



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

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1959 · 50 · 2009

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4356/08  
by Saman KHOA RAHIM  
against Norway

The European Court of Human Rights (First Section), sitting on 2 July 2009 as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 18 January 2008,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Saman Khoa Rahim, is an Iraqi national who was born in 1976. His current whereabouts are unknown to the Court. He is represented before the Court by Mr R. Lynum, a lawyer practising in Oslo.

The Norwegian Government (“the Government”) were represented by their Agent, Mrs F. Platou Amble, Attorney, Attorney-General’s Office (Civil Matters).

### **A. The circumstances of the case**

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant is an Iraqi national who was born in 1976. He is a hairdresser by profession. On 17 December 2002 he applied for asylum in Norway stating the following. He was of Kurdish ethnic origin and was from Kirkuk. He had been under pressure to change to Arabic ethnic affiliation. The general situation of the Kurdish population in Iraq had been difficult. His problems had started after his father’s death in 2000, when he got under pressure to join the Feedayeen militia or the Ba’ath Party. After having been arrested on 17 April 2002, he had been detained for eight months in the Madoma prison where he had been subjected to ill-treatment. His release had been due to his late father’s previous position as a chief of battalion in Kirkuk. On his return to his home he had learned from his mother that his brothers had been arrested; the applicant had then decided to leave the country.

#### *1. Rejection of the applicant’s asylum application in Norway*

On 16 September 2004 the Directorate of Immigration rejected the applicant’s asylum application. It noted that according to finger print examinations he had been registered as an asylum seeker in the Netherlands on 27 April 1998 and that his asylum application had been rejected by the Dutch authorities on 21 May 2002. According to them, he had left the Netherlands on 3 December 2002. Thus, the applicant had been in Europe during the period he had allegedly experienced difficulties in Iraq. This fact had seriously weakened the credibility of his asylum application. As regards the applicant’s fear of the Ba’ath Party, the latter had ceased to exist after the fall of the Ba’ath regime in April 2003. Nor did the Directorate find that there were any strong human considerations or that the applicant had any particular links to Norway such as to justify a grant of a residence permit.

In October 2004 the applicant asked the Directorate to amend its earlier decision, arguing that he had been particularly exposed to a risk because of his father’s position in the Ba’ath regime and that, as a result, he and his brothers had been exposed to massive pressure to work for the regime. Moreover, his brothers had been missing since the fall of the regime, probably as a result of vengeance. The applicant further alleged that his mother, sister, niece and her two children had been killed by his clan as a revenge for his father’s involvement in the earlier regime. In the Directorate’s view, this new information was unsubstantiated and the fact

that the applicant had adduced it only after its first rejection further weakened the credibility of his application. On 31 January 2005 the Directorate refused to amend its earlier decision.

On 3 November 2005 the Immigration Appeals Board rejected an appeal by the applicant against the Directorate's rejection, upholding the latter's reasoning. As regards the claim made by the applicant in his appeal that he feared persecution by Kurdish groups in the Kirkuk area, the Board found peculiar his omission to mention his father's relationship to such groups in his asylum interview, information which would have constituted a central and serious argument concerning any future danger of persecution in Kirkuk. In his asylum interview, the applicant had only stated that he had been exposed to pressure by the Ba'ath regime after his father's death and that his father had been killed by "trouble makers". The applicant did not mention that his family should have been exposed to pressure by Kurds in the area or that he should have been threatened by Kurds after his father's death. The new information had not been substantiated any further. Finally, the Board noted that the applicant could seek the authorities' protection against any possible infringements upon return. Should the applicant not wish to settle in Kirkuk, he could settle in the autonomous Kurdish parts of Northern Iraq. The Board concluded that the applicant did not fulfil the conditions for being recognised as a refugee and did not otherwise fall within the conditions in section 15(1) of the Immigration Act (notably considerable risk of loss of life or ill-treatment) for being protected against expulsion.

## *2. The applicant's criminal conviction*

On 19 May 2006 the Borgarting High Court convicted the applicant, along with four others, on charges of aggravated gang rape carried out in a particularly painful and denigrating manner and sentenced him to five years' imprisonment.

## *3. The Directorate of Immigration's renewed decision of 29 August 2007 to expel the applicant*

On 29 August 2007 the Directorate of Immigration decided that the applicant would be expelled from Norway to Iraq after having served his prison sentence and that the police was to inform the Directorate after having implemented the expulsion. Reference was made to the fact that the applicant's asylum application had been finally rejected by the Immigration Appeals Board's decision of 3 November 2005.

It appears that on 5 March 2008 the applicant appealed against this decision to the Immigration Appeals Board.

On 11 March 2008 the prison authorities informed the applicant that he would be released on probation on 15 April 2008, provided that his expulsion could be implemented concurrently with his release.

*4. The Government's responses to questions addressed by the Court, the latter's application of Rule 39 and subsequent events*

On 7 April 2008 the Government replied to certain questions for information which the Court had addressed to them (Rule 49 §§ 2 and 3 of the Rules of Court) on 3 April 2008:

“The Directorate has made a renewed consideration on the basis of all the facts presently available to it, and has found that implementation of the expulsion will not be contrary to Article 3 of the Convention. The expulsion decision will not be deferred because of the pending complaint. However, the expulsion will not be implemented on 15 April, but on an unspecified future date (*'et stykke frem i tid'*) when the necessary agreements have been reached with the Iraqi authorities. The expulsion will take place to Kirkuk, the applicant's home area.”

Appended to the Government's letter was, *inter alia*, a copy of a decision by the Directorate of 7 April 2008. Referring to the applicant's appeal against the Directorate's decision of 29 August 2007, it affirmed having considered whether to stay the execution of its decision to expel the applicant (notably pursuant to section 40 of the Immigration Act). As to the applicant's claim that he could not be returned to Iraq because of his Kurdish ethnic origin and would be executed by the Iraqi army due to his father's participation in a Kurdish militia sympathetic to the Ba'aths, the Directorate reiterated that this he had previously argued in his asylum application of 17 December 2002. It had moreover been dealt with in the Directorate's and the Immigration Appeals Board's decisions of respectively 6 July 2004 and 3 November 2005 rejecting his application. Also in those decisions it was concluded that the applicant was not covered by the protection provided for in section 15 of the Immigration Act. In any event, his allegation that he would be persecuted as a result of his father's participation in the militia in question was not a circumstance that could constitute a basis for a permission to stay in Norway. The Directorate found that acts of revenge and reprisals would not be directed against the applicant since his father had allegedly been executed. Any feuds would therefore have come to an end and could thus not be aimed at the applicant. A stay of execution of the expulsion measure could therefore not be justified in view of section 40.

On 9 April 2008 the President decided in the interest of the proper conduct of the proceedings before the Court to indicate to the Norwegian Government, under Rule 39 of the Rules of Court, that the applicant should not be deported until further notice. The Directorate of Immigration then deferred the implementation of the applicant's expulsion and transmitted the

applicant's case to the Immigration Appeals Board as an appeal in July 2008.

On 14 April 2008 the Immigration Appeals Board received a copy of certain documents in Arabic. According to a translation made by the Directorate, these consisted of a death sentence from Iraq, dated 1 August 2001, and an arrest warrant dated 15 October 2002. The applicant made no further comments regarding these documents. The documents were deemed to lack credibility in so far as authenticity and verifiability were concerned.

The applicant was released from prison in the summer of 2008. Thereafter he travelled to the Netherlands and renewed his attempt to obtain asylum there.

On 18 September 2008 the Directorate of Immigration accepted a request by the Dutch immigration authorities to transfer the applicant to Norway. It has not been confirmed that the transfer has been effected and whether the applicant currently resides in Norway.

In the meantime, on 8 September 2008, the Immigration Appeals Board received from the Dutch authorities documents pertaining to the applicant's primary asylum case in the Netherlands. From these it transpired that in his asylum application in the Netherlands, which had been made (in 1998) prior to that in Norway, the applicant had stated that his name was Saman Fayak Ghoarahim and that he was born on 3 July 1976 in Halabja in the Sulaymaniyah Governorate in the autonomous Kurdish region in Northern Iraq. He had stated that he was Kurdish and that his parents and siblings lived in Halabja.

#### *5. The Immigration Appeals Board's rejection of 7 October 2008 of the applicant's appeal*

On 7 October 2008 the Immigration Appeals Board rejected the applicant's appeal of 5 March 2008 against the Directorate's decision of 29 August 2007. It observed that, whilst the applicant's asylum application in Norway had been based on his asylum statement that he was a Kurd from Kirkuk, to the Dutch authorities he had stated that he was a Kurd who was born and grew up in Halabja in the Sulaymaniyah Governorate, i.e. in the autonomous region. The asylum statement he had given in the Netherlands had also been based on his being from Sulaymaniyah. This further weakened the credibility of his Norwegian' asylum statement that he was from Kirkuk.

Several elements indicated that, on the balance of probabilities, there was insufficient proof that the applicant originated from Kirkuk. At the time when he had applied for asylum in the Netherlands, it had not been crucial to his asylum case whether he came from the autonomous region or from Central Iraq. This could suggest that the information he had given to the Netherlands authorities about his place of origin was accurate. In the experience of the Norwegian immigration authorities, after the practice in

dealing with Kurds from the autonomous region had been considerably tightened in 2000, a number of Iraqi asylum-seekers (primarily Kurds) had contended that they were from Central Iraq (or Southern Iraq) even if they came from the autonomous region. In the Board's opinion, the applicant's differing statements as to his place of origin must be seen in the light of this general experience and of the fact that in 2002, when he applied for asylum in Norway, it was 'opportune' to come from Central Iraq and not from the autonomous regions.

Moreover, despite his having applied for asylum in the Netherlands in 1998, the applicant had had no qualms about giving incorrect information to the Norwegian authorities. In response to a direct question, he had affirmed that he had not applied for asylum in any other country. Although made aware of his obligation to provide relevant information, he had neglected to inform them that he had applied for asylum in the Netherlands as an ethnic Kurd from Sulaymaniyah.

Nor had the applicant submitted any document that could substantiate or support the information that he came from Kirkuk, although this would have been possible for a person from Kirkuk.

The Board's reasoning continued:

"The Board has also noted that in the [applicant]'s reply to the Netherlands authorities when asked whether he had ever been abroad before fleeing the country, he stated that he was in Iran from March 1988 to September 1988. The Board observes that the Iraqi authorities' poison gas attacks on Halabja took place in March 1988, as a result of which, in addition to many thousands of people being killed or permanently injured, Kurds fled across the border to Iran. In the Board's opinion, this 'incidental information' supplied by the [applicant] tends to link the [applicant] to Sulaymaniyah. At the same time, the information he gave to the Norwegian authorities to the effect that he has not attended school tends to weaken his connection with Kirkuk; at the time he was growing up, schooling was compulsory for all children, so it is unlikely that a person who has grown up in Central Iraq has not attended school — particularly if that person was the child of a high-ranking member of the Ba'ath Party,

On the whole, in the Board's opinion, it has not been sufficiently proved on a balance of probabilities that the [applicant] actually comes from Kirkuk.

However, in the Board's assessment, whether the [applicant] is from Kirkuk or Sulaymaniyah is not of decisive importance to the assessment of the [applicant]'s case.

The Board finds that the [applicant] does not risk serious sanctions if he is returned to the province of Sulaymaniyah. The province is part of the autonomous Kurdish region where the security situation has been calm and stable for quite some time.

In light of the statement made by the [applicant] to the Netherlands authorities, there is good reason to question the information that he is from Kirkuk. Even if the [applicant] were from Kirkuk, it is the opinion of the Board that this does not mean that he is to be protected against deportation on account of the general security situation. In a number of Board meetings, the general conditions in Kirkuk have been assessed as not constituting an obstacle to returning ethnic Kurds to Kirkuk. The Board's practice in this connection was tried by a court in 2008, which upheld the

Board's contention that the general situation in Kirkuk cannot be deemed to be an obstacle to return.

The [applicant]'s arguments concerning his personal needs for protection cannot justify the [applicant] being protected from being returned under section 15 for reasons relating to his individual case.

The [applicant] is permanently expelled from Norway pursuant to section 29(4) of the Immigration Act.”

## **B. Reports on the security situation in Kirkuk and Sulaymaniyah**

### *1. United Nations High Commissioner of Refugees*

According to a report of 18 December 2006 by the United Nations High Commissioner of Refugees (UNHCR Return Advisory and Position on International Protection Needs of Iraqis Outside Iraq) no forcible return of Iraqis from Southern or Central Iraq should take place until there was a substantial improvement in the security and human rights situation in the country.

In a follow-up report of August 2007 complementing the above position paper (UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers), the UNHCR encouraged the adoption of a *prima facie* approach for Iraqi asylum-seekers from Central and Southern Iraq and stated that they should be considered as refugees based on the 1951 Convention relating to the Status of Refugees in signatory countries. In its more recent Eligibility Guidelines of April 2009, the UNHCR observed that in view of the serious human rights violations and ongoing security incidents which were continuing in the country, most predominantly in the five Central Governorates of Baghdad, Diyala, Kirkuk, Niwea and Salah-Al-Din, the UNHCR continued to consider all Iraqi asylum seekers from these five Central Governorates to be in need of international protection and stated that, in signatory countries, they should be considered as refugees based on the 1951 Convention criteria. The Guidelines observed inter alia:

“27. In the context of the Central Governorates of Baghdad, Diyala, Kirkuk, Ninewa and Salah Al-Din where, even though the security situation has improved in parts, there is still a prevalence of instability, violence and human rights violations by various actors, and the overall situation is such that there is a likelihood of serious harm. Armed groups remain lethal, and suicide attacks and car bombs directed against the MNF-I/ISF [Multinational Forces in Iraq/Iraqi Security Forces], Awakening Movements and civilians, in addition to targeted assassinations and kidnappings, continue to occur on a regular basis, claiming the lives of civilians and causing new displacement. These methods of violence are usually targeted at chosen areas where civilians of specific religious or ethnic groups gather, including places of worship, market places, bus stations, and neighbourhoods. Violence appears often to be politically motivated and linked to ongoing struggles over territory and power among various actors. As clarified above, even where an individual may not have personally experienced threats or risks of harm, events surrounding his or her areas of residence

or relating to others, may nonetheless give rise to a well-founded fear. There is also more specific targeting of individuals by extremist elements of one religious or political group against specific individuals of another, through kidnappings and execution-style killings.”

As regards Kirkuk, the Guidelines included the following observations<sup>1</sup>:

“202. Most violence in the governorate is linked to the yet unresolved administrative status of Kirkuk and related power struggles between the various Arab, Kurdish and Turkmen actors. ... Security conditions in Kirkuk Governorate, and in particular in Kirkuk City, tend to worsen during political events related to the status of Kirkuk as armed groups aim at influencing political decisions. For example, during intense negotiations over a provincial elections law in summer 2008, a suicide attack on demonstrating Kurds resulted in an outbreak of intercommunal violence, in which more than 25 people were killed and over 200 injured. ... Conversely, tensions and sporadic violence can complicate future status negotiations.... With the postponing of provincial elections in Kirkuk, the security situation has somewhat stabilized. However, simmering inter-communal tensions are prone to erupt into new violence ahead of decisions to be taken in relation to Kirkuk’s unresolved status. ... Some observers note that tensions among ethnic groups over the unresolved status of Kirkuk could turn into another civil war.<sup>494</sup> Insurgent groups such as AQI[Al-Qaeda in Iraq] also aim at stirring inter-communal violence by attacking proponents of ethnic/religious groups. ... Furthermore, it has been reported that community groups in Kirkuk are arming themselves in preparation for future clashes. ...”

With regard to Sulaymaniyah, which together with Erbil and Dahuk, are frequently referred to as the three Northern Governorates, the UNHCR has observed that since the end of the fighting of Patriotic Union of Kurdistan (PUK) and Kurdistan Democratic Party (KDP) fighting in 1997, the security situation had been relatively calm and, arguably, one of the most stable in Iraq (Return Advisory and Position paper of 18 December 2006, cited above); it had stabilised and local authorities had committed themselves to increasing security against external and internal threats. However, for a number of mainly political factors, the security situation, even if calm, remained tense and unpredictable and should be monitored closely. International protection needs of asylum seekers from the three Northern Governorates should be individually assessed (Eligibility Guidelines August 2007, cited above). In an Addendum to the said Eligibility Guidelines of December 2007, the situation in the three Northern Governorates had not been addressed as, on the whole, they had not been as significant with regard to the international protection considerations for asylum-seekers from Iraq. In its Eligibility Guidelines of April 2009, the UNHCR maintained its position that the claims from asylum-seekers from the three above-mentioned Governorates should be individually assessed based on the 1951 Convention refugee definition.

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<sup>1</sup> The original text quoted contains a number of footnotes which have not been reproduced herein.



## 2. *Landinfo*

The Country of Origin Information Centre (*Landinfo*), an independent human rights research body set up to provide the Norwegian immigration authorities with relevant information, has in a report of 28 October 2008 stated the following about the security situation in Kirkuk city, and the situation for the Kurdish population there, in the Sulaymaniyah Governorate as a whole and in the Halabja area in particular<sup>1</sup>:

### “2. KIRKUK

#### 2.1 SECURITY SITUATION

It is generally recognized that the level of violence in Kirkuk is by far lower than that in Baghdad and Mosul.

The majority of the security incidents in the city appear to be attacks against police and military. Most frequent are attacks against road patrols, and against checkpoints and personnel. These attacks both take place on the roads between Kirkuk and surrounding areas and inside the city. Occasional civilian casualties result from such attacks (DMHA [Disaster Management & Humanitarian Aid] 2008a; UNAMI [UN Assistance Mission for Iraq] 2008).

There are also occasional indiscriminate attacks aimed directly at civilians, such as suicide attacks at crowded places inside the city.

Additional types of targets have been recorded by *Landinfo* since October 2005. These targets are very diverse. There have been attacks on local Kurdish political leaders and their families, on engineers and building contractors, oil business executives, private security guards, gas station workers, churches, Shiite mosques, polling stations, and at a Turkmen political party office. In October 2008 an Iraqi journalist was killed.

The intensity of attacks against all target groups seems to have remained quite stable over the years. Between September 2005 and March 2006, 44 reported incidents were recorded (DM1-IA 2005/2006). During November and December 2006, a total of 30 individuals were reported killed in violent incidents (DMHA 2006).

In March 2008, it was reported that violence had gone up since 2006, and that security remained highly unstable (Ferris and Stoltz 2008, pp. 7-8).[...] According to the US military commander in Kirkuk, by the summer of 2008 violence had dropped by two thirds as compared to the summer of 2007 (Col. David Paschal as cited in Oppel 2008). Figures indicate that since August 2008, violence remains stable through October [...] (UNAMI 2008; DMHA 2008a)

We do not have figures for the summer of 2007, nor do we know for how long period of time ‘summer’ refers to. What the sources indicate, however, is that violence went up by March 2008, then down again by summer the same year, and that it seems to have stabilized somewhat afterwards. With the reservation that we don’t have exact figures to substantiate this trend, we do see, however, that the occurrence of violence is unstable through a fairly short period of time.

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<sup>1</sup> The original text quoted contains a number of footnotes which have not been reproduced herein.

The factors accounting for the security problems continue to be present for the foreseeable future. Accordingly, an unstable level of violence may be expected to continue.

## **2.2 SECURITY SITUATION IN KIRKUK'S NEAR SURROUNDINGS**

According to the American NGO Mercy Corps, which conducts humanitarian work in Iraq, the roads are fairly safe in the areas to the north of Kirkuk. There are not many checkpoints between Kirkuk and the KRG [Kurdish Regional Government] governorates. On the contrary, traffic southwards from the city is difficult (Mercy Corps, interview in Amman March 2008).

In records of incidents along the roads in Tameem Governorate in March and April 2008, incidents appear to have occurred either inside or in the immediate vicinity of Kirkuk, or in areas south of it (DMHA 2008b).

South of the city, US forces proceed with establishing armed local citizen's groups (Safwat/Sons of Iraq) in villages and rural areas such as Bushariya, Hawija and in the Upper Rashaad valley. According to the US Military, Hawija saw a 70 % drop in violence by April 2008 (CENTCOM 2008).

## **2.3 THE SITUATION FOR KURDS IN KIRKUK**

It is commonly assumed that Kurds currently make up a majority of the population in Kirkuk city. However, no exact figures are available (IRIN 2008; ICG 2006).[...] A planned census has so far not been held. The city is run by a city council at which the main ethnic groups are proportionally represented. Accordingly, the Kurdish parties are in a majority. The city is said to be effectively run by the PUK (Western diplomatic source in Erbil, interview March 2007), which also governs the neighbouring governorate of Sulaymaniyah, The KRG is reportedly directly financing the teaching of the Kurdish language in Kirkuk's schools (Daragahi 2007).

The security in the city is handled by the MNF, the Iraqi Army, the Kurdish dominated police and Kurdish intelligence (Asayish) together. Kurdish armed forces are posted inside the city. The Iraqi Army deploys three mainly Kurdish battalions there, which are supported by Kurdish Peshmerga forces not integrated in the Army (Cagaptay 2008, p. 25). The Kurds have reportedly become the main component of the Kirkuk police.[...] The PUK runs a separate Asayish branch in Kirkuk (Asayish Kirkuk) which reports directly to the PUK Political Bureau (HRW 2007, s. 29). Asayish Kirkuk reportedly employs possibly as many as 2000 personnel working undercover (Western diplomatic source in Erbil, interview March 2007).

There are strong indications that the Asayish plays a crucial role in providing the police and the MNF with vital intelligence about the plans and activities of armed groups operating in and around the city (Oppel 2008).

The Kurdish population is protected by forces and agencies run or dominated by the regional Kurdish political leadership, and who are partly or wholly loyal to it.

Taking these factors into consideration the Kurds, as members of the majority population in the city, could be regarded as finding themselves in a favourable position compared to members of other ethnic groups.

## **3. SECURITY IN SULAYMANIYAH**

The governorate has escaped the extensive violence and chaos that has plagued large parts of the country since 2003, although a potential for deterioration of security is recognized (UNHCR 2007, p. 9).[...] This potential for deteriorating security does so far, however, not seem to have been released to any notable extent. Attempts at

attacks have been effectively countered by the authorities. Successful attacks by armed groups are infrequent (Foreign and Commonwealth Office (ECO) UK 2008).

A small number of suicide attacks have been staged. In March 2008, a large hotel in the city centre was attacked by a suicide bomber, leaving one dead and 30 wounded (Cagaptay 2008).

There is possibly some influx of insurgents across the Eastern border (Khalil 2007). Radical and violent Islamists left the governorate in 2003. Later, some of them came back and are now hiding in areas that the authorities are neglecting. Such areas are typically located in rural Sulaymaniyah and in poor parts of Sulaymaniyah city (Kurdish politician, interview in Sulaymaniyah March 2007).

There is occasional artillery fire and air attacks by Iranian forces on anti-Iranian guerrilla groups hiding near the border to the East.

### 3.1 HALABJA

The security situation in Halabja appears to be generally similar to that of the rest of the governorate.

In some respects, however, the area stands out to some degree. For historical reasons there has been a notable public unease in Halabja over alleged PUK mismanagement. Local Islamist parties are in control of the city's governing bodies[...], while militant Islamists have been said to be active near the Iranian border (Embassy of a Western country in Amman, interview March 2006)."

### 3. *UK Border Agency*

The UK Border Agency (Home Office) Country of Origin Information Report of 12 January 2009 contained the following information about Kirkuk:

#### **"Kirkuk**

9.62 The Brookings Institute report, published on 3 March 2008, commented that Kirkuk was 'Home to Kurds, Turkmen, Arabs, and various ethnic Christian communities, competing claims to territory and leadership abound.' Concerning security, the report further noted that '[Kirkuk] does not share the capital's positive trend toward improvement over the past six months. Rather, the security situation in Kirkuk Governorate has deteriorated over the last two years and today remains highly unstable.' [88c] (p4)

....

9.66 The UNSC [UN Security Council] report, 28 July 2008, stated that 'daily attacks against Government, security and international elements... were observed in Kirkuk, where targeted assassinations occurred against law enforcement and other officials. Ansar al-Sunnah and numerous other affiliates are still present and capable of carrying out deadly attacks.' [38q] (p13)

9.67 The IOM [International Organisation for Migration]'s November 2008 report noted that 'Security remains volatile in Kirkuk as ethnic tensions escalate. Recent weeks have seen murders, kidnapping, detention campaigns, and increased checkpoints along all major roads. Many incidents are attributed to motives along ethnic lines. The border crossing to Sulaymaniyah governorate has become even more difficult, and all Arabs must have a sponsor in order to enter.' [111] (p12)"

## COMPLAINT

The applicant, without referring to any provision of the Convention, complained that, should he be expelled to Iraq, it would put his life in danger.

## THE LAW

The Court considers that the applicant's complaint that his expulsion to Iraq would put his life in danger raises issues under Articles 2 and 3 of the Convention, which provide:

**“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. Submissions by the parties**

The Government invited the Court to lift its indication under Rule 39 and to strike the application out of its list of cases under Article 37 § 1(a) of the Convention, in light of the applicant's failure to pursue his application. In the alternative, they requested the Court to declare the application inadmissible under Article 35 §§ 1 and 4 for failure to exhaust domestic judicial remedies against the immigration authorities' decision.

In the further alternative, the Government asked the Court to declare the application inadmissible under Article 35 §§ 1 and 4 as being manifestly ill-founded.

The Government invited the Court to rely on its own case-law according to which issues raised with reference to Article 2 of the Convention in expulsion cases were deemed indissociable from complaints made under Article 3 and could more appropriately be dealt with under the latter.

As to the particular circumstances of the case, the Government stressed that recent evidence suggested that the applicant was actually not from the city of Kirkuk but from Sulaymaniyah, where the general situation was considerably different. Should the Court agree with their view that the applicant most likely came from Sulaymaniyah, no issue would arise under Article 2 or Article 3 of the Convention.

In any event, even if the applicant were to originate from Kirkuk, his personal situation and the general conditions in Central Iraq were not such as would make his forcible return to his home country incompatible with the Convention. He had failed to adduce evidence pertaining to his individual situation indicating that his deportation would give rise to an issue of breach of the Convention. Whether he originated from Kirkuk or Sulaymaniyah could not be decisive, since his reasons for seeking Convention protection against deportation were intrinsically subjective. In so far as he relied on the general situation in Central Iraq, his argument found no support in the assessments made by the Norwegian immigration authorities on the basis of comprehensive and objective information gathered from a range of independent sources, notably the UNHCR and *Landinfo*, concerning the situation in Central Iraq, including the city of Kirkuk. There was nothing in the applicant's situation, either in his personal circumstances or in the general situation in Central Iraq, to suggest that Article 3 would be contravened by expelling him to Iraq. As held by the Court in its constant case-law, "the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3" (see *Nyanzi v. the United Kingdom*, no. 21878/06, § 55, 8 April 2008 with further references). No substantial grounds had been shown for believing that there was a real risk of treatment incompatible with Article 3 of the Convention in the event of the applicant's being expelled to Iraq.

The applicant did not offer any comments to the above observations.

## **B. Assessment by the Court**

The Court does not find it necessary to determine the Government's requests to strike the application out of its list of cases or to declare it inadmissible for failure to exhaust domestic remedies since it in any event, for the reasons set out below, finds the application manifestly ill-founded.

The Court observes that the applicant's complaint raises issues under Article 2 of the Convention and that these concerned consequences of the expulsion for the applicant's life, health and welfare that were indissociable from any matters that fall to be considered under Article 3. In the Court's view, the complaint can be more appropriately be dealt with under the latter provision (see *NA. v. the United Kingdom*, no. 25904/07, § 95, 17 July 2008; *Said v. the Netherlands*, no. 2345/02, § 37, ECHR 2005-VI; *D. v. the United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III, § 59). In so doing the Court will have regard to the principles established in its case-law as summarised notably in *Nyanzi*, cited above:

"51. ...[E]xpulsion 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 concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In

such a case Article 3 implies an obligation not to deport the person in question to that country ...

52. In determining whether substantial grounds have been shown for believing that there is a real risk of treatment incompatible with Article 3, the Court will take as its basis all the material placed before it or, if necessary, material obtained *proprio motu* .... In cases such as the present the Court's examination of the existence of a real risk must necessarily be a rigorous one ....

53. 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 ... Where such evidence is adduced, it is for the Government to dispel any doubts about it.

54. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances ....

55. To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations ... , or governmental sources ... At the same time, it has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 ... and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence ....”

In the present case the applicant's allegation that he was of Kurdish ethnic origin from Iraq has not been called into doubt. However, on a number of other points the information he submitted in support of his asylum application to the Norwegian authorities of December 2002 was inconsistent and also incompatible with the information provided by the Dutch authorities concerning his asylum application made in the Netherlands in 1998.

In the first place, to the Norwegian authorities the applicant denied having previously sought asylum in another country but finger print data led to the discovery that he already had sought asylum in the Netherlands under a different name.

Moreover, it is to be noted that the applicant's allegation in his initial asylum application in Norway that he was arrested on 17 April 2002 and detained for eight months during which he endured ill-treatment, was incompatible with the information provided by the Dutch authorities that he at that time sojourned in the Netherlands.

In his initial application in Norway, the applicant had also said that he feared the Ba'ath Party. However, as pointed out by the Directorate of Immigration in its rejection of 16 September 2004, the Ba'ath Party had ceased to exist after the Ba'ath regime fall in April 2003.

Only after the Directorate of Immigration had rejected his asylum application did the applicant argue that he had been particularly exposed to a risk because of his father's position in the Ba'ath regime and that he

feared vengeance actions by Kurdish groups or clans in the Kirkuk area. He had then submitted unsubstantiated information that, probably as a result of vengeance, his brothers had gone missing since the fall of the regime and that his mother, sister, niece and her two children had been killed by his clan as a revenge for his father's involvement in the earlier regime. As pointed out by the Immigration Appeals Board, it is peculiar that in his asylum application the applicant omitted to mention his fear of persecution by Kurdish groups in the Kirkuk area, despite its significance as a justification for fear of persecution.

What is more, after the applicant had introduced his application under the Convention and the Court had applied Rule 39, it was revealed in new information obtained by the Norwegian immigration authorities from their Dutch counterparts that in his asylum application to the latter he had submitted that he was from Halabja in the Governorate of Sulaymaniyah (in Northern Iraq). To the Dutch authorities he had also provided information that would tend to corroborate this version. In contrast, in his later asylum request to the Norwegian authorities he had stated that he originated from Kirkuk (in Central Iraq).

The Court considers that the above-mentioned contradictions and inconsistencies in the applicant's asylum statements, in the Netherlands and Norway, give rise to serious doubts as to his general credibility. In the Court's view, this state of affairs completely undermines his submissions to the Norwegian immigration authorities with reference to his personal experiences and those of his family members in Iraq.

The only question is whether the general security situation in Iraq is such that the applicant, in view of his Kurdish ethnic origin, would face a real risk of being subjected to treatment contrary to Article 3 if deported.

The Court sees no reason to call into doubt the assessment made by the Immigration Appeals Board that it had not been sufficiently demonstrated that the applicant originated from Kirkuk. It further notes that neither the applicant himself nor his lawyer has commented on the revelations about his asylum submissions to the Dutch authorities. Considering that certain inferences can be drawn from this omission (Rule 44C § 1 of the Rules of Court), the Court will proceed on the assumption, based on the applicant's statement to the Dutch authorities, that he came from the Governorate of Sulaymaniyah (in Northern Iraq), finding this version sufficiently probable for the purposes of its examination.

For the UNHCR the general security situation in Sulaymaniyah has not been a matter of special concern with regard to international protection considerations for asylum seekers from Iraq (August and December 2007 and April 2009). Nor does the information provided by *Landinfo* (October 2008) indicate any general situation of violence in Sulaymaniyah of a level and intensity as would make the applicant's return contrary to Article 3 (cf. *NA.*, cited above, § 115), or that he as a Kurd would be systematically

exposed to a practice of ill-treatment attracting the application of Article 3 of the Convention. Quite the contrary, although tense and volatile, the situation has been relatively calm and stable in this area and it can be assumed that the applicant could seek the protection of the local authorities should he be exposed to a risk of ill-treatment. The applicant has submitted no evidence to the contrary.

Accordingly, no substantial grounds have been shown for believing that, if the applicant's deportation were to be effected to Sulaymaniyah, he would face a real risk of treatment contrary to Article 3 of the Convention.

It follows that the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

*Decides* to discontinue the application of Article 29 § 3 of the Convention;

*Decides* to lift the interim measure indicated under Rule 39 of the Rules of Court;

*Declares* the application inadmissible.

Søren Nielsen  
Registrar

Christos Rozakis  
President