



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

FIFTH SECTION

CASE OF N.M.Y. AND OTHERS v. SWEDEN

(Application no. 72686/10)

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.M.Y. and Others 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. 72686/10) 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 three Iraqi nationals (“the applicants”) on 21 November 2010. The President of the Section acceded to the applicants’ request not to have their names disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicants were represented by Mr I. Aydin, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agents, Ms C. Hellner and Ms H. Kristiansson, of the Ministry for Foreign Affairs.

3. The applicants alleged that their deportation to Iraq would involve a violation of Articles 2 and 3 of the Convention.

4. On 22 December 2010 the President of the Section to which the case had been allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicants should not be deported to Iraq for the duration of the proceedings before the Court.

5. On 12 September 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, three siblings (two women and one man), were born in 1963, 1966 and 1971, respectively, and originate from Baghdad.

7. The applicants arrived in Sweden on 17 September 2008 and applied for asylum two days later. In support of their applications, they submitted in essence the following. They are Christians and had been living together in Baghdad. They had been harassed and called names on a regular basis. The two female applicants had been forced to wear a veil to avoid getting into trouble. In 2006 armed men had stopped the car in which the two female applicants were riding with their mother. When the men had seen a hanging cross in the car, they had forced the passengers out and had taken the car. On 17 August 2008, armed men had come to the applicants' house and had told another brother that the applicants should convert to Islam before 1 September 2008, the beginning of the Ramadan; otherwise they would be killed. The men had also written a message with the same content on the wall of their house. The applicants had left Iraq on 20 August 2008.

8. On 30 December 2008 the Migration Board (*Migrationsverket*) rejected the applications. The Board accepted that there was a threat against the applicants which was based on their religious beliefs and the difficult situation in Baghdad at the time. However, it considered that the threat was limited to Baghdad, as the applicants had not held any prominent professional or religious positions and there was therefore nothing to suggest that they would be of any particular interest outside of Baghdad. The applicants could relocate to central or northern Iraq. This conclusion applied regardless of whether the applicants had a social network in the mentioned regions. As the applicants had shared a household in Iraq, the female applicants would not lack a male relative upon return.

9. The applicants appealed, maintaining that they would not be protected by Iraqi authorities upon return. They stated that they were not just referring to the general situation for Christians, but that they had pointed out several incidents to which they had already been subjected because of their Christian beliefs. Furthermore, the risks facing them were not geographically limited to Baghdad; as Christians, they would risk persecution in the whole country. Consequently, there was no internal flight alternative available to them.

10. In reply, the Migration Board stated that the applicants would be able to relocate to the Kurdistan Region and noted that there were direct flights from Sweden to Erbil.

11. On 16 September 2009 the Migration Court (*Migrationsdomstolen*) upheld the decision of the Board. The court considered that the incidents against the applicants were criminal acts related to the general security

situation in Baghdad at the time. It pointed out that two years had passed since the incidents and that the security situation in Baghdad had improved during this period. Thus, the circumstances did not show that there was a concrete and individual threat against the applicants upon return.

12. On 9 November 2009 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused the applicants leave to appeal.

II. RELEVANT DOMESTIC LAW

13. 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

14. 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

15. The applicants complained that their 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

16. 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 applicants

17. The applicants claimed that, should they be returned to Baghdad, they would face a real risk of being subjected to attacks, threats, kidnappings and outright massacres because of their Christian beliefs. The threats and persecution to which they had been subjected before leaving Iraq showed the existence of such a risk. Although the Iraqi police had a desire to protect the general population, it lacked the ability to do so.

18. As regards internal relocation, the applicants submitted that country information showed that Christians were vulnerable in the whole of Iraq. The Kurdistan Region could not be considered a reasonable alternative under the UNHCR Guidelines. They asserted that Christians who currently are forced to relocate to that region are not only faced with inadequate living conditions and unemployment, but also with an increasing hostility from Muslim extremists. Maintaining that it was for the party claiming the existence of a relocation alternative to identify the proposed area and provide evidence of its reasonableness, the applicants stated that reference to a vast area like the Kurdistan Region could not be considered sufficient and that, in any event, the Government had not shown that there was a region in Iraq that could be considered reasonable for the applicants under the UNHCR Guidelines.

(b) The Government

19. 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, consequently, that assessments of protection needs should be made on an individual basis.

20. As to the applicants' personal risks, the Government pointed out that the threats against them had occurred in August 2008, more than four years ago. In the Government's view, the applicants had not shown that the threats were still valid.

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 applicants in the three northern governorates of the Kurdistan Region. Allegedly, they 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 they would be able to settle there, with access to the same public services as other residents. Moreover, there was no indication that the applicants were

not able to work and provide for themselves, even in an area of Iraq where they lacked a social network. Furthermore, the applicants' story did not suggest that they would not be safe in the Kurdistan Region.

22. The Government further asserted that the Migration Board and the courts had provided the applicants 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 applicants had been given many opportunities to present their 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 applicants are not in essence claiming that the general circumstances pertaining in Iraq would on their own preclude their return to that country, but that this situation together with the fact that they are Christians would put them at real risk of being subjected to treatment prohibited by Articles 2 and 3.

(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 applicants

40. It remains for the Court to determine whether, despite what has been stated above, the personal circumstances of the three applicants would make it unreasonable for them to settle in the Kurdistan Region. In this respect, the Court first notes that the applicants' accounts were examined by the Migration Board and the Migration Court, which both gave extensive reasons for their decisions that they were not in need of protection in

Sweden. The applicants were able to present the arguments they wished with the assistance of legal counsel and language interpretation.

41. As regards the incidents to which the applicants were subjected in Iraq, the Court notes that they all occurred in Baghdad. While they have claimed that they would risk ill-treatment also in the Kurdistan Region, where the situations for Christians are allegedly deteriorating, these claims have not been substantiated and are not supported by the information on the KRI available to the Court.

42. The Court further notes that, if they return and relocate in the Kurdistan Region, the applicants will benefit from each other's support. They appear to have shared a household for many years and may be expected to continue to do so. Moreover, they are all between 42 and 50 years of age and it has not been suggested that any of them suffers from health problems which would affect the ability to work.

(f) Conclusion

43. Having regard to the above, the Court concludes that, although the applicants, as Christians, belong to a vulnerable minority and irrespective of whether they can be said to face, as members 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, they may reasonably relocate to the Kurdistan Region, where they will not face such a risk. Neither the general situation in that region, including that of the Christian minority, nor any of the applicants' personal circumstances indicate the existence of said risk.

Consequently, their 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 applicants 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 applicants 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 orders made in respect of these applicants 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.