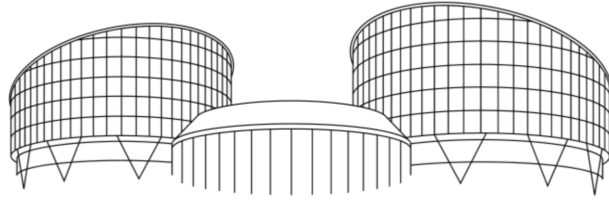

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF D.N.M. v. SWEDEN

(Application no. 28379/11)

JUDGMENT

STRASBOURG

27 June 2013

FINAL

27/09/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of D.N.M. v. Sweden,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
André Potocki,
Paul Lemmens,
Helena Jäderblom, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 28 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 28379/11) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iraqi national, Mr D.N.M. ("the applicant"), on 6 May 2011. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

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

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

4. On 29 June 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, a Kurd and Sunni Muslim, was born in 1988 and is currently in Sweden.

6. On 16 October 2007 he applied to the Migration Board (*Migrationsverket*) for asylum. He submitted that he had lived in Kirkuk in the Tameem province in northern Iraq. He had been in a relationship with a young Sunni woman for one year. Since the woman's brothers had not

approved of him, they had kept their relationship secret. In June 2007, however, the woman's brothers had caught them hugging and had attacked the applicant with scissors. During the attack, the woman had fled and he had not seen her since. The woman's brothers had said that he had offended their honour and that it would only be restored if they killed him. The applicant had been hospitalised for one week and had initially been protected by the police. During that time, the woman's brothers had burnt down his shop. They had also assaulted his father and had told him that they would cut the applicant to pieces. The applicant's father had obeyed the brothers and had given them permission to kill the applicant if they found him. The applicant had reported the incident to the police. However, they had told him that they could not help him as it was an honour-related issue. He had then gone into hiding with relatives in another part of Kirkuk and had subsequently left Iraq in September 2007.

7. On 13 November 2008 the Migration Board rejected the applicant's request for asylum. It first observed that the general situation in Iraq was not a sufficient ground to grant the applicant's request. Instead, an individual assessment had to be made. It further found the applicant's story to be partly contradictory, given that he had stated that the police had been unable to protect him and, at the same time, had stated that the police in fact had protected him during the time he spent in hospital. The Board also found the applicant's story to be vague, for example concerning the assault on his father. It further held that if the woman's brothers had wanted to kill the applicant, they could have done so when they attacked him the first time. The Board stressed that the applicant had been able to stay in Iraq between June and September 2007, without anything happening to him. Lastly, it held that the applicant had failed to give an explanation as to why the woman's brothers had not assaulted her but only the applicant. In sum, the Board did not find it credible that there was a threat from the brothers against the applicant.

8. The applicant appealed to the Migration Court (*Migrationsdomstolen*) in Malmö where he maintained his story and added that the reason he had not been killed in the attack was that neighbours had intervened. The police protection in the hospital lasted only for a limited time. When it had become clear to the police that the case concerned honour-related issues, they had stated that they did not have the resources to protect him. The reason he had been able to stay in Kirkuk for several months was that he had been in hiding at his cousin's home. Through a friend he had learnt that the woman had been killed and that her family had again assaulted his father. Internal relocation was not an alternative, as he did not have any social network outside his home province. Furthermore, the woman's family could find him in other parts of the country.

9. The Migration Board contested the applicant's appeal, considering that he lacked credibility. It acknowledged that, if the Migration Court were

to find the applicant's story credible, he could not be expected to benefit from the authorities' protection. However, in the Board's view, internal flight alternatives were available to the applicant, such as the central parts of Iraq and the Kurdistan Region in the north.

10. On 4 September 2009 the Migration Court upheld the decision of the Board. First, the Court agreed with the Board's assessment that the general situation in Iraq was not sufficient to justify granting the applicant's request. Turning to the individual circumstances of the case, the court considered that the applicant's story had been consistent and had not departed from what was generally known. The court further held that the applicant had given reasonable explanations for the inconsistencies highlighted in the Migration Board's decision. Thus, the court held, the applicant had made probable that he had been in a relationship with the woman, that they had been caught hugging, that he had then been attacked with scissors, that his shop had later been burnt down and that his father had been beaten and told that the applicant would be harmed. It did, however, note that the applicant's statements regarding the death of the woman and the further assault on the father were second-hand information of low evidential value. The court further stressed that two years had passed since the attack on the applicant and held that the interest from the woman's family had probably diminished. The risk that the applicant would be subjected to revenge upon return to Kirkuk could, however, not be disregarded. The court further noted that the Migration Board had accepted that the applicant could not count on protection from the authorities. Thus, the applicant had made out that there was an individual threat against him which was local to Kirkuk and the surrounding area. There was, however, nothing to suggest that the applicant would not be safe in other provinces. The court held that an internal relocation alternative, the Kurdistan Region of Iraq being an example, was reasonable and relevant even if the applicant had no social network there.

11. On 28 October 2009 the Migration Court of Appeal (*Migrations-överdomstolen*) refused leave to appeal.

12. The applicant subsequently claimed that there were impediments to his deportation and requested that his application for a residence permit be examined anew. However, on 18 August 2010, the Migration Board refused to reconsider the case. It appears that the applicant did not appeal against this decision.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Aliens Act

13. The basic provisions applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the Aliens Act (*Utlänningslagen*, 2005:716).

14. An alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden (Chapter 5, section 1 of the Act). The term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country (Chapter 4, section 1). This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, section 2).

15. Moreover, if a residence permit cannot be granted on the above grounds, such a permit may be issued to an alien if, after an overall assessment of his or her situation, there are such particularly distressing circumstances (*synnerligen ömmande omständigheter*) to allow him or her to remain in Sweden (Chapter 5, section 6). Special consideration should be given, *inter alia*, to the alien's health status. According to the preparatory works (Government Bill 2004/05:170, pp. 190-191), life-threatening physical or mental illness for which no treatment can be given in the alien's home country could constitute a reason for the grant of a residence permit.

16. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, section 1). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, section 2).

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

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

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

B. Case-law on honour-related violence

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

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

III. RELEVANT INFORMATION ABOUT IRAQ

A. Honour crimes

21. On 31 May 2012 the United Nations High Commissioner for Refugees (UNHCR) issued the latest *Eligibility Guidelines for Assessing the*

International Protection Needs of Asylum-Seekers from Iraq. In regard to honour violence, it sets out the following (at p. 37):

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

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

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

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

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

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

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

"Women fearing 'honour killing' or 'honour crimes' in either central or southern Iraq or in the Kurdistan Region of Iraq are unlikely to be able to access effective protection. Each case must be considered on its own merits to assess whether internal relocation would be possible for the particular profile of claimant, but in general an internal relocation alternative is unlikely to be available for lone women.

Honour crimes might not always be gender-related and there might be cases where men are as likely as women to be victims for committing certain acts which have brought shame on their family. If in such a case internal relocation is considered unduly harsh then Humanitarian Protection might be appropriate."

B. Tribal structure

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

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

C. Sectarian violence

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

"While open sectarian violence between Arab Sunnis and Arab Shi'ites ended in 2008, armed Sunni groups continue to target Shi'ite civilians with the apparent aim of reigniting sectarian tension. Sectarian-motivated violence includes: mass-casualty attacks targeting Shit'ite civilians and pilgrims; threats against Sunnis in Shi'ite majority areas and Shi'ites in Sunni majority areas; as well as targeted killings of both Sunni and Shi'ite clerics and scholars. Baathist ties and/or purported engagement in terrorism are often equated to sectarianism by the Iraqi Government and the ISF [international security forces]. Many individuals accused of Ba'athist ties and/or terrorism and thus perceived to be engaged in sectarianism are of Sunni background.

...

During the period of heightened sectarian violence in 2006 and 2007, the social and demographic make-up of many areas were altered as Sunni and Shi'ite armed groups sought to seize control and to cleanse "mixed" areas of the rival sect. This occurred principally in Baghdad, Iraq's most diverse city, but also in the mixed towns and villages surrounding it. During that period, many members of both sects were internally displaced or fled abroad. To date, most of Baghdad's formerly mixed

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

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

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

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

D. The situation of Kurds

28. In *HM and others*, the UK Upper Tribunal described the situation of Kurds in Iraq (at para. 300):

"There is nothing in the 2012 UNHCR Guidelines to suggest that Kurds per se are an enhanced risk category. Some support is given to the notion of Kurds as an enhanced risk category by [the expert witness] Dr George who in his written report referred to Kurds in central Iraq "remain[ing] at risk"... and by [the expert witness]

Dr Fatah who in his report refers to Kurds in Baghdad being "more vulnerable"... but in neither instance did the experts seek to say that the number of attacks on Kurds were at significant levels. According to Dr Fatah, the number of Kurds in Baghdad is around 100,000-150,000, far fewer than previously."

E. The possibility of internal relocation

29. As to the availability of internal flight or relocation alternatives (IFA/IRA) in the Kurdistan region, the 2012 UNHCR Guidelines gave the following account (at pp. 49 and 51):

> "A person from central or southern Iraq may be out of reach of his/her persecutors if relocated to the Kurdistan Region as the state protection of the Kurdish authorities may be triggered. This may occur only if the person is both admitted to the Kurdistan Region and allowed to legally remain there and if the Kurdish authorities are able and willing to provide protection in the individual case. Generally, the Kurdish authorities will be able and willing to provide protection; however, certain persons, particularly those who fear harm as a result of traditional practices and religious norms of a persecutory nature – such as women and children with specific profiles and LGBTI individuals – may still be reached by their persecutors if relocated within Iraq. Further, large segments of society and conservative elements in the KRG public administration endorse such norms, which would militate against the availability of an IFA/IRA for some cases in 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."

30. As regards possible internal flight alternatives in southern and central Iraq the report stated, *inter alia*, the following (at pp. 53 and 55):

> "As indicated in these Guidelines, persecution primarily emanates from a range of non-state actors. Armed groups reportedly have operatives in many parts of the country and, as a result, a viable IFA/IRA will likely not exist for individuals at risk of being targeted by such groups in southern and central Iraq. As reported throughout these Guidelines, armed groups are present in many parts of the country and have demonstrated mobility in accessing areas where they do not have strongholds. The mobility and reach of armed groups should not be underestimated in determining the relevance of an IFA/IRA. Persons seeking to relocate to other areas in central and southern Iraq may be at risk of facing renewed violence given the high levels of violence prevailing in many areas. UNHCR protection monitoring shows that lack of physical safety remains a concern for both IDPs [internally displaced persons] and returnees, particularly in the central governorates. Reports have been received of returnees being targeted because they do not belong to the majority sect in their area of return. In some cases, these attacks have been fatal. The presence of IDPs can at times result in tensions with host communities that consider them a destabilizing factor.
>
> Generally, protection by national authorities will not be available given that the national authorities have as yet limited capacity to enforce law and order. Members of the ISF and the judiciary are themselves a major target of attacks and are reportedly prone to corruption and infiltration.

> ...
>
> For categories of individuals who fear harm as a result of traditional practices and religious norms of a persecutory nature – such as women and children with specific profiles, victims of trafficking, and LGBTI individuals – and for whom internal relocation to another part of central and southern Iraq may be relevant, the endorsement of such norms by large segments of society and powerful conservative elements in the Iraqi public administration as well as the continued presence of armed groups with extremist or highly conservative leanings militate against the availability of an IFA/IRA in southern and central Iraq.
>
> ...
>
> Common ethnic or religious backgrounds and existing tribal and family ties in the area of relocation are crucial when assessing the availability of an IFA/IRA, as these generally ensure a certain level of community protection and access to services. ... Further, an IFA/IRA to an area with a predominantly different ethnic or religious demography may also not be possible due to latent or overt tensions between groups. This can be particularly the case for Sunnis in predominantly Shi'ite areas, and vice versa, especially if the demographic make-up of the areas has changed as a result of previous sectarian violence."

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

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

31. In a country guidance judgment of 7 May 2008, *SI (expert evidence – Kurd – SM confirmed) Iraq CG [2008] UKAIT 00094*, the UK Asylum and Immigration Tribunal concluded, *inter alia*, the following in regard to internal relocation within Iraq (at para. 62):

> "[W]e are prepared to accept that Kurds face difficulties pretty well everywhere in central and southern Iraq. However, although there have been examples of Kurdish communities per se facing targeted attacks, the evidence does not demonstrate that that is generally the case. On the whole a Kurd who can relocate safely within central and southern Iraq to an area where there is a significant Kurdish community can find protection there and will be able to avoid unduly harsh living conditions. What, however, of Kurds who for one reason or another are not able to relocate safely to such areas? Here, we are prepared to accept that the evidence indicates a slightly different position. As compared to a Kurd able to relocate safely to an area where there is a significant Kurdish community, a Kurd only able to relocate safely to an area where he (or she) would have to live separately from a Kurdish community would face added difficulties, by virtue of being regarded with suspicion as a stranger who stands out in ethnic, tribal and cultural and sometimes religious terms. However, we do not consider that the evidence demonstrates that for Kurds in either category these difficulties are such as to mean that merely by virtue of being Kurdish a person faces either a real risk of serious harm or that those conditions for them would be unreasonable or unduly harsh."

THE LAW

ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

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

Article 2

"1. Everyone's right to life shall be protected by law. ..."

Article 3

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

33. The Government contested that argument.

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

A. Admissibility

35. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The applicants

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

37. Contrary to the Government, the applicant held that relevant country information indicated that it was debatable whether the preconditions for relying on an internal flight alternative – ability to travel, gain admittance and settle in the Kurdish region – existed.

38. The applicant further stated that it had not been possible for him to submit any documents in support of his claim, although he had tried. He

further stressed that there had been a general police presence in the hospital to which he had been admitted. However, when the police had become aware that he was a victim of honour-related crimes, they had stopped paying attention to him. Furthermore, he stressed that he had been in hiding and had never left the house during the time he had spent with his relatives following the assault.

(b) The Government

39. From the outset, the Government held that the situation in Iraq did not, in itself, suffice to establish that a return of the applicant would entail a breach of Article 3 of the Convention. They further noted that in a UK Home Office report from 2011, the Kurdish region of Iraq had been pointed out as the safest and most stable region of Iraq.

40. Turning to the individual circumstances of the present case, the Government were of the opinion that the applicant's story lacked credibility and that, consequently, his claim that he would risk treatment contrary to Article 3 of the Convention had not been substantiated. They pointed out that the applicant had not shown that he had reported the alleged threats to the police or presented any document substantiating his other claims. Moreover, according to the Government, the applicant's story had been vague, inconsistent and lacking in details, notably as regards his relationship with the woman. For example, he had not produced any detailed information about the alleged death of the woman, although such information ought to be available to him, since her family and his family allegedly were neighbours. In the Government's view, it was also of relevance to note that the allegation that the woman had been murdered had been put forward in connection with the appeal to the Migration Court in December 2008, whereas in October the same year the applicant had stated that he had no knowledge of what had happened to her. In addition, the Government stressed that the applicant had changed his story during the domestic proceedings in several ways.

41. Should the Court find that there was a real risk of honour-related crimes against the applicant upon return, the Government held that it was up to the applicant to show that he had been unable to obtain protection from the domestic authorities in order to claim successfully that his enforced expulsion would violate Article 3 of the Convention. According to the Government, the applicant had not shown that he had tried to seek the protection of the authorities and no general conclusion based on the accessible country information could be drawn concerning the possibilities for men to obtain such protection. Moreover, the applicant had failed to show that any attempts had been made to solve the conflict in which he was allegedly involved through reconciliation. Therefore, it had not been shown that the Iraqi authorities were unable to obviate the risk that the applicant

allegedly would face upon return by providing him with appropriate protection.

42. As concerned the applicant's possibilities of using an internal flight alternative, the Government was of the opinion that, being a man born in 1988 and fit for work, he would be able to provide for himself, even in an area of Iraq where he lacked a social network. Referring to a UK Home Office report from 2010, they further held that the applicant would be able to enter and settle in the Kurdistan Region and nothing had emerged to suggest that he would not be able to gain admittance to central Iraq. Furthermore, the Government asserted that the applicant had failed to substantiate his claim that the woman's family belonged to a powerful clan and no other circumstances had arisen that would indicate that they had the information and resources necessary to locate him in any of those provinces. The Government also noted that the applicant had been able to stay in Kirkuk for several months before leaving Iraq. Therefore, it was possible and reasonable to expect the applicant to resettle in central Iraq or the Kurdistan Region.

2. *The Court's assessment*

(a) General principles

43. 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-...).

44. 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).

45. 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).

46. 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).

47. 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).

48. 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 risks facing the applicant upon return

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

50. While the international reports on Iraq attest to a continued difficult situation, including indiscriminate and deadly attacks by violent groups, discrimination as well as heavy-handed treatment by authorities, it appears that the overall situation is slowly improving. In the case of *F.H. v. Sweden* (no. 32621/06, § 93, 20 January 2009), the Court, having at its disposal information material up to and including the year 2008, concluded that the general situation in Iraq was not so serious as to cause, by itself, a violation of Article 2 or 3 of the Convention in the event of a person's return to that country. Taking into account the international and national reports available today, the Court sees no reason to alter the position taken in this respect four years ago. It must therefore be determined whether the applicant's personal situation is such as to expose him to a real and personal risk of treatment contrary to Article 2 or 3 if sent back to Iraq.

51. The Court observes that the Government have questioned the applicant's credibility and pointed to inconsistencies in his story. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. It accepts that, as a general principle, the national authorities are best placed to assess the credibility of the case since it is they who have had an opportunity to see, hear and assess the demeanour of the individuals concerned (see *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010). In this respect, the Court notes that the Migration Court considered that the applicant had given reasonable explanations for the inconsistencies highlighted by the Migration Board and, moreover, that the Migration Court did not question the applicant's story as such. Under these circumstances the court finds no reason to hold differently.

52. The Court considers that the events that eventually led the applicant to leave Iraq, in particular the assault and subsequent threats made against him and the father's approval of the applicant being killed, strongly indicate that he would be in danger upon return to his home town, all the more so considering the numerous commentators stressing the gravity of honour-related violence in Iraq (see country information above). Accordingly, the Court agrees with the Migration Court's conclusion that the risk of the woman's relatives seeking revenge in order to uphold their perception of honour is real.

53. The Court further notes that the Migration Board accepted before the Migration Court that the applicant would not be able to avail himself of the authorities' protection in Kirkuk. This conclusion is supported by the above-mentioned country information, which indicates that persons who are at risk of being subjected to honour-related crimes in Iraq might not receive effective protection from the authorities. For example, the Iraqi Penal Code allows for lenient punishments for "honour killings" and such crimes are reported frequently to be committed with impunity, given the high level of social acceptance of this type of crime, including among law enforcement officials. In this connection, the Court observes that, according to the applicant, he reported the incident to the authorities but was told they could not help him because it was an honour-related issue. Against this background, the Court agrees with the Migration Court's assessment that the applicant would not be able to avail himself of the authorities' protection in Kirkuk.

(c) The possibility of internal relocation

54. 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).

55. The Government pointed to the Kurdish region as a possible internal relocation alternative, as did the Migration Court. The applicant, who is from Kirkuk in the disputed areas and, apparently, has no local connections in the Kurdistan Region, disputed that he would be able to enter that region. While not disregarding the obvious difficulties for people involved in honour-related conflicts in that region, the Court considers that it is not necessary to examine whether the applicant would be able to settle there, as will be elaborated below, it is of the opinion that he would be able to relocate to other regions, in southern and central Iraq.

56. To begin with, the Court notes that the latest incident involving the applicant dates back to June 2007. Whilst acknowledging the possible long

duration of conflicts such as the present one, the Court nevertheless finds it reasonable to assume that the passing of time has to some degree reduced the threat against the applicant.

57. More importantly, the Court is not convinced that the material before it supports the applicant's claim that the woman's relatives have the means and connections to find him wherever he may be in Iraq. Here, the Court first observes that the available general information suggests that tribes and clans are region-based powers. Thus, in many cases, a person who is persecuted by a family or clan can be safe in another part of the country. In this connection, it is also of importance to note that the influence and power of the tribes and clans in Iraq differ. One factor possibly weighing against the reasonableness of internal relocation is that a person is persecuted by a powerful clan or tribe with influence at governmental level. However, if the clan or tribe in question is not particularly influential, an internal flight alternative might be reasonable in many cases. As regards the family in question in the present case, there is no evidence that it is particularly influential or powerful or that it has connections with the authorities in Iraq. Moreover, the applicant was attacked and threatened by the woman's brothers. He has not put forward evidence to suggest that more people, for instance relatives living outside of Kirkuk, have been involved in the threats made against him.

58. The Court has had further regard to the fact that the applicant is a Kurd and a Sunni Muslim. As noted above (§ 50), the general situation of instability and violence in Iraq is not of such severity that it may be said that the applicant would be exposed to a real risk of ill-treatment simply by being returned there. Furthermore, as concluded by the the UK Upper Tribunal in *HM and others* (see § 29 above), the 2012 UNHCR Guidelines do not show that Kurds per se are an enhanced risk category within Iraq. Also, while acknowledging the problem of sectarian violence in Iraq (see, for instance the UNHCR Guidelines, § 27 above), there is no indication that it would be impossible or even particularly difficult for Sunni Muslims – comprising a sizeable group, reportedly making up one third of the country's population – to find a place to settle where they would constitute a majority or, in any event, be able to live in relative safety. Consequently, neither the applicant's Kurdish ethnicity nor the fact that he is a Sunni Muslim would as such expose him to a real risk of treatment contrary to Article 2 or 3 of the Convention.

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

(d) Conclusion

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds* by five votes to two that the applicant's deportation to Iraq would not be in violation of Article 2 or 3 of the Convention.

Done in English, and notified in writing on 27 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek — Registrar

Mark Villiger — President

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

M.V.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE JOINED BY JUDGE ZUPANČIČ

Although the applicant is not a member of the Christian minority in Iraq, nevertheless, for the same reasons of principle as those set out in my dissenting opinion in the case of *M.Y.H. and Others v. Sweden*, I voted against the majority in finding that Article 3 would not be breached in the event that the deportation order made in respect of this applicant were to be executed.

My dissent is based on the failure of the majority to test whether the requisite guarantees as required by the Court's case law prior to a deportation based on internal flight options have been established in this case.

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

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

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

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