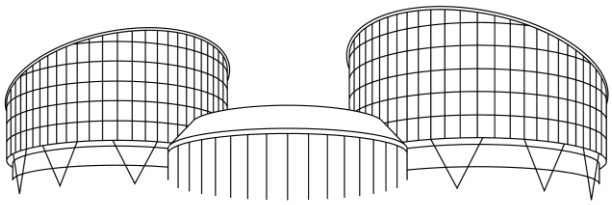

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

**CASE OF N.A.N.S. v. SWEDEN**

*(Application no. 68411/10)*

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.*

**In the case of N.A.N.S. 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. 68411/10) 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 15 November 2010. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr T. Nisebinis, a lawyer practising in Gothenburg. The Swedish Government ("the Government") were represented by their Agent, Ms H. Lindquist, of the Ministry for Foreign Affairs.

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

4. On 8 February 2011 the President of the Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be deported to Iraq until further notice.

5. On 8 November 2011 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1985. He originates from Mosul.

7. The applicant arrived in Sweden on 21 December 2009 and applied for asylum the following day. In support of his application, he submitted in

essence the following. He is Christian and he used to live with his parents and siblings in Mosul, where he had attended school for 14 years. In July and August 2008 the family had received telephone threats from Ansar Al-Sunna, a Sunni insurgent group, which had demanded that they pay 60,000 U.S. dollars and convert to Islam. Shortly thereafter, his father had been shot and wounded by four masked men. In December 2008 his family had received further telephone threats from Ansar Al-Sunna. They had then left their house and moved into a church where they had stayed until January 2009. The applicant's mother had disappeared on 20 January 2009 when she had been out looking for a new house and had been missing ever since. The rest of the family had moved to a Christian family's house. In February 2009 the applicant's father had had to go to hospital and shortly thereafter he had died. The applicant and his siblings had stayed with the Christian family, but the applicant had felt controlled and guarded when leaving the house. He had been afraid that terrorists would find them and kill them. He had therefore left Iraq in October 2009. He feared that he would be subjected to violence and even killed if he were to return to Iraq. The authorities could not protect him.

8. On 8 February 2010 the Migration Board (*Migrationsverket*) rejected the application. The Board held that the telephone threats were to be considered as acts of criminality rather than religious persecution. It considered that there was no obvious connection between the threats, the shooting of the applicant's father and the disappearance of his mother. It further noted that the applicant had not been personally subjected to any threats or violence and that he had stayed in Mosul for nine months following the disappearance of his mother without facing any threats. In light of this, the Board concluded that he did not risk being subjected to any persecution or inhuman treatment if he were to return to Iraq.

9. The applicant appealed, stating that his father had been killed by three police officers and that these officers had been looking for the applicant after his mother's disappearance. He further claimed that he was in a poor mental state and submitted medical documents to support this contention.

10. On 19 October 2010 the Migration Court (*Migrationsdomstolen*) upheld the decision of the Board. The court considered that the applicant had shown that he would be at risk of serious persecution if he were to return to Mosul due to the conflicts there and that it was clear from recent country information that the local authorities could not offer him any protection. However, having regard to the general situation as well as the applicant's personal circumstances, including his gender, age, health, religion and ethnicity, the court found the Kurdistan Region of Iraq to be a reasonable relocation alternative.

11. On 30 November 2010 the Migration Court of Appeal (*Migrations-överdomstolen*) refused the applicant leave to appeal.

## II. RELEVANT DOMESTIC LAW

12. The basic domestic provisions applicable in the present case are set out in *M.Y.H. and Others v. Sweden* (no. 50859/10, §§ 14-19, 27 June 2013 – in the following referred to as "*M.Y.H. and Others*").

## III. RELEVANT INFORMATION ABOUT IRAQ

13. Extensive information about Iraq can be found in *M.Y.H. and Others*, §§ 20-36.

# THE LAW

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

14. 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

15. 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

16. The applicant claimed that, should he be returned to Iraq, he would face a real risk of being killed or subjected to torture or other inhuman or

degrading treatment. He asserted that the general situation in Iraq had worsened in recent years.

17. With respect to his personal experiences, the applicant essentially restated what he had said to the Swedish authorities. He maintained that the attacks to which he and his family had been subjected in Iraq attested to his being at real risk upon return. He further submitted that he was in a very bad state mentally, constantly coming back to thoughts of what had happened to his close relatives in Iraq.

18. The applicant further stated that available country-of-origin information showed that Christians in Iraq had, for several years, been subjected to harassment, kidnapping, threats, forced religious conversions, murder and other forms of serious violence, against which local authorities were generally unable to afford effective protection.

19. As regards internal relocation, the applicant referred to the UNHCR, according to which there was no such alternative in the southern and central parts of Iraq. As for the Kurdistan Region, he claimed that this was not an option available to all Christians; again referring to the UNHCR, he pointed out that persons lacking a personal contact in or other connection to that region were not guaranteed entry. He did not have such links to the region and did not have any social network there; in fact, none of his relatives remained in Iraq. Furthermore, he was not Kurd and did not know Kurdish culture and traditions.

**(b) The Government**

20. The Government acknowledged that country-of-origin information showed that the general security situation in the southern and central parts of Iraq was still serious and that Christians was one of the more exposed groups. However, they maintained that there was no general need of protection for all Christians from Iraq and, that, consequently, assessments of protection needs should be made on an individual basis.

21. In any event, referring to international reports on Iraq as well as information obtained from the Migration Board, the Government contended that there was an internal flight alternative for the applicant in the three northern governorates of the Kurdistan Region. Allegedly, he would be able to enter without any restrictions or sponsor requirements into this region, which had been identified as the safest and most stable in Iraq, and he would be able to settle there, with access to the same public services as other residents. While the Government noted that a need of protection vis-à-vis the serious situation in the applicant's home town of Mosul had been identified in the domestic proceedings and that this situation had not improved to any great extent, they maintained that there was nothing in the applicant's story that suggested the existence of a threat against him in other parts of Iraq. As to the applicant's personal circumstances in relation to the possibility to relocate internally, the Government stressed that he is an adult

man, born in 1985, relatively well-educated and fit for work. Thus, he would be able to provide for himself, even in an area of Iraq where he lacked a social network.

22. The Government further asserted that the Migration Board and the courts had provided the applicant with effective guarantees against arbitrary *refoulement* and had made thorough assessments, adequately and sufficiently supported by national and international source materials. In the proceedings, the applicant had been given many opportunities to present his case, through interviews conducted by the Board with an interpreter present and by being invited to submit written submissions, at all stages assisted by legal counsel. Moreover, having regard to the expertise held by the migration bodies, the Government maintained that significant weight should be given to their findings.

*2. The Court's assessment*

**(a) General principles**

23. 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-...).

24. 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).

25. 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).

26. 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).

27. 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**

28. 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).

29. 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 upto 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.

30. However, the applicant did not only claim that the general situation in Iraq was too unsafe for his return, but also that his status as a member of the Christian minority would put him at real risk of being killed or subjected to ill-treatment.

**(c) The situation of Christians in Iraq**

31. In the mentioned case of *F.H. v. Sweden*, following its conclusion that the general situation in Iraq was not sufficient to preclude all returns to the country, the Court had occasion to examine the risks facing the applicant on account of his being Christian. It concluded then that he would not face a real risk of persecution or ill-treatment on the basis of his religious affiliation alone. In so doing, the Court had regard to the occurrence of attacks against Christians, some of them deadly, but found that they had been carried out by individuals rather than organised groups and that the applicant would be able to seek protection from the Iraqi authorities who would be willing and able to help him (§ 97 of the judgment).

32. During the subsequent four years, attacks on Christians have continued, including the attack on 31 October 2010 on the Catholic church Our Lady of Salvation in Baghdad, claiming more than 50 victims. The available evidence rather suggests that, in comparison with 2008/09, such violence has escalated. While still the great majority of civilians killed in Iraq are Muslims, a high number of attacks have been recorded in recent years which appear to have specifically targeted Christians and been conducted by organised extremist groups. As noted by the UNHCR (see *M.Y.H. and Others*, § 25) and others, Christians form a vulnerable minority in the southern and central parts of Iraq, either directly because of their faith or because of their perceived wealth or connections with foreign forces and countries or the practice of some of them to sell alcohol. The UK Border Agency concluded in December 2011 that the authorities in these parts of the country were generally unable to protect Christians and other religious minorities (*M.Y.H. and Others*, § 26).

33. The question arises whether the vulnerability of the Christian group and the risks which the individuals face on account of their faith make it

impossible to return members of this group to Iraq without violating their rights under Article 3. The Court considers, however, that it need not determine this issue, as there is an internal relocation alternative available to them in the Kurdistan Region. This will be examined in the following.

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

34. 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).

35. The three northern governorates – Dahuk, Erbil and Sulaymaniyah – forming the Kurdistan Region of Iraq, or KRI, are, according to international sources, a relatively safe area. While there have been incidents of violence and threats, the rights of Christians are generally considered to be respected. As noted by various sources, large numbers of Christians have travelled to the Kurdistan Region and found refuge there.

36. As regards the possibility of entering the KRI, some sources state that the border checks are often inconsistent, varying not only from governorate to governorate but also from checkpoint to checkpoint (see the UNHCR Guidelines and the Finnish/Swiss report, which appears to rely heavily on the UNHCR's conclusions in this respect, *M.Y.H. and Others*, §§ 30 and 35 respectively). However, the difficulties faced by some at the KRI checkpoints do not seem to be relevant for Christians. This has been noted by, among others, the UNHCR. Rather, members of the Christian group are given preferential treatment as compared to others wishing to enter the Kurdistan Region. As stated by a representative of an international organisation and the head of Asaysih, the KRI general security authority, to investigators of the Danish/UK fact-finding mission, this is because Christians are at particular risk of terrorist attacks in southern and central Iraq and as the Christians are not considered to pose any terrorist threat themselves (at 4.34 and 8.19 of the report, *M.Y.H. and Others*, § 36).

37. Moreover, while Christians may be able to enter the three northern governorates without providing any documentation at all (see Danish/UK report, at 4.34), in any event there does not seem to be any difficulty to obtain identity documents in case old ones have been lost. As concluded by the UK Border Agency (*M.Y.H. and Others*, § 31) and the UK Upper Tribunal in the recent country guidance case of *HM and others* (*M.Y.H. and Others*, § 34), it is possible for an individual to obtain identity documents from a central register in Baghdad, which retains identity records on microfiche, whether he or she is applying from abroad or within Iraq. In regard to the need for a sponsor resident in the Kurdistan Region, the Upper Tribunal further concluded, in the case mentioned above, that no-one was required to have a sponsor, whether for their entry into or for their continued residence in the KRI. It appears that the UNHCR is of the same opinion as regards entry, although its statement in the Guidelines directly concerns only the requirements of a tourist (*M.Y.H. and Others*, § 30). The Finnish/Swiss report states that Christians may be able to nominate senior clerics as sponsors (*M.Y.H. and Others*, § 35); thus, they do not have to have a personal acquaintance to vouch for them.

38. Internal relocation inevitably involves certain hardship. Various sources have attested that people who relocate to the Kurdistan Region may face difficulties, for instance, in finding proper jobs and housing there, not the least if they do not speak Kurdish. Nevertheless, the evidence before the Court suggests that there are jobs available and that settlers have access to health care as well as financial and other support from the UNHCR and local authorities. In any event, there is no indication that the general living conditions in the KRI for a Christian settler would be unreasonable or in any way amount to treatment prohibited by Article 3. Nor is there a real risk of his or her ending up in the other parts of Iraq.

39. In conclusion, therefore, the Court considers that relocation to the Kurdistan Region is a viable alternative for a Christian fearing persecution or ill-treatment in other parts of Iraq. The reliance by a Contracting State on such an alternative would thus not, in general, give rise to an issue under Article 3. The same conclusion applies to Article 2.

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

40. It remains for the Court to determine whether, despite what has been stated above, the personal circumstances of the applicant would make it unreasonable for him to settle in the Kurdistan Region. In this respect, the Court first notes that the applicant's account was examined by the Migration Board and the Migration Court, which both gave extensive reasons for their decisions that he was not in need of protection in Sweden. The applicant was able to present the arguments he wished with the assistance of legal counsel and language interpretation.

41. As regards the serious events which the applicant and his family experienced in Iraq, the Court notes that they all occurred in Mosul. While he has claimed that he would risk ill-treatment also in the Kurdistan Region, this claim has not been substantiated and is not supported by the information on the KRI available to the Court. Moreover, as the Court has already noted (see (§§ 36-37 above), recent information suggests that Christians may enter the KRI without providing a personal sponsor or any particular documentation. The applicant's misgivings in this respect are thus not supported by the evidence available to the Court.

42. The Court further notes that the applicant is a young man who has an education and is apparently fit for work. In these circumstances, the fact that he does not have a social network in the Kurdistan Region and is not familiar with the culture and traditions there cannot be given any weight in the Court's determination under Articles 2 and 3 of the Convention.

**(f) Conclusion**

43. Having regard to the above, the Court concludes that, although the applicant, as Christian, belongs to a vulnerable minority and irrespective of whether he can be said to face, as a member of that group, a real risk of death or of treatment proscribed by Article 3 of the Convention in the southern and central parts of Iraq, he may reasonably relocate to the Kurdistan Region, where he will not face such a risk. Neither the general situation in that region, including that of the Christian minority, nor any of the applicant's personal circumstances indicate the existence of said risk.

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

## II. RULE 39 OF THE RULES OF COURT

44. 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.

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

## FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

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 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

For the same reasons 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 was 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, were established in this case.