



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

GRAND CHAMBER

CASE OF W.H. v. SWEDEN

(Application no. 49341/10)

JUDGMENT
(striking out)

STRASBOURG

8 April 2015

This judgment is final but may be subject to editorial revision.

In the case of W.H. v. Sweden,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President*,
Josep Casadevall,
Guido Raimondi,
Işıl Karakaş,
Elisabeth Steiner,
Luis López Guerra,
András Sajó,
Mirjana Lazarova Trajkovska,
Nebojša Vučinić,
Kristina Pardalos,
Angelika Nußberger,
Linos-Alexandre Sicilianos,
Faris Vehabović,
Ksenija Turković,
Dmitry Dedov,
Jon Fridrik Kjølbro, *judges*,
Johan Hirschfeldt, *ad hoc judge*,

and Erik Fribergh, *Registrar*,

Having deliberated in private on 18 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 49341/10) 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 27 August 2010. The President of the then Third Section acceded to the applicant’s request not to have her name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Ms A.-P. Beier, a lawyer practising in Stockholm. The Swedish Government (“the Government”) were represented by their Agents, Ms C. Hellner, Ms I. Kalmerborn, Ms H. Lindquist and Ms J. Sjöstrand, of the Ministry for Foreign Affairs.

3. The applicant alleged that her deportation to Iraq would involve a violation of Article 3 of the Convention.

4. On 30 August 2010 the President of the then Third Section decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be deported to Iraq before 29 September 2010. On 28 September 2010 this indication was prolonged until further notice.

5. On 7 March 2011 the application was communicated to the Government.

6. Mrs Helena Jäderblom, the judge elected in respect of Sweden, withdrew from the case (Rule 28). Accordingly, the President of the Fifth Section decided to appoint Mr Johan Hirschfeldt to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

7. On 27 March 2014 a Chamber of the Fifth Section, composed of judges Mark Villiger, Boštjan M. Zupančič, Ganna Yudkivska, Vincent A. De Gaetano, André Potocki, Aleš Pejchal and Johan Hirschfeldt, and also of Claudia Westerdiek, Section Registrar, delivered a judgment in which it, unanimously, declared the application admissible and found that the implementation of the deportation order against the applicant would not give rise to a violation of Article 3 of the Convention, provided that she was not returned to parts of Iraq situated outside the Kurdistan Region.

8. On 25 June 2014 the applicant requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention and Rule 73. On 8 September 2014 the panel of the Grand Chamber granted that request.

9. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

THE FACTS

10. The applicant was born in 1978. She is from Baghdad and is of Mandaean denomination. She was once married, but divorced her husband in 1999, after which she lived with their son, born in 1998, in Iraq while her former husband moved to the United States.

11. The applicant arrived in Sweden on 27 August 2007 and applied for a residence permit the following day and for asylum on 21 January 2008. She stated that she and her son had left Iraq on 25 July 2007 and had then stayed with relatives in Amman, Jordan, for a month. In Amman she had left behind her son, because she had not been able to afford his trip. Later, her former husband had come to Jordan and brought the son back with him to the United States. To the Swedish authorities the applicant submitted an Iraqi citizenship certificate, an identity card, divorce documents and a membership card for Mandaeans regarding her and her son.

12. Assisted by legal counsel, the applicant stated in essence the following in support of her application. Her main reason for leaving Iraq was the generally insecure situation for Mandaeans in Iraq, which had affected her and her family personally. Her fears had led to her son going to school only sporadically during the past year. Moreover, at the beginning of June 2007 her mother had received a threatening phone call from someone

who had wanted to contact the applicant, presumably to forcibly remarry her with another man. If they did not comply, the applicant understood that her family would have to leave the neighbourhood. They had taken the threats very seriously and she had moved immediately with her son to her grandmother's house in the al-Dora neighbourhood of Baghdad, where they had stayed for a month. The applicant further stated that her only remaining relative in Iraq was her mother.

13. On 31 October 2008 the Migration Board (*Migrationsverket*) rejected the application and ordered the applicant's deportation to Iraq. The Board held that she had not proved her identity, but that she had made it plausible that she was from Iraq. It further considered that the situation in Iraq as such did not constitute grounds for asylum. While noting that Mandaeans were an exposed minority, their general situation did not suffice either for an individual be granted protection, but his or her personal circumstances would have to be assessed. The Board went on to state that the applicant had not submitted any written evidence in support of her allegations of persecution. Furthermore, she had received a threat on only one occasion and it had not been shown that the person threatening her had referred to her religious beliefs. Nor was there any other indication that she had been ill-treated on account of those beliefs or that she had received other threats before leaving Iraq. The Board then noted that the applicant's brother, who had also applied for asylum in Sweden, had had his application rejected and his deportation to Iraq ordered and that, consequently, the applicant would likely not lack a male network upon return to Iraq. In conclusion, the Board found that she had not made it probable that she was at personal risk of being subjected to serious ill-treatment if she returned to Iraq.

14. The applicant's brother, who had arrived in Sweden on 18 December 2007, had his application for a residence permit rejected by the Migration Board on 2 October 2008.

15. The applicant appealed, adding the following to her story. Mandaeans, being the smallest and most vulnerable minority in Iraq, were subjected to extortion, kidnappings and murder. Mandaean women and children had been forced to convert to Islam, often after having been assaulted and raped. The Mandaeans were not a large enough community to be able to protect and support each other and there was no particular region where they could settle safely. This was enough to show that she was in need of protection. The applicant asserted that the threat against her had to be seen against this background. Her whole existence had been marked by the threatening atmosphere and demands directed at non-Muslim women and in particular the Mandaeans. Her situation had been further aggravated by the fact that she is a single woman without a social network in Iraq. Her mother had had the intention of leaving the country as well, but the applicant had no information on her whereabouts. Furthermore, in Sweden

the applicant had met a Muslim man from Iraq together with whom she now lived. This situation would never be accepted in Iraq. Also, when she had talked about her new relationship in Sweden, her family had reacted very negatively and had virtually frozen her out.

16. On 14 December 2009 the Migration Court (*Migrationsdomstolen*) upheld the decision of the Board. The court acknowledged the difficult situation for Mandaeans in Iraq and stated that, consequently, a lower threshold was applied in assessing the individual risks than in Iraqi cases in general. The general situation for Mandaeans did not suffice of itself to be granted protection, however; an assessment of the applicant's individual circumstances was necessary. In the absence of written evidence, the court went on to examine the statements made by the applicant. It considered that the threat received concerning forced marriage was primarily related to the general security situation in Iraq at the time. In the two years since the applicant had left the country, the security situation had improved. While the Mandaeans remained disadvantaged, there was no sign that she was still being searched for in Iraq. Nor was there anything to indicate that her mother's possible exile had been caused by continued threats. The court further found that the negative reaction of the applicant's family to her new relationship did not imply a need of protection. In that connection, it further noted that the asylum appeal lodged by her brother, who had not turned his back on her, had been rejected on the same day. Thus, she could return to Iraq with him and thereby have a social network in the country.

17. On 16 February 2010 the Migration Court of Appeal (*Migrationsöverdomstolen*) refused the applicant leave to appeal. On 25 February 2010 it refused leave to appeal also in the applicant's brother's case.

18. Subsequently, the applicant, as well as her brother, claimed that there were impediments to the enforcement of their deportation orders. Their petition mainly concerned the brother's period of active duty in the Iraqi army, during which he had gained knowledge of important people in the army and their illegal actions. This knowledge would put both the applicant and her brother at risk if they were returned. The applicant further claimed that her mother had been kidnapped.

19. On 8 May 2010 the Migration Board rejected the petition, finding that no new circumstances justifying a reconsideration had been presented. It considered that the claims made in relation to the brother did not in any way show that there were threats against him or the applicant. The allegation that the mother had been kidnapped was actually new, but it was unclear when this incident was supposed to have happened and there was nothing to conclude that the possible kidnapping had any personal connection to the situation of the applicant and her brother. The applicant did not appeal against the Board's decision.

20. On 23 August 2010 the applicant submitted a letter to the Migration Board, which was perceived by the Board as a new petition for

reconsideration. The applicant stated that, if she were forced to return to Iraq, she would have to do so without her current partner or her brother, who were both in Sweden. Her partner had been issued a visa to Syria, as he was born in Damascus, and could not return to Iraq. Consequently, they would be separated, because she could not travel to Syria since she lacked a passport and would not be granted a visa. The applicant further asserted that she had no relatives in Iraq.

21. On 25 August 2010 the Migration Board decided not to reconsider the case. Although the fact that the applicant's partner had been granted a visa to Syria was considered to be new, the Board stated that this fact did not constitute a lasting impediment to the enforcement of the deportation order. The applicant did not appeal against the Board's decision.

22. The respondent Government submitted the following notes to the Court, taken from the files of the Migration Board. The applicant's mother was living with relatives and friends in Baghdad. When the applicant left Iraq, her grandmother and cousins had been living in the al-Dora neighbourhood of Baghdad. In Sweden, the applicant had been living in the same flat as her brother and her partner from October 2009 onwards. Her partner had left Sweden in October 2010 to be reunited with his family in Syria, whereas her brother was still in Sweden. Furthermore, in reply to the Government's request for information in the case, the Migration Board had stated that it was likely that the applicant had a large number of relatives left in Baghdad.

23. The applicant gave the following additional account to the Court. Following her divorce in 1999, she had gone to live with her parents and her brother. Her father, under whose protection she had been living, died in 2005. Her grandmother, with whom she had briefly lived after the threatening telephone call, had died in 2008. To her knowledge, she had no relatives left in Iraq, cousins or others. Several relatives were living abroad, in Sweden, France, the Netherlands, the United Kingdom, Spain and Canada. Her sister was living in Denmark. After the applicant and her brother had left Iraq, their mother had gone to live with a Christian family in Baghdad, from whom she had rented a room. In the beginning of 2010, the applicant and her brother had received information about their mother's disappearance, and the applicant was still unaware of what had happened to her mother. However, given the time that had passed without any contact with her, she assumed that she was dead. The applicant was still in a relationship with the man she had met in Sweden, although he was now living in Syria. The people who had disowned her because of that relationship were her relatives in Sweden, with the exception of her brother. The brother had married a relative, a Swedish citizen, on 27 May 2012. He had left Sweden and applied at the Embassy in Tehran for a Swedish residence permit based on his marriage. By a decision of 5 November 2013

the Migration Board had granted him a residence permit until 5 November 2015.

24. On 16 February 2014 the deportation order against the applicant became statute-barred and could no longer be enforced. Ten days later, the applicant lodged a new request for asylum.

25. On 15 October 2014 the Migration Board granted the applicant a permanent residence permit in Sweden. While not considering her to be a refugee, the Board had regard to the prevailing general security situation in Baghdad, in combination with the fact that the applicant is a woman lacking a social network in Iraq and belonging to religious minority, and concluded that she was in need of protection. Moreover, given that hundreds of thousands of Iraqis had fled to the Kurdistan Region within the space of a few months, there was no internal relocation alternative for her.

THE LAW

I. REQUEST TO STRIKE OUT THE APPLICATION

26. The applicant complained that her return to Iraq would involve a violation of Article 3 of the Convention. This provision reads as follows:

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

27. The respondent Government asserted that the case should be struck out, since the applicant, following the Migration Board’s decision of 15 October 2014, no longer faced a risk of being expelled to Iraq. In the alternative, the Government contended that the application should be declared inadmissible as the applicant could no longer claim to be a victim.

28. The applicant submitted that she no longer wished to pursue her application and that she had no objections to the Court striking out the case. She stated that she had obtained what she was seeking when she applied to the Court and that, for her, the matter had finally been resolved.

29. The Court notes that the applicant has been granted a permanent residence permit in Sweden. In these circumstances, the matter has been resolved, within the meaning of Article 37 § 1 (b) of the Convention. Regard is had also to the fact that the applicant does not intend to pursue her application (Article 37 § 1 (a)). Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case.

30. Accordingly, it is appropriate to strike the application out of the list of cases.

II. RULE 39 OF THE RULES OF COURT

31. As a consequence of the above, the application of Rule 39 of the Rules of Court is discontinued.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Decides to strike the application out of its list of cases.

Done in English and French, and notified in writing on 8 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik Fribergh
Registrar

Dean Spielmann
President