



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

FIFTH SECTION

CASE OF T.A. v. SWEDEN

(Application no. 48866/10)

JUDGMENT

STRASBOURG

19 December 2013

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

In the case of T.A. v. Sweden,

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

Mark Villiger, *President*,
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
Ganna Yudkivska,
Helena Jäderblom,
Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 19 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 48866/10) 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 23 August 2010. The President of the Section acceded to the applicant’s request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr A. Soussi, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agent, Ms G. Isaksson, of the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that his deportation to Iraq would involve violations of Articles 2 and 3 of the Convention.

4. On 25 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 until 22 September 2010. On 21 September, 2 and 23 November and 7 December 2010 this indication was prolonged, eventually until further notice.

5. On 22 September 2011 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicant, who was born in 1979, is a Sunni Muslim from Baghdad. He is married and has a son.

7. The applicant arrived in Sweden on 11 November 2007 and applied for a residence permit the following day and for asylum on 20 May 2008. The Migration Board (*Migrationsverket*) held an interview with him in the presence of his legal counsel and an interpreter.

8. The applicant stated in essence the following in support of his application. He and his family lived in Karrada, a Shi'a-dominated district of Baghdad. In June 2003 he began working for a security company. After a year and a half he switched to another company in the same business and in January 2007 he began working for the biggest security company in the country which had connections to the US military. In May 2007 his clan disowned him due to this affiliation. In his work he had access to the "Green Zone", the international area of Baghdad. He also had the right to bear arms and to search suspected criminals. In October 2007 members of the Badr militia visited his house and told his wife that he should appear at their office for questioning. Some days later the al-Mahdi militia, which cooperated with the Badr militia in his neighbourhood, made the same demand. On 20 October 2007 he received a threatening letter pasted to his car, urging him to stop working for the US troops or else he would be killed. He asked his employer for help, but did not get any. On 1 November 2007 his house was hit by shell fire and was completely destroyed. No other house in the street was hit. He suspected that the two militias were behind the attack. The police arrived, but did not take any action. He and his family went to live with his parents-in-law in another part of Karrada. Three days later he left for Sweden, leaving his wife and son behind in Baghdad. In October 2008 they were assaulted at the home of his parents-in-law by men who were asking about his whereabouts. In late 2008 a friend visited his destroyed house in Baghdad and found another threatening letter addressed to the applicant which was forwarded via the applicant's wife to Sweden. The applicant claimed that he would risk persecution and inhuman treatment from the militias and his clan if he were to return to Iraq. He was also worried that he could be badly treated by the US military which may believe that he had disclosed information about them and because he brought with him his service identification cards when he left Iraq.

9. On 3 March 2009 the Migration Board rejected the application and ordered the applicant's deportation to Iraq. The Board held that he had not proved his identity, but that he had made it plausible that he was from Iraq. It further considered that the situation in Iraq as such did not constitute grounds for asylum. Noting that the applicant had not had any difficulties for religious or political reasons and that he had been able to live in a Shi'a-dominated area without anything having happened to him until October 2007, the Board concluded that the threats against him were local and related to the militias in question. It could not be considered as persecution, however, and there was no indication that he risked persecution upon return. Nor did the Board find that he risked other forms of ill-treatment. In so

finding, it noted that he had not been subjected to such treatment previously. Since the applicant had been working for security companies and thereby cooperated with the American troops since 2003, the Board found his claim that he had received threats only in October 2007, four years later, to be peculiar. As to the alleged threats by the militias, the applicant had not been able to state who the people visiting his house were or what had been the purpose of their visits. His accounts in these respects were, according to the Board, mere speculation. Moreover, if the threats concerned his work for the American troops, the applicant had since ended that job and the threats could therefore no longer be considered valid. Also the applicant's accounts of the destruction of his house and the attack on his wife and son lacked details as to who the perpetrators were and why the actions had been undertaken. Consequently, no connection had been shown between the militia visits and the alleged subsequent events and the latter events did not indicate that the militia groups were still looking for him. In this context, the Board also noted that a remarkably long period of time had passed between the applicant's leaving Iraq and the alleged attack on his family members. It was further deemed peculiar that someone should have left a threatening letter at his demolished house long after his escape from the country. Furthermore, the applicant had not been able to explain why his clan would pose a threat to him. Finally, the Board noted that the incidents to which the applicant claimed to have been exposed were locally restricted to the Shi'a-dominated Karrara district; as a Sunni Muslim he should be able to move to a Sunni part of Baghdad.

10. The applicant appealed, adding that, if he were to be removed to Iraq, he would be split up from his family, who had moved to Syria. Furthermore, he claimed that he had not ended his employment at the security company and that, thus, the connection to the American troops remained.

11. On 2 March 2010 the Migration Court (*Migrationsdomstolen*) held an oral hearing in the case. The applicant was represented by his counsel and assisted by an interpreter. He later requested a further hearing, at which he wished that his former boss at one of the security companies in Iraq be heard by telephone. On 24 March 2010 the court rejected this request, finding it unnecessary, and instead gave the applicant the opportunity to finalise his submissions in writing.

12. On 16 April 2010, after having rejected the applicant's renewed request for a further hearing, the Migration Court upheld the decision of the Board, generally agreeing with its conclusions. The court considered that, even though the applicant and his family had been assaulted in Iraq, there was no evidence of a remaining threat against him upon return. In so finding, the court noted that it had not been shown that there was a connection between the various incidents and that the applicant did not know who were the perpetrators or why they had carried out the acts.

Furthermore, almost a year had passed between the destruction of the house and the assault on his family. His wife and child had stayed in Baghdad during this period and, if any group had had an interest in him to the alleged extent, they would in all likelihood have searched for him more actively. The court further took into account that more than two years had passed since the applicant had stopped working for the security companies and, consequently, that it was not likely that he would be exposed to further threats due to his former work if he were to return to Iraq. Also, many of the incidents dated back a number of years and had to be seen as consequences of the difficult general security situation in Iraq in 2007.

13. On 4 June 2010 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused the applicant leave to appeal.

14. In September and October 2010, at the Court's request, the applicant presented additional information, including copies of identification cards, certificates and letters of recommendation to show that he had been working for the security companies in question. He also submitted photos to prove that he had been training with the US military and photos of his wife and child to show that they had been injured in the alleged assault in October 2008. Additionally, he submitted several documents in Arabic and translations into Swedish. The documents, a report to the police by the applicant's brother, instructions of an investigating judge, witness statements by the brother and neighbours and a police account of measures taken – all dated in October 2008 –, provide the following account of events. On 10 October 2008 at 10 p.m., a black car stopped outside the applicant's house and four men got out of the car and went into the house. They rummaged through the house looking for the applicant and destroying property in the process. However, the brother told the police that the applicant was at work in the "Green Zone" at the time and therefore was not at home. The four men left a threatening note for the applicant. The alleged note was submitted to the Court with a translation.

II. RELEVANT DOMESTIC LAW

15. 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).

16. 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).

17. 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.

18. 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).

19. Matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances: the Migration Board, the Migration Court and the Migration Court of Appeal.

III. RELEVANT INFORMATION ABOUT IRAQ

A. General human rights situation

20. On 31 May 2012 the United Nations High Commissioner for Refugees (UNHCR) issued the latest *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq* (hereafter “the UNHCR Guidelines”). They contain the following account (at p. 8):

“[A]rmed groups opposed to the Iraqi Government remain active and capable of disrupting the security environment with regular mass casualty attacks, often directed at Shi’ite civilians, reportedly aiming to reinvigorate sectarian violence. Armed groups are also thought to be responsible for targeted attacks on government and security officials, politicians, tribal and religious leaders, and members of religious and ethnic minorities, among others. Occasionally, local cells manage to coordinate attacks across the country. The number of civilian casualties, though less than at the

peak of violence in 2006 and 2007, remains nonetheless significant with around 4,000 civilians killed in both 2010 and 2011, respectively. At least 464 civilians were killed in January 2012, in what appeared to be a surge in mass casualty attacks. Shi'ite civilians have been the most affected. After a short lull in violence, several major attacks across central Iraq were again reported in late February, March and April 2012.

These casualty figures are indicative of the significant risks still faced by Iraqi civilians. The number of civilian deaths from suicide attacks and car bombs decreased in 2011 compared to previous years, to an average of 6.6 per day. While these attacks still account for the highest number of civilian deaths each month, the number of civilians killed from gunfire/executions rose to an average of 4.6 per day in 2011. This suggests that an increasing number of Iraqis, especially government and security officials, are being individually targeted. Violence is mostly concentrated in the predominantly Sunni or mixed central governorates of Al-Anbar, Baghdad, Diyala, Ninewa, Kirkuk, and Salah Al-Din, but occasionally moves into the mainly Shi'ite governorates further south. Armed Sunni groups such as Al-Qa'eda in Iraq and Ansar Al-Islam are thought to be responsible for most of the violence. Shi'ite armed groups have to a large extent been integrated into the ISF [Iraqi security forces] and the political process, though they reportedly maintain their independent military capabilities and at times threaten to use it to further their political agendas. Armed groups target civilians on the basis of their (imputed) political views, religion, ethnicity, social status or a combination of reasons. As a result of the weak law enforcement and justice system, persons at risk of persecution are reportedly unable to find protection or judicial redress. Observers mention undue political influence, the lack of trained legal professionals and corruption as further obstacles to the administration of justice, including in the Kurdistan Region. Legal professionals continue to work in a very difficult security environment, and remain a target of armed groups. Crime is widespread and some armed groups reportedly engage in extortion, kidnappings and armed robberies to fund their other, politically – or religiously, or ideologically – motivated activities, conflating acts of persecution and criminality. Consequently, the line between persecution and criminality appears to be increasingly blurred.”

The UNHCR Guidelines also describe the armed Shi'ite groups (at pp. 11-12):

“After 2003, a range of armed Shi'ite groups reportedly started to compete for power and religious influence in Iraq, at times resulting in violent intra-Shi'ite clashes. This was the case, in particular, between the Badr Corps, the armed wing of the Supreme Council for the Islamic Revolution in Iraq / Islamic Supreme Council of Iraq, and the Jaysh Al-Mahdi, the armed wing of the Sadrism Movement led by cleric Muqtada Al-Sadr. Jaysh Al-Mahdi became the main Shi'ite opposition to the foreign coalition forces in Iraq after the fall of the former regime in 2003. It staged two uprisings against US forces in April and August 2004 and launched numerous attacks against mainly US military targets. Attacks on US forces peaked in mid-2007, when Jaysh Al-Mahdi was responsible for the majority of all US casualties. Both the Badr Corps and the Sadrists have integrated into the political process and the Sadrists have become a major political force and main backer of Prime Minister Al-Maliki. However, none of these groups have given up military capacity and, in the case of Jaysh Al-Mahdi / Promised Day Brigades, sporadic attacks on US targets continued into 2011. Some members of the Badr Corps, and to a lesser extent the Jaysh Al-Mahdi, have been integrated into the ISF. Armed Shi'ite groups are accused of having a major role in the sectarian cleansing that followed the February 2006 Al-Askari

shrine bombing. Armed Shi'ite groups were significantly affected by the ISF-led offensives in southern Iraq and Sadr City/Baghdad in 2007–2008.

Muqtada Al-Sadr faced apparent difficulties in retaining control over Jaysh Al-Mahdi, and the group splintered into various factions with differing agendas (so-called “Special Groups”), some of them engaging in mainly criminal activities. In recent years, three main armed Shi'ite groups have been active: Jaysh Al-Mahdi / Promised Day Brigades; Asa'ib Ahl Al-Haq, which was created by former Sadrists Qays Al-Khazali; and Kata'ib Hezbollah. In 2011, these groups claimed responsibility for lethal attacks against the USF-I [United States Forces in Iraq] aimed at expediting the withdrawal of foreign forces from Iraq. Their presence is mainly reported in Baghdad, Basrah, Missan, Thi-Qar, Kerbala, Babel, Najef, Wassit and Diwaniyah. Armed Shi'ite groups have also been reported to engage in criminal activities such as kidnappings, extortion and oil smuggling.

Armed Shi'ite groups boasted that the US troop withdrawal from Iraq in mid-December 2011 was a “historic victory”. It remains to be seen how their agendas will evolve in the aftermath of this withdrawal. Reportedly, there continue to be regular rocket attacks against the US consulate in Basrah, which houses almost 1,000 US diplomatic and security personnel. At the same time, Asa'ib Ahl Al-Haq announced its decision to lay down its arms and engage in the political system as an opposition party. This decision heightened existing tensions with the Sadrists. Muqtada Al-Sadr has repeatedly warned that the Promised Day Brigades stand ready to attack any “oversize” US diplomatic presence in Iraq. There are no indications that Kata'ib Hezbollah seeks to integrate into the political system.

While armed Shi'ite groups have in the past publicly focussed on attacking the MNF-I [Multi-National Forces in Iraq] / USF-I, there are reports that they also single out Iraqis of various profiles for kidnapping and assassination, including former Ba'athists, security and government officials, political/religious rivals, and persons considered as “collaborators” with the foreign forces, especially the US. Further, Shi'ite groups have also enforced strict Islamic rules of behaviour and dress, and are considered to be responsible, *inter alia*, for attacks on women not wearing the veil, persons engaged in selling liquor, and LGBTI persons.”

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

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

Political instability and regional developments continued to impact negatively on the security situation in Iraq, with its concomitant toll on civilians. Although the Government takes the impact of violence on civilians extremely seriously and has

taken measures to enhance security, more needs to be done to ensure the proper coordination of financial, medical and other forms of support for the victims of violence.”

22. The UK Border Agency *Iraq Operational Guidance Note* of December 2012 describes the general security situation thus (at pp. 21-22):

“3.6.2 The security situation in Iraq continues to affect the civilian population, who face ongoing acts of violence perpetrated by armed opposition groups and criminal gangs. In particular, armed groups continue to employ tactics that deliberately target crowded public areas and kill and maim civilians indiscriminately. While some attacks appear to be sectarian in nature, frequently targeting religious gatherings or residential areas, others seem random, aimed at creating fear and terror in the population at large and casting doubt over the ability of the Government and Iraqi security forces to stem the violence. Assassinations also persist across the country, targeting, inter alia, Government employees, tribal and community leaders, members of the judiciary and associated persons.

3.6.3 Apparently making use of the political wrangling which has followed the elections for Iraq’s Council of Representatives (CoR) held on 7 March 2010, armed Sunni groups (such as Al-Qaeda in Iraq) have stepped up attacks since December 2011. These attacks have been carried out primarily against Shi’ite civilians in what appears to be an effort to stir sectarian tensions and undermine confidence in the ISF and, ultimately, the Iraqi Government. The political stalemate also comes at an uncertain period in the wider region: the repercussions of ongoing unrest and tensions in Syria and Iran, with which Iraq shares porous borders and political and economic ties, are not yet known. Iraq’s political difficulties have also reportedly increased tensions with neighbouring Turkey.”

23. In a country guidance determination, *HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC)*, delivered on 13 November 2012, the UK Upper Tribunal (Immigration and Asylum Chamber) reached, *inter alia*, the following conclusions (at p. 2):

“ii. As regards the current situation, the evidence does not establish that the degree of indiscriminate violence characterising the current armed conflict taking place in the five central governorates in Iraq, namely Baghdad, Diyala, Tameen (Kirkuk), Ninewah, Salah Al-Din, is at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat.

iii. Nor does the evidence establish that there is a real risk of serious harm under Article 15(c) [of the Refugee Qualification Directive 2004/83/EC] for civilians who are Sunni or Shi’a or Kurds or have former Ba’ath Party connections: these characteristics do not in themselves amount to “enhanced risk categories” under Article 15(c)’s “sliding scale” ...”

B. The specific situation of certain groups, in particular persons (perceived to be) affiliated with the former multi-national forces

24. The UNHCR Guidelines contain the following account in regard to individuals affiliated with the USF-I, foreign governments, non-

governmental organisations (NGOs) or international companies (at pp. 16-17):

“Civilians (formerly) employed or otherwise affiliated with the former MNF-I/USF-I or foreign governments, NGOs or international companies, as well as their families, are at risk of being targeted by non-state actors for their (imputed) political opinion. Since 2003, both Sunni and Shi’ite armed groups are known to have threatened, kidnapped and killed interpreters, embassy workers, drivers, subcontractors and others affiliated with the MNF-I/USF-I, foreign governments, international companies or organizations, reportedly to deter others from working for them.

Ahead of the full USF-I withdrawal from Iraq, achieved by mid December 2011, advocates and Iraqis (formerly) employed with the US military raised concerns about being left without protection. There are fears that employee records maintained by the USF-I may have leaked to armed groups. Perpetrators of violence against Iraqis affiliated with the MNF-I/USF-I are both Sunni and Shi’ite armed groups. It is reported that there were no contingency plans to provide emergency protection to former Iraqi employees after the USF-I withdrawal.

Individuals who have worked for the MNF-I/USF-I may be unable to find new employment if their former employer becomes known. Many former USF-I employees allegedly hesitate to reveal their prior work experience to a potential new employer for fear of retribution.”

25. The UK Border Agency *Iraq Operational Guidance Note* states as follows (at pp. 23-25):

“3.6.11 Almost all attacks are currently attributable to Sunni extremists and target current Iraqi Security Forces, Government of Iraq (GoI) employees, or very occasionally Shia gathering areas. Most incidents are targeted attacks against specific individuals, with only a small number of indiscriminate attacks. ...

...

3.6.14 Shia militias have predominantly been seen to operate in most areas of eastern Baghdad, generally emanating from the Sadr City area. They do also have a presence in the more ethnically mixed areas of central and western Baghdad. Shia militia tend to have a far higher capability to carry out lethal acts, though their intent is presently very low. Their agenda is far more linked to the political situation and as their leadership attempt to move into power-brokering they have far less of an inclination to use violence openly. Previously most of their attacks specifically targeted US Forces, though these started to tail off mid 2011 with the understanding that US Forces would withdraw entirely by the end of the year. In 2012 thus far it would be difficult to attribute more than a handful of incidents to Shia militia, and most of these would be down to in-fighting between different factions, or criminal disputes.”

THE LAW

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

26. The applicant complained that his return to Iraq would involve a violation of Articles 2 and 3 of the Convention. These provisions read as follows:

Article 2

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

...”

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

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

B. Merits

1. The submissions of the parties

(a) The applicant

28. The applicant submitted essentially the same claims and circumstances as those presented before the Swedish authorities. He stated that the risks facing him in Iraq had increased since the US troops had left the country. He maintained that, due to his work for security companies that had cooperated with those troops, he risked being apprehended and tortured and possibly killed by the Badr militia. Allegedly, the Iraqi authorities did not have the ability or will to protect him. The applicant further asserted that there were no inconsistencies in his statements and that this had been noted in the Migration Court’s judgment. Moreover, there was no relevant internal flight alternative for him.

(b) The Government

29. The Government acknowledged that, although recent country-of-origin information suggested that the overall security situation in Iraq and in

Baghdad had improved, serious concerns remained regarding the sustainability of the improvement. Nevertheless, in their view, belonging to a certain professional sector or cooperating with international or Iraqi forces or Iraqi authorities was not, of itself, a determining risk factor. Furthermore, a person in one of these categories who had a localised threat would be able to relocate to an area where that threat did not exist. In any event, the need of protection should be assessed on an individual basis.

30. As to the present case, the Government first asserted that the Migration Board and the courts had made thorough assessments. In the proceedings, the applicant had been given many opportunities to present his case, assisted by legal counsel and an interpreter. The Migration Board conducted an interview with the applicant and the Migration Court held an oral hearing. Moreover, having regard to the expertise held by the migration bodies, the Government maintained that significant weight should be given to their findings.

31. In regard to the applicant's personal risks, the Government pointed out that the Migration Board and the Migration Court, while not questioning the applicant's general credibility, had found reason to question some of his statements. The Government further asserted that the Arabic documents concerning events in October 2008 revealed circumstances which were inconsistent with information supplied by the applicant himself. For instance, the four men mentioned in the documents were supposed to have entered a house that had allegedly been completely destroyed the previous year. Furthermore, the applicant's brother had explained that the applicant had been at work, although he had already been in Sweden for almost a year. In the Government's opinion, these inconsistencies gave strong reasons to question the authenticity of the documents. They also gave cause to question certain details of the applicant's story to a greater extent than the Swedish migration bodies had done.

32. The Government submitted that the identities of those who had sent threatening letters to the applicant, attacked his house and assaulted his wife and child were unknown and that the applicant's claim that they had been members of the Badr and al-Mahdi militias was merely based on speculation on his part. Further, the applicant's wife and child had remained in Baghdad for a year after the first incident and, during this time, the applicant had been sought after on one single occasion; if he had been of great interest to any particular group, he would have been sought after more actively. The Government also pointed out that no information about incidents occurring later than 2008 had been submitted by the applicant. Also, in the threatening letters he had been urged to stop working for the US troops and considerable time had now passed since he carried out any actual work for the security company with connections to the Americans.

2. *The Court's assessment*

(a) **General principles**

33. The Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 67; *Boujlifa v. France*, judgment of 21 October 1997, *Reports* 1997-VI, p. 2264, § 42; and *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In these circumstances, Article 3 implies the obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008-...).

34. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assesses the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (*H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, § 40).

35. The assessment of the existence of a real risk must necessarily be a rigorous one (*Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. In this respect, the Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is

presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *Collins and Akaziebie v. Sweden* (dec.), no. 23944/05, 8 March 2007; and *Hakizimana v. Sweden* (dec.), no. 37913/05, 27 March 2008).

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

37. The above principles apply also in regard to Article 2 of the Convention (see, for example, *Kaboulov v. Ukraine*, no. 41015/04, § 99, 19 November 2009).

(b) The general situation in Iraq

38. 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).

39. 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.

40. However, the applicant is not in essence claiming that the general circumstances pertaining in Iraq would on their own preclude his return to that country. Instead, he asserts that this situation together with the fact that

he has worked at security companies with connections to the former US forces in Iraq – and allegedly has been subjected to attacks and threats from two militias on account of that employment – would put him at real risk of being subjected to treatment prohibited by Articles 2 and 3.

(c) The particular circumstances of the applicant

41. The Court first notes that the applicant was heard by both the Migration Board and the Migration Court, that they carefully examined the applicant's claims and that they delivered decisions containing extensive reasons for their conclusions.

42. The Court further notes from recent country information that private militias remain active in Iraq. The two Shi'ite militias allegedly posing a threat to the applicant appear, however, to have integrated to a large extent into the Iraqi security forces, and the great majority of militia attacks are carried out by Sunni groups against Shi'ites. Nevertheless, targeted attacks against the former international forces in Iraq and their subcontractors as well as individuals seen to be collaborating with these forces, especially the US troops, have been widespread and conducted also by Shi'ite groups (see, for instance, the UNHCR Guidelines, § 20 above). Consequently, individuals who worked directly with the international forces or for a company connected to those forces must, as a rule, be considered to be at greater risk in Iraq than the average population.

43. The applicant has stated – before the Swedish authorities as well as the Court – that, between June 2003 and late 2007, he consecutively worked for three different security companies in Baghdad. At least the last of the three – allegedly the biggest company of its kind in Iraq – had connections to the US military. Because of his work he received visits and threats from the Badr and al-Mahdi militias, who told him to stop his employment or else he would be killed. In November 2007, shortly before his departure for Sweden, his house was completely destroyed. In October 2008, his wife and child, who had remained in Baghdad but moved to the house of her parents, were assaulted at their new home. The applicant claims that the two militias carried out these attacks. In late 2008, a friend visiting his destroyed house in Baghdad found a threatening letter addressed to the applicant.

44. In support of his claims, the applicant has also submitted various documents, purporting to be of an official nature. They state that the applicant's brother and neighbours had told the police that four men had gone into the applicant's house in October 2008, thus almost a year after it had allegedly been completely destroyed. The applicant's original claim and the information contained in the documents submitted by him are mutually exclusive. Despite the fact that the respondent Government pointed out this contradiction in their observations, the applicant has not given any explanation. In the Court's view, this seriously weakens the applicant's credibility, not only in regard to this particular incident but also with respect

to the other parts of his story. In this connection, it must be emphasised that no evidence has been presented which shows that the applicant and his family have been threatened and attacked by the two militias or that the alleged incidents to which they were allegedly subjected were targeted at them because of the applicant's work.

45. The Court has further regard to the fact that the applicant left Iraq in November 2007, almost six years ago, and that, consequently, he has not worked for any security company or other employer with a US affiliation during this period. Thus, the interest that certain groups or individuals may have had in the applicant personally must have waned considerably.

46. Finally, the Court notes that the applicant's claim that he would risk ill-treatment also from his clan in Iraq and from the US military lacks substantiation.

(d) Conclusion

47. Having regard to the above, the Court finds reasons to generally question the applicant's credibility and considers that he has not been able to make it plausible that there is a connection between the incidents to which he and his family were allegedly exposed and his previous work for security companies connected to the former US troops in Iraq. In any event, many years have passed since said incidents and the applicant's work for the companies, and there is, consequently, no sufficient evidence to conclude that he would face a real risk of being subjected to treatment contrary to Article 2 or 3 of the Convention upon return to Iraq.

Consequently, his deportation to Iraq would not involve a violation of Article 2 or 3.

II. ALLEGED VIOLATIONS OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 7 TO THE CONVENTION

48. The applicant further complained that the decisions of the Swedish authorities violated his rights under Article 8 of the Convention and Article 1 § 1 of Protocol No. 7 to the Convention. These provisions read as follows:

Article 8

"1. Everyone has the right to respect for his ... family life

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

Article 1 § 1 of Protocol No. 7

“An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

- (a) to submit reasons against his expulsion,
- (b) to have his case reviewed, and
- (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.”

Admissibility

49. Under Article 8 of the Convention, the applicant complained that his wife and son, who had moved to Syria, could not return to Iraq on account of the assault to which they had been subjected there. Since the applicant did not have a residence permit in Syria and could not be expected to be admitted there, his deportation from Sweden would split up the family. In this respect, the Court notes that the family was split up already in November 2007, when the applicant left Iraq, and that no decision taken by the Swedish authorities or the possible deportation of the applicant from Sweden has changed or would change that situation. Furthermore, having regard to the above conclusion that the applicant would not face a real risk of being subjected to treatment contrary to Article 2 or 3 of the Convention if he returns to Iraq, the Court cannot find that his wife and son would be unable to join him there.

50. Under Article 1 § 1 of Protocol No. 7, the applicant claimed that, as he had not been granted a second oral hearing before the Migration Court, he had not had the opportunity to submit all reasons speaking against his deportation. In regard to this complaint, the Court notes that, throughout the Swedish proceedings, the applicant was assisted by legal counsel and an interpreter, that the Migration Board held an interview with him and that the Migration Court held an oral hearing and, when it refused a further hearing, gave him the opportunity to finalise his submissions in writing. It is thus clear that the applicant had ample opportunity to present all the arguments that he found relevant to his case and that the proceedings fully complied with applicable requirements.

51. It follows that these complaints are manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4 of the Convention.

III. RULE 39 OF THE RULES OF COURT

52. 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.

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning Articles 2 and 3 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds*, by five votes to two, that the implementation of the deportation order against the applicant would not give rise to a violation of Article 2 or 3 of the Convention;
3. *Decides*, unanimously, to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to deport the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 19 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President

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

M.V.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE JOINED BY JUDGE ZUPANČIČ

My reason for being unable to accept the majority's conclusion in this case is based upon the cumulative weight of a number of factors that come into focus when assessing the risk of treatment prohibited by Articles 2 and 3 of the Convention.

Since January 2007 the applicant worked for the biggest security company in Iraq with connections to the US military. Civilians (formerly) employed or otherwise affiliated with the former multinational forces and/or US forces in Iraq, as well as their families, are at risk of being targeted by non-State actors. The UNHCR concludes that such individuals associated with or perceived to have been associated with supporting the US forces in Iraq are, depending on the circumstances, likely to be in need of international refugee protection on account of their (imputed) political opinion.¹ The applicant (whose general credibility was not questioned by the domestic authorities) has already been the subject of threats, including, threats upon his life, whilst living and working in Iraq. These threats, he claims, were related directly to his association with the US forces. His home was targeted, specifically, and destroyed and his wife and son were assaulted after his departure from Iraq. The applicant's profile thus places him within a specific risk category of Iraqi asylum seekers.

In addition to this risk factor, regard must be had to the serious decline in the general situation in Iraq today. The majority, whilst noting the existence of the indiscriminate and deadly violence, nevertheless, considers that 'the overall situation has been slowly improving since the peak in violence in 2007' (§ 39) and it sees no reason to depart from the position it took over four years ago in *F.H. v Sweden* (no. 32621/06). I cannot share this perspective. It has been reported that 2013 has, thus far, been the deadliest year in Iraq since 2008.² The Interior Ministry has put the death toll for the month of November alone at 1,121 and the number of people injured at 1,349. Thus, even if one were to accept that the general situation in Iraq is not to be regarded as being sufficiently serious as to cause by itself a violation of Article 3 of the Convention in the event of an individual's forcible return thereto, the significant escalation in violence this year is, nevertheless, of sufficient seriousness as to weigh heavily in the balance when assessing, cumulatively, any risk of exposure to treatment that would violate Article 3 of the Convention.

¹ UNHCR (21 May 2012) *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at page 14 and following. These Guidelines replaced the earlier 2009 Guidelines. They were prepared based on an analysis of up-to-date and relevant information from a wide variety of sources as of the 18th of March 2012. Various news reports confirm that the general security situation in Iraq has deteriorated since then.

²See, for example, <http://rt.com/news/Iraq> and various other news agencies.

Having raised no serious issue as to the applicant's credibility,¹ it is, to my mind, somewhat questionable as to whether the reasons given by the migration authorities in rejecting the applicant's claim for asylum are sufficiently robust as to meet the level of 'rigorous' assessment required under Articles 2 or 3 of the Convention (*Chahal v United Kingdom* judgment of 15 November 1996, *Reports* 1996-V, § 96). For example, the Migration Board found it 'peculiar' that the applicant only received threats in 2007 four years after he had started working with security companies and thereby cooperating with the American troops (§ 9). However, it is clear from the judgment (§ 8) that the applicant's work with the company that actually had 'connections to the US military' had only commenced in 2007 (the year in which threats were received) and not in 2003. Another reason for the rejection of the applicant's claim was his inability to identify his attackers or to state who the 'visitors' to his house were or why they had carried out the attacks (§§ 9, 12). How, precisely, are victims of targeted violence supposed to 'identify' those who terrorize them in arbitrary and unpredictable attacks? To be required to meet such an onerous test is to impose upon a person fleeing persecution an unreasonable and disproportionate burden. Further, while the Migration Court accepted that the applicant and his family had been assaulted in Iraq, it rejected his appeal, nevertheless, because it considered, *inter alia*, that the applicant failed to show that there was any connection between the various incidents and thus no remaining threat against him in the event of his return (§12). The applicant's entire claim, however, is based upon the fact that there is, indeed, a connection between the various incidents in that they were all forms of retaliation against him for his imputed collaboration with the US military. That submission is plausible. That such attacks occur precisely because of perceived cooperation with foreign forces is confirmed by international observers.²

The Respondent State points to a discrepancy between the applicant's initial claim and the contents of certain documents adduced later in the proceedings (§ 44). The applicant cannot be blamed for what his brother said to the men who arrived at the applicant's former home after he had fled to Sweden. The majority, to my mind, accords too much weight to this alleged discrepancy and too little weight to the overall credibility of the applicant - a credibility which those who interviewed him found no reason to question.³ The general reliability of the applicant's account when taken together with his specific risk profile and viewed in the light of the deteriorating security situation in Iraq, lead me to conclude that the applicant would face a real risk of being subjected to treatment contrary to

¹ See § 28 of the Government's Observations dated 19 March, 2012.

² See UNHCR (21 May 2012) *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq*, at page 14 and following.

³ See §§ 28 and 32 of the Government's Observations dated 19 March, 2012.

Article 2 or 3 of the Convention should the Respondent State return him to Iraq at this time.