communities, including Yezidis, Christians and Shabaks, also suffered threats and acts of violence. Shi'a pilgrims attending various religious festivals and activities similarly came under attack in various parts of the country."

In regard to the Kurdistan region, the report stated (at p. ix):

"The overall human rights situation in the Kurdistan Region continued to improve, although challenges remain, including concerns over respect for freedoms of assembly and expression, and the protection of journalists. The Kurdistan Region experienced almost no insurgent violence, although civilians living in areas close to the international borders continued to suffer from the effects of cross-border shelling and military operations conducted by foreign forces.

...

Progress was made towards full implementation of the Law on Combatting Violence Against Women, with the establishment of a high level inter-ministerial committee to oversee implementation of the law, and the adoption of a five-year plan to combat violence against women, along with other reforms and initiatives."

29. In his report of 16 February 2011, the Representative of the (United Nations) Secretary-General on the human rights of internally displaced persons, Mr Walter Kälin, noted the following (at paras. 9-10) after a visit to Iraq in September/October 2010:

"Despite improvements in the overall security situation since 2006, the situation in Iraq is still characterized by continued indiscriminate attacks against civilians, including religious and ethnic minorities, arbitrary arrests, alleged ill-treatment while in detention, and sexual and gender-based violence. Moreover, impunity is reported as being widespread, while access to justice is largely absent due to fear of reprisals, lack of capacity among rule of law institutions, corruption and lack of awareness of accountability mechanisms.

In the Kurdistan Region of Iraq, while the security situation is considerably better than in the rest of the country, specific concerns have been raised with regard to, inter alia: serious violations of the rights of suspects and detainees by KRG [Kurdistan Regional Government] authorities; sexual and gender-based violence; and the impact of anti-terrorism legislation on human rights, including specifically the practice of keeping persons in de facto unlimited administrative detention."

30. The UK Border Agency *Iraq Operational Guidance Note* of December 2011 noted (at paras. 2.3.4 and 2.3.5):

"Violence, albeit still far above what ought to be tolerable, has levelled off in the past two years. Iraqi security forces have taken the lead in several important operations. Recently, they have withstood three noteworthy tests: the departure of close to 100,000 US troops since January 2009; the March 2010 parliamentary elections; and, over the past several months, political uncertainty prompted by

institutional deadlock. If insurgents remain as weak as they are and find no fresh opportunity to exploit political fractures, security forces operating at less-than-optimal levels still should face no serious difficulty in confronting them.

It has been reported that although oversight by the MOI [Ministry of Interior] and MOD [Ministry of Defence] has increased, problems continue with all security forces, arising from sectarian divisions, corruption, and unwillingness to serve outside the areas in which personnel were recruited. ...”

## **B. The specific situation of minorities**

31. In its July – December 2012 report, UNAMI noted, *inter alia*, the following:

“While there have been some improvements in terms of security for Iraq’s ethnic and religious groups, their situation remains precarious. During the second half of 2012, UNAMI continued to receive reports of attacks directed at persons on account of their ethnic or religious affiliations. UNAMI has particular concerns regarding the situation of the Turkmen community in the disputed areas, Christian families that migrated from Baghdad to Erbil following attacks against the community in 2010, and the rising tension between the Shabak and the Christian minorities in Ninewa. Figures collected by UNAMI indicate that members of minority groups are still leaving their homes in many areas on account of insecurity and acts of violence perpetrated against their communities, compounded by lack of access to basic services and poor economic opportunities.”

This report does not contain any information on the Mandaean community, but UNAMI’s 2011 report, published in May 2012, noted the following about their situation in the Kurdistan Region (at p. 32):

“The numbers of Sabian Mandaean families have fallen to approximately 75 in the Kurdistan Region due to migration of members of the group. Some community representatives informed UNAMI that they do not face any threat or persecution in the Kurdistan Region and they are supported by the Government, but most are migrating for economic reasons.”

32. The Minority Rights Group International described the Mandaeans in Iraq thus (*Iraq’s Minorities: Participation in Public Life*, November 2011, p. 9):

“Sabeian Mandaeans, whose religion is one of the oldest surviving Gnostic religions in the world, have existed in Iraq for more than two millennia. Many of the 60,000–70,000 present in the Middle East once lived in Iraq, but today, their numbers there have dwindled to around 5,000 people, mainly through displacement, but also through killings. Traditionally, many Sabeian Mandaeans have worked as goldsmiths; the resulting perception that they are wealthy has contributed to their being targeted for kidnapping. They are forbidden by their faith to marry outside the religion, which has contributed to their reduced numbers since 2003.”

In regard to minority women, the Minority Rights Group International gave, *inter alia*, the following account (*ibid.*, p. 25):

“For minority women, the situation again follows the general trend, with the added security risk that comes from being from a minority. Fifty-seven per cent of

respondents to the IMC [Iraqi Minorities Council] survey said that they believed that women needed to hide their religious affiliation, either by not wearing their religious symbols or traditional makeup, by covering their heads even if they are secular or non-Muslims, or by not speaking in their traditional languages ... . A number of Failsi Kurd, Sabean-Mandaean and Christian women stated that they avoid speaking their language (e.g. Assyrian, Armenian) or wearing clothes that indicate their community belonging when in public. Non-Muslim minority women in particular complain of pressure to modify their dress. ...

Overall, only 25 per cent of respondents surveyed said that they thought that women felt safe when leaving the home. Sabean-Mandaean women have reported being pressured to convert to Islam; they also report physical and verbal abuse on the street from university staff, or, if in employment, for not covering their heads and not adhering to an Islamic dress code.”

33. On 31 May 2012 the United Nations High Commissioner for Refugees (UNHCR) issued the latest *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq* (hereafter “the UNHCR Guidelines”). The situation for members of religious minorities is summarised as follows (at p. 27):

“UNHCR considers that, depending on the particular circumstances of the case, members of minority religious groups in central and southern Iraq are likely to be in need of international refugee protection on the grounds of religion, (imputed) political opinion or membership in a particular social group.

Christian converts are likely to be in need of international refugee protection in the whole country, including the Kurdistan Region.”

In regard to minority women, UNHCR states (at p. 27):

“Minority women are likely the most vulnerable section of Iraqi society, facing violence and discrimination from a variety of actors on account both of their gender and their religious affiliation. Minority women’s freedom of movement and freedom to express their religious identity through the way they dress has been severely restricted by ongoing threats of violence and growing religious intolerance. This, in turn, restricts their access to health services, employment and education.”

UNHCR give the following information relating to the Mandaean community (at p. 29):

“The Sabaeen-Mandaean religion is a gnostic religion with John the Baptist as a central figure and considered a prophet. Its adherents cannot marry outside the faith and they do not accept converts. Before 2003, there were an estimated 50,000 to 70,000 Mandaean living in Iraq many of whom were well educated and worked as doctors, engineers, dentists and jewelers. After the fall of the former regime, Sunni and Shi’ite armed groups, as well as criminals, have singled out Sabaeen-Mandaean on the basis of their religion, profession and (perceived) wealth. Some Sabaeen-Mandaean elders, who traditionally wear long beards, have reportedly been attacked by Shi’ite militants who have mistaken them for strictly observant Sunni Arabs or Wahhabists. Sabaeen-Mandaean are particularly vulnerable to attacks for several reasons. Unlike other groups in Iraq, the pacifist Mandaean did not form militias to defend themselves. Further, the already small community lives mainly in scattered groups. Their disputed status as “people of the book”, which under the Qur’an would provide them with a level of protection, failed to dissuade extremist groups from

targeting them. As a result of general violence and targeted attacks, large numbers of Mandeans fled Iraq, mainly to Syria and Jordan. Currently, an estimated 3,500 to 7,000 Mandeans remain in Iraq. Most of them live in Baghdad and southern Iraq, including in Amara, Basrah and Nassiriyah. According to a spokesman for the Mandaean community, there are currently about 500 Mandaean families in southern Iraq, mostly in the Governorate of Basrah.

Since 2003, Sabaeen-Mandeans have been subjected to threats, abductions and killings. There are also reports of forced conversions to Islam and some Sabaeen-Mandeans have reportedly been killed for refusing to do so. Most religious leaders have either been killed or fled the country. Eight Sabaeen-Mandeans were reportedly killed and five injured in 2010 in what were reported to be targeted attacks. In 2011, additional kidnappings and killings were reported by the Mandaean Associations Union. Sabaeen-Mandaean goldsmiths reportedly continued to receive threats and suffer from attacks. Even in cases of kidnapping for ransom, the perpetrators may deliberately single out Sabaeen-Mandeans due to their vulnerable status as a religious minority, considered “infidel”. There have been reports of kidnapped Sabaeen-Mandeans killed or remaining missing despite the payment of ransom.

In addition to targeted violence perpetrated against Sabaeen-Mandeans, the community has also suffered from social marginalization and religious discrimination. There are no schools in southern and central Iraq that teach children in their language, Aramaic, and children are obliged to undertake Qur’anic studies at public schools. Sabaeen-Mandaean women are pressured to observe the *hijab* in public in order to avoid physical and verbal abuse, although their religion does not require veiling. Reportedly, Sabaeen-Mandaean women have been pressured to marry outside their faith in contradiction with their own religious customs and have been pressured to convert to Islam.”

34. In its *International Religious Freedom Report for 2012*, published on 20 May 2013, the United States Department of State summarises the religious situation in Iraq thus:

“The constitution provides for religious freedom and the government generally respected religious freedom in practice. The trend in the government’s respect for religious freedom did not change significantly during the year. The constitution recognizes Islam as the official religion, mandates that Islam be considered a source of legislation, and states that no law may be enacted that contradicts the established provisions of Islam. However, it also states that no law may contradict principles of democracy or the rights and basic freedoms stipulated in the constitution. The constitution guarantees freedom from intellectual, political, and religious coercion. Some apparent contradictions between the constitution and other legal provisions were tested in court during the year; the courts upheld full legal protection for religious freedom in those cases. Other contradictions remain untested. Officials sometimes misused their authority to limit freedom for religious groups other than their own. However, the government continued to call for tolerance and acceptance of all religious minorities, provided security for places of worship such as churches, mosques, shrines, and religious pilgrimage sites and routes, and funded the construction and renovation of places of worship for some religious minorities. Al-Qaeda in Iraq (AQI) and other terrorist and illegally armed groups committed violent attacks that restricted the ability of all believers to practice their religion.

There were reports of societal abuses and discrimination based on religious affiliation, belief, or practice. Sectarian violence occurred throughout the country, although to a lesser extent in the Iraqi Kurdistan Region (IKR), and restricted

religious freedom. No reliable statistics on religiously motivated violence were available. The overwhelming majority of mass casualty terrorist attacks targeted Muslims. A combination of sectarian hiring practices, corruption, targeted attacks, and the uneven application of the law had a detrimental economic effect on minority non-Muslim communities, and contributed to the departure of non-Muslims from the country.”

35. Designating Iraq as a “country of particular concern” for the sixth year running, the United States Commission on International Religious Freedoms, in its *2013 Annual Report*, published on 30 April 2013, made the following findings:

“Over the last several years the Iraqi government has made efforts to increase security for religious sites and worshippers, provide a stronger voice for Iraq’s smallest minorities in parliament, and revise secondary school textbooks to portray minorities in a more positive light. Nevertheless, the government of Iraq continues to tolerate systematic, ongoing, and egregious religious freedom violations, including violent religiously-motivated attacks. Violence against Iraqi civilians continued in 2012 at approximately the same level as in 2011. In addition, the government took actions that increased, rather than reduced, Sunni-Shi’i and Arab-Kurdish tensions, threatening the country’s already fragile stability and further exacerbating the poor religious freedom environment.

...

Shi’i Muslims experienced the worst attacks of any religious community during the reporting period, including against pilgrims participating in celebrations on or around important religious holidays. The government has proven unable to stop religiously-motivated attacks from occurring and lacks the will or capacity to investigate attacks and bring perpetrators to justice. This has created a climate of impunity, which in turn exacerbates a perpetual sense of fear for all religious communities, particularly the smallest ones. Large percentages of the country’s smallest religious minorities – which include Chaldo-Assyrian and other Christians, Sabeen Mandaean, and Yezidis – have fled the country in recent years, threatening these communities’ continued existence in Iraq. The diminished numbers that remain face official discrimination, marginalization, and neglect, particularly in areas of northern Iraq over which the Iraqi government and the Kurdistan Regional Government (KRG) dispute control. Religious freedom abuses continue towards women and individuals who do not conform to strict interpretations of religious norms or attacks on businesses viewed as “un-Islamic”. However, in a positive development, the Iraqi parliament shelved a problematic draft Information Crimes law that would have restricted the freedoms of religion and expression. Additionally the KRG parliament rejected a draft law to “protect sanctities,” which, if adopted, would violate these same freedoms. However, there are reports that KRG officials may still pursue legal action against the media for offending religion, Kurdish history, or national symbols.

...

Many of the non-Muslim minorities internally displaced by violence have gone to the north of the country, mainly to Nineveh governorate and the territory of the KRG, which is comprised of three other governorates. Northern Iraq, particularly the Nineveh Plains area of Nineveh governorate, is the historic homeland of Iraq’s Christian community, and the Yezidi community is indigenous to Nineveh and the KRG governorate of Dahuk. The three KRG governorates are relatively secure, but Nineveh governorate, particularly in and around its capital Mosul, remains extremely

dangerous, and control over this ethnically and religiously mixed area is disputed between the KRG and the central Iraqi government.

Religious and ethnic minorities in these areas, including non-Muslims and ethnic Shabak and Turkomen, have accused Kurdish forces and officials of engaging in systematic abuses and discrimination against them to further Kurdish territorial claims. These accusations include reports of Kurdish officials interfering with minorities' voting rights; encroaching on, seizing, and refusing to return minority land; conditioning the provision of services and assistance to minority communities on support for Kurdish expansion; forcing minorities to identify themselves as either Arabs or Kurds; and impeding the formation of local minority police forces. The minorities also accuse both Arab and Kurdish officials of ignoring these vulnerable communities as they focus on their fight for territorial control."

### **C. Possibility of internal relocation to the Kurdistan Region**

36. The Representative of the UN Secretary-General stated in the above-mentioned report of 16 February 2011 (at para. 65):

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

37. The UNHCR Guidelines contain the following observations (at pp. 27 and 48-51):

"In the Kurdistan Region, the rights of religious minorities are generally respected and groups can worship freely without interference. The KRG Ministry of Education funds public schools at the elementary and high school level in the Aramaic language. The curriculum in the Kurdistan Region does not contain religion or Qur'an studies. A significant number of religious minorities, in particular Christians, have sought refuge in the region.

...

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

professionals bringing skills and disposable incomes that boost the local economy. Unskilled IDPs have provided a source of affordable labour for the construction industry.

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

...

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

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

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

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



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

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

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

38. As regards the acquisition of identity documents, the UK Border Agency maintained (*Iraq Operational Guidance Note* of December 2011, para. 2.4.5, and of December 2012, para. 2.4.4):

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

Disagreeing with the UNHCR as to the possibility of internal relocation for Iraqi asylum seekers, the Border Agency further stated (*Iraq Operational Guidance Note* of December 2011, para. 2.4.14):

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

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

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

“Entry into and residence in the KRG can be effected by any Iraqi national with a CSID [Civil Status ID], INC [Iraqi Nationality Certificate] and PDS, after registration with the Asayish (local security office). An Arab may need a sponsor; a Kurd will not.

Living conditions in the KRG for a person who has relocated there are not without difficulties, but there are jobs, and there is access to free health care facilities, education, rented accommodation and financial and other support from UNHCR.”

40. The findings in *MK* were endorsed in a recent country guidance determination, *HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)*, of 13 November 2012. Having particular regard to the Danish/UK report extensively quoted below (at § 42), the Upper Tribunal stated (at para. 348):

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

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

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

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

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

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

“Interviewed sources confirmed that the KRG is open and liberal toward religious minorities and normally also toward ethnic minorities. The areas controlled by the

KRG can be considered safe for minorities. In the Iraqi Kurdish areas, a majority of Kurds live close to minorities such as Christians, Arabs, Turkmen, Yazidis, Fayli Kurds, Shabak, Kakai, and Mandaean / Sabaeans. Fayli Kurds, Yazidis, Kakai, and Shabak are perceived as Kurds and therefore are generally not persecuted, but they can be under social pressure for assimilation.”

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

“The fact-finding mission learned that there have been no relevant, recent changes to KRG entry and screening procedures. UNHCR Iraq in Erbil indicated that there are no government statistics available on who has entered the KRG area and who has been denied access. There are four main entry checkpoints to the KRG area, which are controlled by the KRG Security Protection Agency. The checkpoints apply basically the same entry procedures.

At the same time, some international organizations, NGOs, and the UNHCR claimed that the guidelines on entry practices are not consistent between the three northern governorates of the KRG or between checkpoints leading to a single governorate. There are also no published instructions or regulations on entry procedures, as these would be against the Iraqi Constitution. According to the UNHCR, entry often depends on the commander on duty and the commander’s daily instructions at the checkpoint. The procedures can be tightened or relaxed according to the current security situation in the area.

Several NGOs and the UNHCR have surveyed IDPs at different times concerning entry procedures to the KRG region at different checkpoints. A comparison of the results shows differences in entry practices between governorates and time periods. For instance, the surveys show that the need for a sponsor / guarantor has essentially ceased at a Dohuk governorate entry checkpoint, but that even at one checkpoint congruency can lack at different times.

...

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

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

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

for Kurds originating outside the KRG area than for persons of other ethnicities to find a sponsor in the region.”

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

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

...

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

...

1.10 ... [The Director of BMD stated that] there are large numbers of IDPs from religious minority communities in [southern and central] Iraq and the disputed areas. These are mostly Christians and Saebaens who were displaced following sectarian violence.

...

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

...

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

...

2.28 [The General Manager of Kurdistan checkpoints in the Kurdistan Regional Security Protection Agency, KRG Ministry of Interior, Erbil] explained [that] after a person had finished providing information about their identity to Asayish at the KRG external checkpoint, they would then undergo a second procedure at the checkpoint to

apply for the appropriate entry card. There existed three entry cards: a Tourism Card, a Work Card, and an Information Card/Residency Card for those seeking to reside in KRI. Once the relevant card had been issued, the person would then be free to travel throughout KRI, including travel between the three KRI governorates, without being required to show any further form of documentation. [He] stated that this procedure made it easy for anyone to move freely within KRI.

...

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

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

...

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

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

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

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

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

...

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

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

...

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

...

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

...

4.41 According to the Director of an international NGO in Erbil, all Iraqis irrespective of ethnic origin or religious orientation are free to enter KRI through the KRG external checkpoints by presenting their Iraqi Civil ID Card. The Director added that Iraqi Turkmen, Christians and Faili Kurds normally enter through these checkpoints without any difficulties. On the other hand Iraqis of Arab origin would normally be required to undergo greater scrutiny, requested to present their Civil ID Card at the checkpoint and explain the nature and intention of their visit to KRI. However, this procedure was unproblematic and did not require that a reference should be present at the checkpoint. According to [the Director] all persons would be required to routinely show their Civil ID Card at the entry checkpoint and persons of Arab origin faced no problems in staying in the KRI. However the same source clarified that persons of Arab origin would normally have their Civil ID Card photocopied as an extra security precaution. The Director emphasized that persons of Arab origin do not need a reference to be present at the checkpoint."

## THE LAW

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

43. The applicant complained that her 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

44. The respondent Government raised the issue whether the applicant had exhausted domestic remedies. They noted that she had petitioned the Migration Board on two occasions for a reconsideration of her case and had then invoked new circumstances. She had not appealed against the Board’s decisions not to reconsider the case. In the Government’s view, if the applicant invoked before the Court also the circumstances presented in her petitions for reconsideration, it could be questioned whether she had exhausted all available and potentially effective remedies. The Government left it to the Court to decide whether the application was inadmissible for this reason.

45. The applicant submitted that the first request for reconsideration had mainly concerned her brother and, as their lawyer had been unable to continue representing them *pro bono*, she had chosen not to lodge an appeal. The second request had been written more in the form of a plea regarding her hopeless situation, but had been interpreted as a formal petition by the Board. By the time of the Board’s decision of 25 August 2010, she had received five negative answers to her application for a residence permit and was already in police custody in order to be deported. She did not appeal this time as she did not consider such an action to be an effective remedy. Instead, she had lodged the present application with the Court. She argued that the exhaustion rule must be applied with some degree of flexibility and without excessive formalism.

46. The Court reiterates that the rule of exhaustion of domestic remedies in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system, thus dispensing States from answering before the European Court for their acts before they have had an opportunity to put matters right through their own legal system. For a remedy to be effective it has to be available in theory and in practice at the relevant time, meaning that it has to be accessible, capable of providing redress in respect of the applicant’s complaints and offer reasonable prospects of success. Article 35 must also be applied to reflect the practical realities of the applicant’s position in order to ensure the effective protection of the rights and freedoms guaranteed by the Convention (see *NA*

*v. the United Kingdom*, no. 25904/07, 17 July 2008, § 88, with further references).

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

48. Turning to the present case, it is clear that the applicant exhausted all domestic remedies in the ordinary proceedings for asylum and a residence permit. Subsequent to her deportation order acquiring legal force, she asked the Migration Board on two occasions to reconsider her case, but did not, following the Board's negative decision under Chapter 12, section 19 of the Aliens Act, lodge any appeals with the courts. Whether or not these two petitions should have been considered as formal petitions for reconsiderations is irrelevant, as the Board in fact understood and examined them as such. However, the lodging of the petitions – or, indeed, the potential appeals to the courts – had no automatic suspensive effect on the deportation order against the applicant, nor did the Board take a decision to suspend her deportation.

49. In these circumstances, an appeal to the Migration Court could not be considered as an effective remedy in relation to the applicant's petitions for reconsideration. Consequently, as she did appeal to the final instance in the ordinary proceedings, she must be considered to have met the requirements of exhaustion of domestic remedies.

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

## **B. Merits**

### *1. The submissions of the parties*

#### **(a) The applicant**

51. The applicant claimed that, should she be returned to Iraq, she would be subjected to ill-treatment through persecution, assault, rape, forced conversion and forced marriage. She points to the fact that neither the domestic authorities nor the Government have questioned her statement that she is a Mandaean, a single woman and a divorcee and that she received a



threat implying that she would be subjected to forced marriage. Being a Mandaean and a single woman without a male network, she would be in a particularly vulnerable situation upon return to Iraq. For this reason, a lower standard of proof than generally applied must be used in evaluating the risks facing her individually in the future. While the Government had pointed out that the threat in question had been uttered only once and argued that nothing indicated that it had been connected to her being a Mandaean, the applicant feared that she had indeed been targeted because of her religious beliefs and asserted that that fear was objectively supported by unanimous reports that Mandaean were being subjected to kidnappings, rape, forced conversion and forced marriages during the time when she had received the threat. She argued that religiously motivated violence aimed at women, in particular those belonging to minority groups, was still ongoing in Iraq and claimed that the security situation in Iraq had not improved significantly in a lasting manner. Furthermore, the risks facing her personally were exacerbated by her lack of support and protection, not only because she had no male network or any relatives in Iraq, but also because the Mandaean community as a whole would consider that she had converted through her relationship with a non-Mandaean man.

52. In reply to the Government's questioning of parts of her story, the applicant asserted that she had been completely truthful with the Swedish authorities and had not exaggerated her asylum claim. For instance, she had never stated that relatives in Iraq had disowned her as a consequence of her relationship with a Muslim man; instead, it was the relatives in Sweden that had done so. She had consistently upheld that, to her knowledge, she does not have any relatives left in Iraq. Early in the domestic proceedings she had stated that her mother was the only remaining relative, but later she was informed that she had disappeared. The statement made by the Migration Board, referred to by the Government in their observations – that the applicant likely had a large number of relatives in Baghdad – was not true and it was unclear on what basis this assumption was made.

**(b) The Government**

53. The Government acknowledged that, according to country-of-origin information, the Mandaean were still considered to be a vulnerable group in Iraq. The main reason why the number of Mandaean in the country had decreased was that they, like other minority groups, had been targets of sectarian violence, which was very prominent in 2006 and 2007. Thereafter, the situation had improved significantly and sectarian violence had diminished markedly. According to information from the British Home Office from March 2011, the main source of violence against Mandaean was criminal gangs who assumed that the Mandaean were wealthy because of their traditional occupation as jewellers. The improved security situation had also contributed to a safer environment for Iraqi women. However,

single women could not expect help or protection from the authorities, at least not from family-related or gender-based violence, as they were still influenced by the patriarchal society. Nevertheless, the Government maintained that the applicant did not belong to a group that was systematically exposed to a practice of ill-treatment, for which reason an individual risk assessment had to be made.

54. As to the applicant's personal situation, the Government generally relied on the decisions and judgments by the Migration Board and the courts, noting that they had not questioned any of the factual statements submitted by the applicant and had made thorough assessments before concluding that there were no reasons to believe that she would face a risk of treatment in violation of Article 3 if returned to Iraq. The Government further submitted, *inter alia*, the following. The threat suggesting a forced marriage had been received in June 2007, at a time of widespread criminality and violence in Iraq, and the security situation had improved since then. Moreover, only one threat had been received, from an unknown private individual, and there was nothing to suggest that this person would have an interest in contacting the applicant again more than six years later. Nor was there any indication that the threat had anything to do with the applicant being a Mandaean. Furthermore, the applicant originated from Baghdad, where most Mandaeans still residing in Iraq lived, and should therefore be able to return to a familiar place and reintegrate into the community without too much effort. In regard to the applicant being a woman, the Government noted that she had not received any threats on this ground or for being a divorcee. While women were a vulnerable group unless they had support from a male relative, they further asserted that male protection in Iraq could be given by someone not closely related to the woman. Also, considering the substantial improvements in the functioning of the Iraqi police and other authorities since 2008, the applicant should be able to turn to the authorities for protection.

55. As regards the applicant's family relations in Iraq, the Government noted that the applicant, upon arrival in Sweden, had stated to the Migration Board that she had been living in Baghdad with her son, her mother, her brother and her grandmother and that she also had cousins in Iraq. Whereas three of the relatives with whom she had lived had either left the country or had died, the mother's whereabouts still remained unclear. The Government further claimed that, when the applicant had stated that her family had disowned her as a consequence of her new relationship, she had referred to family in Iraq, and asserted that such a statement about her Swedish relatives would have lacked relevance for the assessment of her risk of ill-treatment upon return to Iraq. They considered it most likely, therefore, that the applicant had both friends and relatives still living in Baghdad. Finally, the Government maintained that the applicant had submitted clarifications and corrections about issues relating to her relatives at a very late stage.

## 2. *The Court's assessment*

### (a) **General principles**

56. 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-...).

57. 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).

58. 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).

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

**(b) The general situation in Iraq**

60. 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).

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

62. However, the applicant is not in essence claiming that the general circumstances pertaining in Iraq would on their own preclude her return to that country, but that this situation together with the fact that she is a Mandaean and a single woman would put her at real risk of being subjected to treatment prohibited by Article 3.

**(c) The applicant's family situation**

63. While it is not in dispute in the case that the applicant is a Mandaean and that, as a consequence, she belongs to a religious group that is in a vulnerable situation in Iraq, the Government has questioned her claim that she has no relatives left in the country and have asserted that she has made conflicting statements concerning her family situation there. It is therefore necessary to first look at that issue, in order to determine whether she would be alone without male protection upon return to Iraq.

64. The Court notes, in this respect, that the applicant stated that her family had frozen her out when informed of her new relationship with a Muslim man. While the Government have asserted that the applicant must have referred to relatives in Iraq and that this statement therefore showed that she would not be without family support upon return, the Court is of the opinion that her claim that she was talking about her family in Sweden cannot be considered implausible or incongruous, especially when assessed in the context of her repeatedly insisting that no relatives remain in Iraq (with the exception of the mother who, at the time of the applicant's arrival in Sweden, was still living in Iraq, but allegedly disappeared in 2010). The Court also notes that the applicant's brother, in November 2013, was granted a two-year residence permit in Sweden based on his marriage to a Swedish citizen. Consequently – and as it does not find reason to question the other family information supplied by the applicant – the Court will examine the case on the basis that, if returned to Iraq, she will live as a single woman.

**(d) The situation of Mandaeans in Iraq**

65. In several recent judgments (see, for instance, *M.Y.H. and Others v. Sweden*, 50859/10, 27 June 2013) the Court examined the present situation for Christians in Iraq and concluded that the number of targeted attacks by extremists against this vulnerable minority appeared to have escalated. The Mandaean community is much smaller than the Christian group and, consequently, the recorded attacks and the number of reports concerning Mandaeans are naturally less frequent. It appears, however, that the Mandaeans are in much the same situation as the Christians in the southern and central parts of Iraq, being attacked because of their faith, their profession and their perceived wealth (see, for instance, the UNHCR Guidelines, at p. 29; § 33 above). Obviously, the low number of remaining Mandaeans in the country and the fact that the community is not uniformly organised – the members living mainly in scattered groups – further contribute to their vulnerability.

**(e) The situation of single women in Iraq**

66. Reports from national and international organisations attest to the difficult situation of women in Iraq (ibid., at p. 27; § 33 above; see also the UNAMI Report; § 28 above). As noted above, the present applicant, if returned to Iraq, is likely to live on her own, without the protection of a social network, in particular the protection potentially provided by male relatives. Nevertheless, in the Court's view, the general risks attached to the status of being a single woman in Iraq cannot be considered of themselves to reach the threshold of ill-treatment prohibited by Article 3 of the Convention (cf. *M.Y.H. and Others v. Sweden*, cited above, § 71). However, in addition to being a single woman, the applicant is also a member of a small religious minority. As noted by the Minority Rights Group International (§ 32 above) and the UNHCR (§ 33 above), minority women face a particular security risk, being subjected to violence, discrimination and religiously driven pressure to convert or change their appearance.

67. The two characteristics – being a single woman and a member of an ethnic or religious minority – must be examined together. Having regard to the country information available to the Court, which appears to focus on the situation in southern and central Iraq, the Court considers that women with these characteristics in general may well face a real risk of being subjected to treatment contrary to Article 3 if returned to the mentioned parts of the country. This view is reinforced in the present case by the fact that the applicant belongs to a particularly small and vulnerable minority.

**(f) The possibility of relocation to the Kurdistan Region**

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

69. 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).

70. 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. As noted in the UNAMI 2011 report, community representatives had stated that the Mandaeans do not face any threat or persecution in the Kurdistan Region and are supported by the regional government (§ 31 above). The UNHCR has concluded that, in the KRI, “the rights of religious minorities are generally respected and groups can worship freely without interference”. Specifically mentioning the Mandaean minority, the Finnish/Swiss report expressed the same opinion (at pp. 49-50, § 41 above).

71. The Court further notes that, while the Representative of the UN Secretary-General expressed concern over sexual and gender-based violence in the Kurdistan Region following a visit to Iraq in late 2010 (§ 31 above), the situation for women appears to have developed favourably since (as noted in the UNAMI Report for the second half of 2012; § 28 above).

72. 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, § 37 above, and the Finnish/Swiss report, which appears to rely heavily on the UNHCR’s conclusions in this respect, § 41 above). However, the difficulties faced by some at the KRI checkpoints do not seem to be relevant for certain groups. In regard to Christians, this has been noted by, among others, the UNHCR. While the country information documents available to the Court do not mention any specific entry procedures for Mandaeans, the fact that many members of that community have taken refuge in the KRI and are living there alongside other minorities give the impression that they benefit from a similar preferential treatment as the Christians (see § 70 above).

73. Moreover, whether or not members of the Mandaean community have to provide documentation in order to enter the three northern governorates, 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 (§ 38 above) and the UK Upper Tribunal in the recent country guidance case of *HM and others* (§ 40 above), 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. As 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 (§ 37 above).

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

75. 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. As noted above, Mandaean community representatives have attested that Mandaeans are supported by the Kurdistan Regional Government (UNAMI 2011 report, § 31 above). In any event, there is no indication that the general living conditions in the KRI for a Mandaean settler, whether a single woman or not, 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.

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

**(g) The particular circumstances of the applicant**

77. 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 her to settle in the Kurdistan Region. In this respect, the Court first notes that the applicant's accounts were examined by the Migration Board and the Migration Court, which both gave extensive reasons for their decisions that she was not in need of protection in Sweden. The applicant was able to present the arguments she wished with the assistance of legal counsel.

78. The Court has already had regard to the applicant's special situation as a single woman of Mandaean minority denomination and found that these characteristics would not prevent her from settling safely and reasonably in the Kurdistan Region. As regards the specific incidents to which the applicant and her family have been subjected in Iraq, the Court notes that she received a threat on one single occasion in June 2007, more than six years ago. Furthermore, following the end of the ordinary asylum proceedings, the applicant has claimed that her mother was kidnapped and presumably is dead. There are no indications, however, as to why she may have been kidnapped or killed. Furthermore, both this event and the threat received in 2007 occurred in Baghdad where the applicant should not be



returned (see § 67 above). They do not show that she would face a risk of treatment prohibited by Article 3 in the Kurdistan Region.

79. The applicant has also referred to her brother's alleged active duty in the Iraqi army and her new relationship initiated in Sweden with a Muslim man from Iraq. However, also with respect to these circumstances, the Court cannot find that they would put the applicant at particular risk if she is deported to the Kurdistan Region. This is all the more so as the brother may not return to Iraq, following his marriage to a Swedish citizen. As regards the applicant's partner, according to information supplied by the parties, he left Sweden for Syria in October 2010 and, allegedly, cannot return to Iraq. Noting that the relationship was first invoked in the applicant's appeal to the Migration Court and thus appears to have started after the applicant's deportation had been ordered by the Migration Board, the Court finds that no evidence has been presented which shows that he would be unable to enter the Kurdistan Region or that they would face ill-treatment there based on their relationship.

**(h) Conclusion**

80. Having regard to the above, the Court concludes that, although the applicant, as a Mandaean single woman, may face a real risk of being subjected to treatment contrary to Article 3 of the Convention if returned to the southern and central parts of Iraq, she may reasonably relocate to the Kurdistan Region, where she will not face such a risk. Neither the general situation in that region nor any of the applicant's personal circumstances indicates the existence of said risk.

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

## II. RULE 39 OF THE RULES OF COURT

81. 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.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that the implementation of the deportation order against the applicant would not give rise to a violation of Article 3 of the Convention, provided that she is not returned to parts of Iraq situated outside the Kurdistan Region;
3. *Decides* 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 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek  
Registrar

Mark Villiger  
President