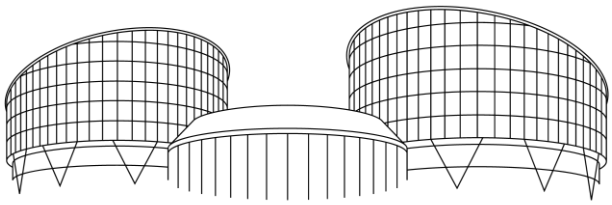

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF A.A. AND OTHERS v. SWEDEN

(Application no. 14499/09)

JUDGMENT

STRASBOURG

28 June 2012

FINAL

28/09/2012

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

In the case of A.A. and Others v. Sweden,

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

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Mark Villiger,
Ann Power-Forde,
Ganna Yudkivska,
André Potocki, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 15 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 14499/09) 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 six Yemeni nationals, A.A. and her five children ("the applicants") on 17 March 2009.

2. The applicants were represented by Mrs E. Rimsten, a lawyer working for the Red Cross in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ms C. Hellner, of the Ministry for Foreign Affairs.

3. The applicants complained that, if deported from Sweden to Yemen, they faced a real risk of being the victims of honour-related crimes in violation of Articles 2 and 3 of the Convention.

4. On 24 March 2009 the Chamber to which the case had been allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to deport the applicants until further notice.

5. On 11 May 2009 the President of the Chamber decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

6. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the above application was assigned to the newly composed Fifth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant is born in 1966, the second applicant is her oldest daughter, born in 1988, the third and fourth applicants are her sons, born in 1989 and 1990, and the fifth and sixth applicants are her youngest daughters, born in 1993 and 1999. They are currently in Sweden.

8. On 14 February 2006 the first and fifth applicants arrived in Sweden and, two days later, they applied for asylum and residence permits. The second, third, fourth and sixth applicants arrived in Sweden on 17 August 2006 and applied for asylum and residence permits on the same day. The Migration Board (*Migrationsverket*) held three interviews with the first applicant and two interviews with the fifth applicant. The applicants' legal representative was present at the third interview with the first applicant and at the second interview with the fifth applicant. The legal representative also submitted written submissions to the Board concerning all of the applicants.

9. During the three interviews held by the Migration Board on 16 February, 6 March and 5 October 2006, the first applicant essentially told the Board the following. She was from Sana'a in Yemen where she had lived with her husband, X, and their five children. She and X came from the same clan and he worked in industry. In her view, they had been poor. Her mother, one brother and two sisters lived in Yemen and another brother lived in London. Her father was deceased. She had travelled with the fifth applicant to Sweden, via Paris, using their passports and with French visas. She had thrown the passports away upon arrival in Sweden for fear of being sent back. They had paid about 2,000 US dollars (USD) for their tickets and about USD 1,000 for the visas. She had paid for this by selling gold that she owned. A friend of hers had helped to obtain the visas from the French Embassy in Sana'a in January 2006. Her brother had obtained their passports without X's knowledge. The second, third, fourth and sixth applicants had travelled to Sweden illegally with the help of smugglers.

10. The first applicant claimed that her biggest problem was X who had abused her for many years. They had married when she was 14 years old and he had been very strict and had hit her, burnt her and threatened her with a knife. She had back problems caused by the violence and had received an injection at a hospital in Sana'a a few months before leaving the country to alleviate the back pain caused by a slipped disc. She had tried to obtain a divorce but the judge at the court had told her that she should solve her private problems with her husband. She had not contacted a lawyer as she had no money and she had not reported the violence to the police because they did not interfere in family matters.

11. However, the first applicant alleged that the main reason for leaving Yemen had been to protect her daughters. The second applicant had been

forced to marry an older man when she was 14 years old and forced to leave school because of it. X had also planned to marry off the fifth applicant to a much older man when she was only thirteen years old. The first applicant had petitioned the courts to stop the marriage but the courts had decided that X, as the head of the family, was entitled to make that decision. She claimed that women had no freedom in Yemen and that X would kill her if she were returned since she had dishonoured him by leaving the country with their daughter and without his permission. No one would be able to protect her and her daughter.

12. The fifth applicant supported her mother's claims, stating that X had wanted to marry her off to an older man against her will. The court case to stop the marriage had taken about six months and the outcome had favoured X for which reason she and the first applicant had left the country. Her uncle had helped them to obtain travel documents so they could leave the country legally. She also stated that X had worked at a ministry and that he had been very strict with her and her mother.

13. The second applicant also supported her mother's claims and submitted that X had married her off, at the age of 14, to a much older man who had eight children and a disabled first wife. He had treated the second applicant like a servant but had agreed to divorce her if he was reimbursed the USD 4,000 that he had paid as a dowry for her to X. After her mother and sister had left the country, the second applicant alleged that X had made her other siblings leave the house but that they had been able to stay with a friend of hers until they could travel to Sweden. She submitted that, if they were to return to Yemen, they would all risk being killed since they had dishonoured X. She also risked being killed by her husband since she had left him without his permission.

14. In a later submission, the second applicant added that X would never allow her to return home even if she did obtain a divorce from her husband. Moreover, when X had made her siblings leave their home, she had exceptionally been allowed by her husband to house them.

15. On 9 May 2007 the Migration Board rejected the applications. It first noted that the applicants had not submitted their passports or any other documents to prove their identity or to support their story. It then observed that Yemen is a tribal society dominated by a patriarchal social order where women are subject to discriminating treatment and where they have to obey their husbands. Turning to the applicants' personal situation, the Board first pointed out that the first applicant's brother had failed according to the "honour rules" by helping her to obtain a passport. Moreover, it considered that the mere fact that the first applicant had left the country, and by doing so allegedly dishonoured her husband, was not sufficient to create a need for protection in Sweden. In this respect, the Board observed that the first applicant's clan could protect her against X. Concerning the fifth applicant, the Board considered that X's actions had been motivated by financial gain

and that, by paying the necessary sum to X, the fifth applicant could solve any problems that might arise. Here, it noted that the applicants' contention that they were poor was contradicted by the fact that they had been able to afford to travel to Sweden since the cost of the journey would have been a fortune to a poor person. Turning to the second applicant, the Board observed that her husband had consented to divorce her if she reimbursed him the sum he had originally paid X. Again, the Board considered that the problem was mainly a financial matter which could be solved by paying the required amount. In regard to the remaining applicants, the Board found that they would be able to stay with their maternal grandparents or other relatives in the clan.

16. Thus, the Board concluded that the family's problems were related to financial matters rather than to honour and, consequently, they could not be considered refugees or otherwise in need of protection in Sweden. Since the situation in Yemen was not such as to call for an automatic grant of residence permits, the applicants' requests were rejected. In reaching this conclusion, the Board had regard to the fact that some of the applicants were minors.

17. The applicants appealed against the decision to the Migration Court (*Migrationsdomstolen*), maintaining their claims and adding that they had disgraced the head of their family as well as the clan by fleeing. Since they were members of the same clan as X and, since the clan always took the side of the man, it would not protect them. On the contrary, the clan, which was very large and powerful, had blacklisted them and they were convinced that the clan would kill them to save its honour. Moreover, the first applicant's brother had helped them in secret and had risked his own life by doing so. He would not be able to help them again. According to the applicants, there was no one in Yemen who would be able to protect them. Furthermore, the applicants insisted that their need for protection was honour-related and not economic in nature. The second and fifth applicants did not have the money necessary to buy their freedom and, in any event, nothing would hinder X from marrying them off to someone else later on. The first applicant added that she had been a member of a women's association which had met on Thursdays and Fridays and that she had told the women in the association about her problems and they had lent her some money to pay for travel. The remainder of the cost, she had paid by selling her jewellery. As concerned the other applicants, the second applicant had helped to pay for that trip.

18. In support of their claims, the applicants submitted an e-mail, dated 26 December 2007, and sent by a programme officer for "Sisters of Arab Forum for Human Rights". It stated that, if the applicants were sent back to Yemen, their lives would be in danger since the first and fifth applicants had disgraced their husband/father when they had run away instead of accepting his decision that the fifth applicant marry the man X had chosen for her. It

further stated that honour crimes were common in Yemen and that Yemeni law encouraged it; for example, a man who killed his wife because of infidelity would only be sentenced to six months' imprisonment.

19. They also submitted a copy of a police report, dated 19 January 2008, from which it appeared that X had reported to the Yemeni Ministry of the Interior that the third and fourth applicants had stolen 1,500,000 Yemeni rial (approximately EUR 5,300) from him. He stated in the report that he had hidden the money in his wardrobe about two months previously and had discovered that it had gone two days before. He had asked his wife about it but she had not known anything and thus he suspected that his two sons had stolen the money since they had been out a lot lately. The sons had now run away from home and he wanted them arrested. It appeared from the report that a regional arrest warrant had been issued for the third and fourth applicants. The applicants claimed that this was a method for X to get the authorities' help to locate the family in order for him to have his revenge. They had received the report from the first applicant's brother, who had heard about it and requested a copy from the Ministry of the Interior. He had received a copy since he was the boys' uncle.

20. Lastly, the applicants submitted the children's birth certificates in original which their uncle had also acquired and sent to them.

21. On 19 August 2008 the Migration Court rejected the applicants' appeal. The court first observed that the general situation for women in Yemen was not a sufficient ground for them to be granted refugee status. An individual assessment had to be made in each case. It then observed that the reasons referred to by the applicants in support of their need for protection mainly concerned problems within the personal sphere caused, *inter alia*, by the country's traditions. The court further noted that, other than the first applicant's petition to a court to stop the fifth applicant's marriage, the applicants had not turned to the Yemeni authorities to obtain protection against X or the second applicant's husband. The court reiterated that, before international protection could be considered for problems of violence and reprisals within the family, all avenues of mediation and protection by the national authorities should have been tried. With regard to X's police report against the third and fourth applicants, the court considered that it would be no problem for them to prove that they were innocent since they were in Sweden at the time of the alleged crime. Therefore, they did not risk being arrested or imprisoned. The court concluded that the applicants could not be considered refugees, that they were not in need of protection and that there were no exceptional circumstances to grant them leave to remain in Sweden, even though some of them were still minors. In reaching this conclusion, the court also had regard to the fact that the family was united, that several of them were adults and that they had family and friends in Yemen who supported them.

22. On 22 October 2008, with one of the judges being of a dissenting opinion, the majority of the Migration Court of Appeal (*Migrationsöverdomstolen*) refused leave to appeal. This decision was final and the deportation order thus became enforceable.

23. However, in January 2009, the applicants lodged an application with the Migration Board to stay the enforcement of the deportation order and to reconsider their case due to new circumstances. They maintained their previous claims and submitted a copy of a document in Arabic that they claimed was a copy of a summons, dated 22 December 2008, and which had been issued by a Yemeni court. According to the applicants, it stated that the first applicant had taken her and X's five children and had moved to Sweden, following a dispute between her and X regarding whether or not the fifth applicant should be married to an older man. According to the document, X requested the court to order the return of the applicants to Yemen so that the children would be with their father and to imprison the first applicant because she had disobeyed her husband and to stop her from leaving Yemen again. Moreover, X requested the court to decide that the fifth applicant should marry the man that he had chosen. The applicants contended that this, together with the other information in the case, showed clear discrimination against women and that there could be no doubt that, should they be returned to Yemen, they would be subjected to persecution because they had dishonoured the head of the family.

24. On 20 January 2009 the Migration Board rejected the new application and decided that the measures to enforce the deportation order should continue. The Board found that the grounds invoked by the applicants had already been examined earlier in all essential parts and that no new circumstances had been presented which could lead to a stay of the enforcement of the deportation order. Furthermore, it considered that the applicants had invoked no other new circumstances which could lead to granting them residence permits in Sweden.

25. The applicants appealed against the decision to the Migration Court, insisting that the evidence showed that inhuman treatment awaited them if they were returned to Yemen. However, on 13 February 2009, the court upheld the Board's decision and reasoning in full and rejected the appeal.

26. Upon further appeal, the Migration Court of Appeal, on 5 March 2009, refused leave to appeal

27. On 24 March 2009, upon request by the applicants, the Court applied Rule 39 of the Rules of Court until further notice. On the same day and on the basis of the Court's request, the Migration Board stayed the enforcement of the deportation order until further notice.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Aliens Act

28. The basic provisions mainly applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the Aliens Act (*Utlänningslagen*, 2005:716 – hereafter referred to as "the Aliens Act"), as amended on 1 January 2010. The following refers to the Aliens Act in force at the relevant time.

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

30. Moreover, if a residence permit cannot be granted on the above grounds, such a permit may be issued to an alien if, after an overall assessment of his or her situation, there are such particularly distressing circumstances (*synnerligen ömmande omständigheter*) to allow him or her to remain in Sweden (Chapter 5, section 6 of the Aliens Act).

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

32. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This applies, under Chapter 12, Section 18, of the Aliens Act, where new circumstances

have emerged that mean there are reasonable grounds for believing, *inter alia*, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced. If a residence permit cannot be granted under this provision, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, Sections 1 and 2, of the Aliens Act, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not doing so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, Section 19, of the Aliens Act).

33. Under the Aliens Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances; the Migration Board, the Migration Court and the Migration Court of Appeal (Chapter 14, Section 3, and Chapter 16, Section 9, of the Aliens Act).

B. Instructions from the Head of the Legal Department of the Migration Board

34. On 22 March 2011 the Head of the Legal Department of the Migration Board issued an instruction concerning the enforcement of deportation orders to Yemen. He noted that the already unstable situation in Yemen had rapidly deteriorated due to protests against the regime and that there was increased violence from various groups, including by government forces. Having regard to the difficulties in evaluating the situation in the country and how it would develop, the Head of the Legal Department considered that no deportation orders to Yemen should be enforced until further notice.

35. A second instruction was issued on 10 February 2012 by the Head of the Legal Department of the Migration Board in which he considered the developments in Yemen since the issuance of the first instruction. He first noted that the security situation in Yemen was affected by a number of internal conflicts, such as conflicts between clans, between the regime and various clan militias in the north and the south of the country as well as the regime fighting Al-Qaida in the Arab Peninsula (AQAP). These conflicts had been accentuated by the growing protests and opposition against the regime by civil society, weakening the central government and its control over the country. During the autumn of 2011, in particular, there had been violent clashes in the bigger cities of Sana'a and Taiz. Following the agreement brokered by the Gulf Cooperation Council and sanctioned by the United Nations, where President Ali Abdullah Saleh agreed to hand over

power to Vice-President Abdel Rabbo Mansour Hadi, the situation in Yemen continued to be marked by political unrest, an unstable security situation and continued internal conflicts. However, the country-wide protests had diminished in intensity and no longer paralysed the big cities of Sana'a and Taiz. Thus, the general security situation in Sana'a and other big cities had improved. In view of this, the Head of the Legal Department found that the situation in the country was generally very serious but that the violence was not so serious or indiscriminate as to give well-founded grounds to assume that civilians, through their mere presence in the parts of the provinces where the violence occurred, were at a real risk of being exposed to serious and personal threats to life or limb.

36. In conclusion, the Head of the Legal Department noted that Yemen was still marked by major political instability and occasionally armed fighting between various entities in essentially all parts of the country. The Government had little if any power in certain parts of the country and the judicial system could currently not be considered to be capable of impartially protecting the population's basic rights. In these circumstances, he considered that there were severe conflicts (*svåra motsättningar*) within the meaning of the Aliens Act in all of Yemen. It was important to point out that the severe conflicts, and consequently the security situation, were more serious in some parts of the country than in others and that this had to be taken into account in each individual case. He further noted that vulnerable groups in Yemen, such as women and children, should be given special attention when their need for protection was considered. Through this instruction, the first instruction was repealed and thereby the stay on deportation orders was also ended.

III. INFORMATION ABOUT YEMEN

A. General country information

37. The U.K. Foreign & Commonwealth Office's Travel Advice for Yemen, as updated on 5 March 2012[1], sets out the following about the political situation in Yemen:

> "Following the signing on 23 November 2011 of the Gulf Cooperation Council's Initiative by President Saleh, political transition in Yemen is now underway. Much progress has since been achieved with the appointment of a new prime minister, a National Unity Government comprising ministers from the former ruling party and opposition, and approval by parliament of the government's programme. Interim presidential elections were held on 21 February 2012 and President Abd Rabbuh Mansour Hadi was inaugurated on 25 February as Yemen's new head of state. The

[1] http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/middle-east-north-africa/yemen/ Downloaded on 9 March 2012.

second phase of transition has now begun, leading to greater participation in the political process by all Yemenis, constitutional reform and parliamentary elections. The situation remains uncertain in Yemen, with some seeking to disrupt the new political process and others dissatisfied with the pace of change. Yemen faces tough political, humanitarian and economic challenges. Violent clashes continue across Yemen, particularly in Sana'a and Taiz. The long period of political impasse in 2011 has resulted in the withdrawing of effective state control over parts of the country, especially in the north in Sadah and the south in Abyan. Dialogue is ongoing to achieve political transition and the situation remains extremely tense."

38. The volatile and tense situation in Yemen, as set out above by the Head of the Legal Department of the Migration Board and the U.K. Foreign & Commonwealth Office, is reflected and supported by other international sources, such as the United Nations[1].

B. The situation of women and children

39. The United States Department of State "2010 Human Rights Report: Yemen", of 8 April 2011, states among other things:

"Women

The law, rarely enforced, provides women with protection against violence, but there were no laws specifically prohibiting domestic violence, including spousal abuse. Although spousal abuse occurred, it generally was undocumented. Violence against women and children was considered a family affair and usually went unreported to police. Due to social norms and customs, an abused woman was expected to take her complaint to a male relative (rather than to authorities) to intercede on her behalf or provide sanctuary to avoid publicizing the abuse and shaming the family ... The law criminalizes rape, although spousal rape is not criminalized because a woman may not refuse sexual relations with her husband ... The law does not address other types of honour crimes, including beatings, forced isolation, imprisonment, and forced early marriage. The law regarding violence against women states a convicted man should be executed for killing a woman ... Social custom and local interpretation of Shari'a discriminated significantly against women ... Men were permitted to take as many as four wives. A husband may divorce a wife without justifying the action in court. Under the formal court system, a woman has the legal right to divorce, but she must provide a justification, and there were practical, social, and financial considerations that impeded women from obtaining a divorce. However, in some regions under tribal customary law, a woman has the right to divorce without justification... Women also faced discrimination in courts, where the testimony of one man equals that of two women ... Governmental mechanisms to enforce equal protection were weak or nonexistent. According to the Ministry of Social Affairs and Labour (MSAL), there were more than 170 NGOs working for women's advancement. The Arab Sisters Forum for Human Rights worked with other NGOs, the government, and donor countries to strengthen women's political participation. The Yemeni Women's Union and Women's National Committee

[1] UN News Centre, "After successful polls, Yemen must address security and humanitarian concerns", downloaded on 9 March 2012 from:
http://www.un.org/apps/news/story.asp?NewsID=41482&Cr=yemen&Cr1=

(WNC) conducted workshops on women's rights. The Arab Sisters Forum, with funding from the Netherlands and in cooperation with the MSAL, established projects aimed at providing protection against violence for women and children.

Children

The law does not define or prohibit child abuse, and there was no reliable data on its extent. Child marriage was a significant problem in the country. There was no minimum age of marriage, and girls were married as young as age eight. A February 2009 law setting the minimum age for marriage at age 17 was repealed. According to a 2009 MSAL study, a quarter of all girls were married before they were 15 years old. The law has a provision that forbids sex with underage brides until they are "suitable for sexual intercourse," an age that is undefined. An Oxfam International study calculated that among 1,495 couples, 52 percent of women and 7 percent of men were married at an early age. The report also highlighted that 15-16 years was generally considered the appropriate age of marriage for girls, depending on region and socioeconomic status."

40. The Amnesty International report "Yemen's Dark Side - Discrimination against Women and Girls", of November 2009, and the Human Rights Watch report "How Come You Allow Little Girls to Get Married? Child Marriage in Yemen", of December 2011, support the above-mentioned findings concerning women and children by the U.S. Department of State.

41. The Human Rights Watch report further states that:

"The provisions in Yemen's Personal Status Law on marriage and divorce create particular hardships for women and girls. ... A man may divorce his wife by pronouncing his repudiation three times. A woman may ask for separation from her husband on certain conditions, for example if the husband fails to provide financially for his family even though he is capable of doing so; if he abandons his wife for more than one year with no compensation, or for more than two years with compensation; if he is imprisoned for more than three years; or if he marries more than one woman and is unable to provide financially for his wives. The wife must provide proof of these allegations before being granted a divorce. A wife who wishes to divorce her husband for other reasons may file for khul'a, or no-fault divorce, under which she is required to pay back her dowry and forego claims to maintenance. Given women's economic dependence on their husbands, this requirement makes it difficult for women to seek and obtain a divorce."

42. 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 note concerning marriage in Yemen dated 20 July 2010, observed that, according to the Yemeni Personal Status Law no. 20 of 1992, as amended in 1997 and 1999, there is no requirement that a bride be physically present when she is married. It is enough that her guardian agrees and shows his identity card or family book. Moreover, it notes that the mother of the bride has no legal authority to decide about her daughter's marriage, since she is also under the authority of her husband and has to follow his decisions. The note further states that every year there are girls who flee their forced marriages and seek refuge with NGOs and human rights activists. In this respect, it

observes that NGOs run a few shelters in Sana'a and one in Aden where these girls and other women in vulnerable situations can receive protection, counselling and training in various skills.

43. *Landinfo* has in another note focusing on Yemeni women's possibilities to support themselves, dated 20 March 2009, observed that it is not acceptable for a Yemeni woman to live alone without a family network. Although women, formally, have some civil and political rights, in reality, they are hindered from using them due to poverty and religious and cultural values. However, there are working women and they are to a certain extent visible on the work market. Roughly 25% of all university students are women and women are allowed to work within the health care and education system, as well as in the agricultural sector, private business or for NGOs.

44. The Freedom House's report "Women's Rights in the Middle East and North Africa 2010- Yemen", of 3 March 2010, sets out:

> "Yemen is a tribal and traditional country where prevailing cultural attitudes, patriarchal structures, and Islamic fundamentalism accord women low status in the family and community and limit their participation in society. ...
>
> Women face additional difficulties obtaining justice because police stations and courts – which are always crowded with men – are commonly considered to be inappropriate places for "respected women". Moreover, the lack of female judges, prosecutors, and lawyers discourages women from turning to the courts. Given the social discrimination experienced by women, they hesitate to approach male legal consultants, particularly for issues such as abuse or rape. Instead, women often rely on male relatives to go to court in their place, or turn to them to solve their problem rather than taking the matter to the judiciary.
>
> Domestic violence in cases related to honor is a concealed phenomenon in Yemen. Normally such cases are handled discreetly within the family and rarely reach police records. If the parties to the problem are not relatives, it is often resolved amicably through tribal mechanisms. Cases of honor-related homicide perpetrated against women are usually not reported, and no health certificate is required for a burial, particularly in rural areas. As a result, such deaths are often attributed to natural causes."

45. There have been some recent changes as observed by Human Rights Watch in its report of December 2011, cited above, pp. 8-9:

> "Women played an important role in anti-Saleh protests, despite beatings, harassment, and, in some cases, the condemnation of relatives. President Saleh in April 2011 admonished women demonstrators, saying "divine law does not allow" public intermingling of the sexes. Women responded with further protests. In October 2011, Tawakkol Karman, a prominent woman journalist and human rights activist who has played a pivotal role in the protests, won the Nobel Peace Prize along with two women leaders from Liberia. In recent years, Karman has defied conservatives in her political party Islah, or the Islamists Congregation for Reform, by calling for a minimum age for child marriage."

46. The important role played by women in the protests against the Yemeni Government during 2011 has also been highlighted by other sources, such as Amnesty International[1] and the media[2].

47. Yemen is a State Party to a number of international treaties and conventions that explicitly prohibit discrimination against women and protects the rights of women and children, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights.

C. Travel documents and travel restrictions

48. The United States Department of State's 2010 Report on Yemen, cited above, states:

> "The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights with some restrictions. The government limited the movement of women, foreign tourists, and other foreigners ... According to the law, government officials required women to have the permission of a male relative before applying for a passport or leaving the country. A women's rights NGO asserted that a husband or a male relative could bar a woman from leaving the country and that authorities strictly enforced this requirement when women travelled with children. During the year authorities reportedly turned back several women at the airport because they did not have the permission of a male relative."

49. *Landinfo* has in a thematic note of 2 November 2010 concerning Yemeni travel and identity documents concluded that the notoriety of Yemeni documents was low, partly as a result of a weak central government, widespread corruption and incomplete registration procedures and archives. Thus, it was reported that it was easy to obtain forged documents through bribery or personal connections.

50. The note further stated that passports were issued and renewed by the Ministry of the Interior. In order to get a passport, the applicant would have to present a valid identity card or family book as well as two photographs and leave his or her fingerprints. For a woman to obtain a passport, she had to have the permission of her husband or, if she was

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[1] Amnesty International: "Women's Day: Taking a stand with women in the Middle East", dated 6 March 2012, downloaded from: http://www.amnesty.org/en/news/women-s-day-taking-stand-women-middle-east-2012-03-02

[2] CNN, "Yemen is experiencing two revolutions, says female activist", dated 17 November 2011, downloaded from: http://edition.cnn.com/2011/11/17/opinion/yemen-revolution-afrah-nasser/indeXhtml

BBC, "Yemen women burn veils in Sanaa anti-Sahel protest", dated 26 October 2011, downloaded from: http://www.bbc.co.uk/news/world-middle-east-15466661

unmarried, that of her father or other male relative. Children were normally registered in their parents' passport until the age of 16. However, if necessary, a child could get a passport if the child's birth certificate and the father's passport were submitted to the issuing authority. As concerned leaving the country, the note observed that there was different information available. According to the U.S. Department of State, a woman needed permission from her husband, or father if unmarried, to leave the country. However, the Women's National Committee (a Yemeni government-affiliated body working to empower women) and a Yemeni lawyer had informed *Landinfo* that, once a married woman had obtained a passport, she did not need formal permission from her husband to leave the country.

THE LAW

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

51. The applicants complained that the enforcement of the deportation order to Yemen would be in violation of Articles 2 and 3 of the Convention which, in relevant parts, read:

Article 2

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

Article 3

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

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

A. Admissibility

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

B. The parties' submissions

1. The applicants

54. The applicants maintained that the general situation for women in Yemen was serious and that the Yemeni authorities could not provide women with adequate protection from honour-related persecution.

55. Regarding the credibility issues put forward by the Government, the applicants contended that neither the Migration Board, nor the Migration Court had questioned the applicants' credibility.

56. The applicants submitted that, as the Swedish Embassy in Riyadh had not checked the authenticity of the submitted police report and the court summons, the Government could not state that the documents had no value as proof of what would happen to the family on arrival in Yemen.

57. Concerning the arranged marriage for the fifth applicant, they asserted that X had never told either the first applicant or the fifth applicant whom he intended to name as the fifth applicant's husband and that X had behaved in exactly the same way when he had arranged the marriage for the second applicant. The applicants added that they had received a decision from the domestic court in the court case concerning the marriage of the fifth applicant but had left it in the house in Yemen.

58. Regarding the applicants' travel to Sweden, they asserted that the first applicant's brother had told the staff at the airport that the first applicant and her daughter were going to meet the first applicant's husband on arrival at their destination. Thus they had been able to leave the airport without male company. Regarding the financing of the journey to Sweden, the applicants claimed that X had decided where money should be spent and from that perspective the first applicant had been poor. However, when she had learned that the fifth applicant risked being married off, she had done her utmost to raise the money for the journey, like any mother would have done.

59. The second applicant asserted that she had been abused and maltreated by her husband during their marriage. Furthermore, she had left the country without her husband's permission. To pay back the dowry would not help her since she had committed a crime according to the culture of honour. Also, she insisted that she had no possibility to return to X, since he would immediately arrange a new marriage for her.

60. As concerned the question of whether the applicants could receive protection from the domestic authorities, they submitted that the Yemeni law did not provide protection against domestic violence since it was considered a family affair. Neither would it be possible for them to turn to the clan for protection from X's abuse. The first applicant had turned to the clan for help regarding X's plans to marry off the fifth applicant but the clan had advised her to turn to the courts.

61. They further asserted that the third and fourth applicants (the male applicants) would not be able to protect the other applicants or give them the necessary support to travel or resettle elsewhere in Yemen. The third and fourth applicants were in danger as well, since they had also acted against the culture of honour by following their sisters and mother to Sweden. Moreover, they claimed that the first applicant's brother was constantly in hiding, moving around in Yemen and, thus, they could not rely on his protection.

2. The Government

62. From the outset, the Government pointed out that even though the country information supported the view that the human rights situation for women and girls in Yemen was of great concern it did not, in itself, suffice to establish that a return of the applicants would entail a breach of Article 3 of the Convention.

63. The Government did not question that, generally speaking, the actions of some of the applicants were of such character that they might give rise to honour-related crimes. However, they considered that there were shortcomings and inconsistencies in the applicants' statements in essential parts which gave reason to question their general credibility. In the Government's view, the applicants' accounts before the domestic authorities had been strikingly brief and lacking in detail in all aspects.

64. Upon request by the Government, the Swedish Embassy in Riyadh, which covers Yemen, had sent a report relating to the authenticity of some of the documents submitted in the domestic proceedings by the applicants. The Government referred to the findings in the report and stated the following. Regarding the alleged court case initiated against X to prevent the marriage of the fifth applicant, the Embassy had not been able to verify this claim as the applicants had not presented any details of the case, such as the date when the case had been initiated, the name of the relevant court or the case number. In the Government's view, the lack of details given by the applicants about this court case gave reason to question its veracity. They also stated that if the applicants, as they claimed before the Court, had received a decision from the Yemeni court, it could have been expected that the applicants present the decision or at least provide a satisfactory explanation for their failure to do so.

65. Turning to the alleged court summons issued by a Yemeni court, the Government submitted that the Embassy in Riyadh had noted in its report that the document was rather a record concerning an action filed with the court by X and an interview held with him. The Government suggested that there was reason to question the authenticity of the document as the applicants had not presented any information about how they had obtained the document and since the document had been presented at a late stage in the proceedings. Furthermore, the document was dated 22 December 2008,

which meant that the alleged court action by X had been filed about two years and ten months after the first and fifth applicants had left Yemen. The Government stated that the applicants had not offered an explanation as to why X would wait that long before going to court if he had really been offended and upset about their departure. Moreover, regarding the submitted police report, the Government stated that there was reason to question its authenticity.

66. They also questioned how the first applicant's brother had managed to arrange for passports for the first and fifth applicants since country information and the report from the Embassy in Riyadh supported that both the first and fifth applicants would have needed permission from X to obtain passports. The report also noted that the applicants should be able to obtain copies of the passports from the Yemeni authorities. The Government further observed that the applicants had not explained how they had managed to leave Yemen without being accompanied by a male relative.

67. Furthermore, the Government stated that the applicants had not substantiated that the fifth and sixth applicants were at real risk of being married upon return. The applicants had not provided any details concerning the man that they claimed X had chosen as the fifth applicant's future husband. Nor were there any details about the alleged marriage agreement. As concerned the sixth applicant there was, according to the Government, no indication that X had even considered arranging for her to be married. Should the Court find that the fifth and sixth applicants would be forced to marry upon return it had not, in the Government's view, been sufficiently established that they would face a real and personal risk of being subjected to treatment contrary to Article 3 of the Convention.

68. The Government submitted that the fact that the second applicant's husband had agreed to divorce her indicated that he had nothing in particular against her leaving him or the country. Thus, there was no reason to believe that she would run a real risk of being ill-treated or killed by him for reasons of honour. Concerning the information given before the Court, that the second applicant had been abused and maltreated by her husband, the Government considered that there was reason to question this information in view of the fact that it was new to the case and that the applicants had not provided any further details concerning the claim, nor explained why it was submitted at such a late stage.

69. Should the Court find that the applicants had shown that there was a real risk of honour-related crimes or spousal abuse against the applicants upon return, the Government noted that it was evident from various human rights reports that the applicants would have limited possibilities to receive protection from the authorities but also from the clan, in view of Yemen's patriarchal society and the fact that the first applicant and X belonged to the same clan. Also, referring to the report by the Swedish Embassy in Riyadh, the Yemeni authorities did not offer protection to children who ran the risk

of being forced into marriage or killed as a result of honour-related conflicts.

70. As concerned the applicants' possibilities of using an internal flight alternative, they claimed that the female applicants would be accompanied by their male relatives, the third and fourth applicants, which would be sufficient to make it possible for the applicants to resettle within Yemen. As to the issue of social network, the Government noted that the applicants would at least have the support of the first applicant's brother in Yemen. The first applicant had, according to the Government, shown considerable strength and independence by going to court several times to file for divorce and managing to obtain the necessary practical and financial means to leave her husband. In the light of the above-mentioned circumstances the Government held that there was an internal flight alternative available to the applicants.

C. The Court's assessment

1. General principles

71. The Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, *inter alia*, *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102 Series A no. 215, p. 34,). However, expulsion 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 of the Convention implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008).

72. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assess the conditions in the receiving country against the standards of Article 3 of the Convention (see *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 (see *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 (see *H.L.R. v. France*, 29 April 1997, § 40, *Reports* 1997-III).

73. 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, *inter alia*, *N. v. Sweden*, no. 23505/09, § 53, 20 July 2010 and *Collins and Akasiebie v. Sweden* (dec.), no. 23944/05, 8 March 2007). In principle, the applicant has 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 of the Convention (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005 and *NA. v. the United Kingdom*, no. 25904/07, § 111, 17 July 2008). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

74. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicants to Yemen, bearing in mind the general situation there and their personal circumstances (see *Vilvarajah and Others*, cited above, § 108).

2. The general situation in Yemen

75. According to the Court's case-law, a general situation of violence will not normally in itself entail a violation of Article 3 of the Convention in the event of an expulsion (see *H.L.R.*, cited above, § 41). Indeed, the Court has rarely found a violation of Article 3 on that ground alone (see *NA.*, cited above, § 114, with further references). Thus, although the Court has never ruled out the possibility that a general situation of violence in a country of destination could be of a sufficient level of intensity to entail that any removal to it would necessarily breach Article 3 of the Convention, it would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (see *NA.*, cited above, § 115).

76. As concerns the present case, the Court observes that, as set out above in §§ 35-38, the general situation in Yemen remains volatile and extremely tense despite some improvements since the political transition started at the end of November 2011. There are several internal conflicts going on between various groups in different parts of the country and the new president and government face many challenges, including establishing effective state control over all parts of the country. However, in the Court's view, this general situation of instability and violence in Yemen is not of such intensity that it may be said that the applicants would be exposed to a

real risk of ill-treatment simply by being returned there. It must therefore be determined whether their personal situation is such as to expose them to a real and personal risk of treatment contrary to Article 3 of the Convention if sent back to their home country.

3. The applicants' case

77. The Court observes, from the outset, that there is a dispute between the parties as to some facts of the case and that the Government have questioned the applicants' credibility and pointed to inconsistencies in their stories. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in cases such as the present one. It accepts that, as a general principle, the national authorities are best placed to assess the credibility of the case since it is they who have had an opportunity to see, hear and assess the demeanour of the individuals concerned (see *R.C. v. Sweden*, no. 41827/07, § 52, 9 March 2010). In this respect, the Court notes that the Swedish authorities did not question the applicants' stories as such but found that the submitted information was not sufficient to show that the applicants were in need of protection in Sweden. It also observes that the applicants' case was thoroughly examined by both the Migration Board and the Migration Court, which included several interviews before the Board. They further appealed against the Migration Court's judgment to the Migration Court of Appeal, which decided to refuse leave to appeal. Before all instances the applicants were assisted by female legal counsel. Furthermore, apart from the ordinary asylum proceedings, which went through three instances, both the Migration Board and the Migration Court have examined the applicants' application for subsequent review of the enforcement order. There are no indications that the proceedings before the domestic authorities lacked effective guarantees to protect the applicants against arbitrary *refoulement* or were otherwise flawed. Against this background, the Court will continue by examining whether the information presented before this Court would lead it to depart from the domestic authorities' conclusions.

78. The Court first notes the applicants' claim that the clan would pose a risk to them. However, they have not said that they have ever received any threats from anyone in the clan and, moreover, when the first applicant turned to the clan for help regarding the fifth applicant's marriage, the clan advised her to go to court. Thus, the clan did not take the side of X or encourage the first applicant to accept the marriage plans. Consequently, the Court finds that the applicants have not substantiated in any way that the clan would pose a threat to them or that it should have "blacklisted" them.

79. As concerns the third and fourth applicants, the sons, they have asserted that they would risk honour-related persecution by X because they have disgraced him by leaving the country together with the rest of the family. The Court first observes that nothing happened to either the third or

the fourth applicants while they were living in Yemen, including after X had made them leave their home following the first and fifth applicants' departure. Moreover, in relation to the police report, in which X allegedly reported that the third and fourth applicants had stolen money from him, the Migration Court found that it would be no problem for them to prove that they were innocent as they were in Sweden at the time when the alleged crime took place. The Court finds no reason to depart from that evaluation and considers that the police report, if authentic, does not show that they would risk treatment in violation of Article 3 of the Convention upon return. In this respect, the Court also notes that the report, which is dated 19 January 2008, was submitted to the Migration Court following the Migration Board's initial rejection and about one and a half years after the sons' departure from Yemen.

80. Since the third and fourth applicants are now adult men, they are free to find jobs and settle where they wish within the country. Consequently, the Court finds that the third and fourth applicants have not substantiated that they would face a real and personal risk of reprisals which would reach the threshold of Article 3 of the Convention if returned to Yemen. Having this in mind, the Court will continue to examine the claims put forward by the female applicants.

81. With regard to the first applicant, the Court observes that the alleged marital abuse against the first applicant has not been questioned on a domestic level and the Court finds no reason to make another assessment. In support of her claim that she would risk being the victim of an honour crime if returned, she invoked the alleged court record dated 22 December 2008 according to which X had requested that the applicants be returned home. The Court considers that there are reasons to question the authenticity of the document since the applicants have not presented any information about how they obtained it within a few weeks of its issuance. Also, the document is dated two months after the final decision by the Migration Court of Appeal and was invoked as a new ground before the Migration Board in their request for reconsideration of their case, adding to their claims. Moreover, as the Government have pointed out, the applicants have not offered an explanation as to why X would wait until almost three years after the first and fifth applicants' departure from Yemen before reporting their absence to the court if he was seriously offended by their departure. Furthermore, since X allegedly made the remaining children leave their home when the first and fifth applicants left Yemen, this would suggest that he had no interest in maintaining a relationship with his family members and, even less, that he would physically harm them. For these reasons, the Court finds that it has not been established that there is a real risk that X would subject the first applicant, or any of his children, to any honour-related crimes if they were to be returned to Yemen.

82. Having regard to the country information concerning travel and travel documents (see, §§ 48-50), the Court accepts that the first and fifth applicants might have been able to leave the country with the first applicant's brother escorting them and telling the airport personnel that they were travelling to meet X at the destination. However, the Court doubts that the first applicant and, in particular, the fifth applicant could have obtained their passports without the permission of X, noting the strict requirement of the husband's/father's permission and supporting documents (such as the father's passport for a child). It notes that the first applicant said in the interview with the Migration Board on 6 March 2006 that she would try to obtain copies of the passports from the Yemeni authorities. This should be possible according to information from the Swedish Embassy in Riyadh. Still, although she has had several years to try to obtain copies of the passports, she has not done so. Here the Court observes that she did manage to have the children's birth certificates in original sent from Yemen to Sweden, as well as the alleged court record and police report.

83. The Court further agrees with the Government's view that the first applicant has shown proof of independence by going to court in Yemen on several occasions to file for divorce from X and also shown strength by managing to obtain the necessary practical and financial means to leave Yemen. It also notes that the first applicant's brother has continued to assist the applicants by sending them various documents. Even if it is true that he is now moving around in Yemen, the Court is of the opinion that the first applicant has not shown that she cannot count on his protection in Yemen. Moreover, if returned, the first applicant would be accompanied by her two adult sons who could also support her and which would enable her to live away from her husband. The Court also notes that her mother and two sisters live in Yemen, adding to her social support network, and that she has one more brother who lives in London and might provide additional support. Here, the Court further observes that, according to international sources (see, §§ 39 and 42), there are NGOs in Sana'a operating shelters and providing help for exposed women.

84. In so far as the e-mail from Sisters of Arab Forum for Human Rights is concerned, the Court notes that the programme officer writing the message did not have any personal knowledge of the applicants or their specific family situation. Thus, her reply was general in nature, reflecting information about the situation for women and children in Yemen as set out above (see §§ 39-44). It cannot therefore be taken as proof of what would happen to the applicants in the present case if returned to Yemen.

85. Having regard to the above, the Court finds that it has not been substantiated that, if deported, the first applicant would face a real and personal risk of being subjected to treatment contrary to Article 3 of the Convention.

86. Turning to the second applicant, the Court observes that neither the domestic authorities nor the Government have questioned the essentials of her story and the Court finds no reason to make a different assessment in this regard. However, it observes that there is very little information about the conditions under which the second applicant lived during her marriage. This may to a certain extent be due to the fact that she was never interviewed before the Migration Board. However, the Court notes that, even in the written submissions before the domestic authorities, the second applicant failed to give any details regarding the conditions under which she lived in Yemen.

87. Before the Court, the second applicant has claimed that she was abused and maltreated by her husband during their marriage. Since this information is new to the case and as the applicants have not given a reasonable explanation as to why this information was not presented earlier, the Court finds that this new information may to some extent be an escalation of her story. However, having regard to the country information, the Court does not rule out that the second applicant might have suffered abuse by her husband.

88. The Court is aware that the second applicant, who is now 23 years old, was married off against her will at a young age to an older man who allegedly treated her as a servant. Due to the patriarchal structures which exist in the country she felt that she had to obey her husband's and father's will to stay in the relationship. While acknowledging the vulnerable situation in which the second applicant, being a minor, must have found herself while she lived in Yemen she has still not, as noted above, presented any details about her specific living conditions or her daily life in Yemen. Furthermore, she has not explained how she managed to leave Yemen with three of her younger siblings when she was only 18 years old. Thus, it remains unclear who paid and arranged for their trip and how they travelled to Sweden.

89. The Court further observes that there is nothing in the case to suggest that the second applicant's husband has tried to locate her since her departure from Yemen or otherwise shown an interest in getting her back. Moreover, the fact that he has apparently agreed to divorce her if she pays back the dowry also indicates that he has a limited interest in her and that she would be able to obtain a divorce if she paid the money demanded.

90. Here the Court reiterates that it is for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that she would be exposed to a real risk of being subjected to treatment contrary to Article 3 upon return (see § 73). Having regard to the above findings, it is the Court's view that such evidence has not been presented regarding the second applicant. Also, if returned, the second applicant would be accompanied by her two brothers, with whom she left Yemen and, thus, she would have a male network and be able to live away from her

husband and father. She would also have the support of her mother and her mother's family. In these circumstances, it has not been shown that the second applicant would face a real risk of reprisals from either her husband or X upon return, and consequently it has not been substantiated that a deportation of the second applicant would constitute a violation of Article 3 of the Convention.

91. With regard to the fifth applicant, the Court observes that neither the Migration Board nor the Migration Court have questioned the alleged plans by X to forcibly marry off the fifth applicant to an older man when she was thirteen years old. The Government questioned this information but the applicants claimed that they were never informed by X whom he intended to name as the fifth applicant's husband and that he had behaved in exactly the same way when he had arranged the second applicant's marriage.

92. In view of the country information regarding Yemen, the Court does not find any reason to question the applicants' account in this respect. However, the Court finds that it has not been established that X today would still consider marrying off the fifth applicant, who has now turned eighteen. Likewise, there is nothing to indicate that the man intended by X to marry the fifth applicant is still waiting for her or would still be interested in marrying her if she returned. Moreover, as has been stated above, the Court finds reason to question the document of 22 December 2008 which allegedly states that X had requested the court in Yemen to decide that the fifth applicant should marry the man that he had chosen. In any event, the fifth applicant is now adult and any risk of being ill-treated if forced to marry upon return is hypothetical and unsubstantiated since, in the Court's view, there is too little information and documentation available in the case for such a conclusion.

93. As to the sixth applicant, the Court notes that she is still a minor and thus at a hypothetical risk of being forced to marry at a young age if returned to Yemen. However, this claim has not been made by the applicants before the domestic authorities. In any event, they have not invoked any substantial grounds to show that this would be the case. Thus, for example, there is nothing to suggest that X might already have chosen a husband for the sixth applicant or even planned for her to wed. Here, the Court reiterates that Article 3 of the Convention sets a high threshold particularly where the case, like the present one, does not concern the direct responsibility of the Contracting State for the infliction of harm (see *Bensaid*, cited above, § 40).

94. Moreover, as has been stated regarding the other female applicants, both the fifth and sixth applicants would be accompanied by their two brothers, who also travelled with the sixth applicant from Yemen to Sweden and, thus, they would have a male network as well as their mother and older sister. For the above reasons, it has not been shown that the fifth and sixth applicants would have to go back to X and thus face a real risk of reprisals

by him upon return. Therefore it has not been substantiated that a deportation of the fifth and sixth applicants to Yemen would constitute a violation of Article 3 of the Convention.

95. Returning as a family unit, the Court finds that the applicants will have support from each other. Moreover, noting the substantial support that the first applicant's brother has given the applicants both before and since they left Yemen, the Court considers that he would also be able to help them upon return.

96. Having regard to all of the above, the Court concludes that substantial grounds for believing that the applicants would be exposed to a real risk of being killed or subjected to treatment contrary to Article 3 of the Convention if deported to Yemen, have not been shown in the present case. Accordingly, the implementation of the deportation order against the applicants would not give rise to a violation of Articles 2 or 3 of the Convention. The Court further finds that, in the circumstances of the present case, it does not raise any other issues under the Convention.

II. RULE 39 OF THE RULES OF COURT

97. The Court reiterates 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.

98. It considers that the indication made to the Government under Rule 39 of the Rules of Court must remain in force until the present judgment becomes final or until the Panel of the Grand Chamber of the Court accepts any request by one or both of the parties to refer the case to the Grand Chamber under Article 43 of the Convention (see *F.H. v. Sweden*, no. 32621/06, § 107, 20 January 2009).

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds* by six votes to one that the applicants' deportation to Yemen would not be in violation of Articles 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 further order.

Done in English, and notified in writing on 28 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Dean Spielmann
Registrar	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 is annexed to this judgment.

D.S.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE

I voted against the finding of no violation of Articles 2 and 3 in this case. My assessment of the risk of ill-treatment which the applicants would face, if deported, relates, primarily, to the first, second and fifth—all of whom are women—and to the sixth applicant who is a 13 year old girl (hereinafter "the applicants").[5]The first applicant and her daughters left Yemen and have been in Sweden since 2006. They claim to have escaped from X – a violent man – who is the husband of the first applicant and the father of her children. The first applicant's oldest daughter (the second applicant) claims to have been forcibly married at the age of 14 and to have suffered and fears suffering ongoing violence at the hands of her spouse. Having failed in her courageous efforts to prevent her second daughter (the fifth applicant) from being forcibly married at the age of 12, the first applicant fled Yemen with this child and sought refuge in Sweden. She and the other applicants claim that they will suffer persecution as victims of so called 'honour crimes', if returned to Yemen, particularly, having failed to honour and respect 'cultural' principles within that patriarchal and fundamentalist society.

The Court frequently affirms that domestic authorities, having had the benefit of direct contact with all persons concerned, are best placed to assess questions of credibility. It is significant for me – as it was for the dissenting judge before the Migration Court of Appeal – that the Board which met and interviewed the first applicant (an illiterate and traumatised woman) and the fifth applicant (then a 12 year old child), did not question their credibility or the overall authenticity of their history. In such circumstances, I see no convincing reason for this Court to do so and I have voted on the assumption that the applicants' account of gender based violence and forced child marriage is a true one. Furthermore, their history is wholly consistent with the independent research findings on child marriage and gender-based violence in Yemen as contained in such reports as the 2011 Human Rights Watch: "*How Come You Allow Little Girls to Get Married*?"

Assuming then the credibility of their story, two questions arise. Is gender-based violence, whether in the form of bodily assault or the physical and psychological violence inherent in a child or young girl being forcibly married, sufficient to reach the minimum standard required under Article 3 in circumstances where these practices form part of a third country's

[5] The third and fourth applicants' requests for asylum were rejected by the Migration Board, apparently, without a hearing and, allegedly, in breach of the mandatory requirement of domestic law (Chapter 13, Section 1 of the Alien Act) that an oral hearing be conducted by the Board before an alien can be expelled from Sweden (See Applicants' Observations, page 4). The Migration Court of Appeal refused all applicants' request for an oral hearing. There being no hearing at all of the third and fourth applicants' claims and, consequently, no detailed submissions on the assessment thereof at national level, it is not possible for me to conclude that their expulsion would not violate Article 3.

'traditions'? If so, have the applicants established a real risk of being subjected to such treatment if returned to Yemen?

In *Opuz v. Turkey*, (no. 33401/02, ECHR 2009) the Court made four important findings which, to my mind, are relevant to the instant case. The Court accepted that victims of domestic violence fall within a group of "vulnerable individuals" entitled to State protection (§ 66). It further confirmed that physical violence and psychological pressure of the type that occurs within domestic abuse amounts to 'ill-treatment' within the meaning of Article 3. Based on the authorities' failures, in that case, to take protective measures in the form of effective deterrence against serious breaches of the applicant's personal integrity by her husband, the Court in *Opuz* held, unanimously, that Article 3 of the Convention had been breached. Finally, having regard to the independent research evidence available, the Court accepted that domestic violence such as occurred in that case "may be regarded as gender-based violence which is a form of discrimination against women" (§ 200).

These findings apply with equal force to the instant case. The fact that the gender based violence occurs in Yemen in no way diminishes the relevance or applicability of the *Opuz* principles. These women fall within a group of "vulnerable individuals" entitled to State protection. Such protection is not only unavailable in their home country; it is not even considered necessary. The beating of women, their forced isolation or imprisonment and forced early marriage are not addressed in Yemeni law. Marital rape is not a criminal offence. Violence against women and children is considered 'a family affair' and there is no minimum age for marriage.[6] The violence inflicted upon the first applicant, in the form of frequent beatings, burning and threatened assaults with a knife,[7] is similar to the violence described in *Opuz* and, consequently, must also be considered to constitute 'ill-treatment' within the meaning of Article 3. There is compelling evidence that the Yemeni authorities fail to take protective measures in the form of effective deterrence against domestic violence and child marriage.[8] There is nothing to suggest that this situation is likely to change upon the applicants' return to that country.

Expulsion 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

[6] See the United States Department of State "2010 Human Rights Report: Yemen" of 8 April, 2011 and cited in § 39 of the Judgment.
[7] Applicants' Observations dated 11 February 2010 at page 7 and § 10 of the Judgment.
[8] See the extracts from the International Human Rights Reports that are cited at §§ 39, 40, 42, 43 and 44 of the Judgment.

obligation not to deport the person in question to that country (*Saadi v Italy* [GC], no. 37201/06, § 125, ECHR 2008).

Objectively, the policies, practices and laws of Yemen demonstrate that systemic and structural discrimination in the form of gender-based violence exists in that country and that breaches of the most fundamental human rights of women and girls are common.[9] To my mind and in the light of their credible history, the subjective test has also been satisfied by these applicants. That the real risk of ill treatment occurs in a country whose 'traditions' endorse such practices against women in no way diminishes the fact that domestic and gender based violence violates Article 3.

The Migration Board rejected the women's application for protection against honour related crimes, forced marriage and/or domestic violence on the basis that the family's problems were related to 'financial matters' (§16 of the Judgment). In essence, it found that both the second and, if necessary, the fifth applicant could trade their way out of 'any problems that might arise' (§15). The fifth applicant could pay her father the equivalent of a potential dowry to avoid being forcibly married and the second could divorce and reimburse her husband for the 'wasted dowry' he had paid for her at the time of her forced marriage. The Migration Court, which refused to conduct a hearing, also considered that the applicants' reasons for protection mainly concerned problems within 'the personal sphere caused, *inter alia*, by the country's traditions' (§21). It affirmed that before international protection could be considered for problems of violence and reprisals within the family, all avenues of mediation and protection by the national authorities should be tried (§21).

The rationale offered by the domestic authorities in refusing the applicants' claims for protection is not at all convincing. With respect, it displays a remarkable lack of insight into the reality of life for many women in Yemen—and for these applicants, in particular. Furthermore, the protection of a person's fundamental human rights cannot be reduced to a question of currency. The right to self-determination, to respect for one's bodily integrity and the right not to be ill treated are not commodities which can be 'traded'. One should not have to pay to be left alone. The applicants' problems 'within the personal sphere' that are caused by their 'country's traditions' are, to my mind, sufficiently serious as to amount to a violation of Article 3. To demand that vulnerable women exhaust meagre, discriminatory and ineffective 'remedies' before courts that can sanction the marriage of a 12 year child (as did the Yemeni court in this case)—before a grant of international protection may be considered—is to demand too much.

In her separate opinion the dissenting judge in the Migration Court of Appeal argued that leave to appeal should have been granted to the

[9] Ibid.

applicants in order to establish legal principles concerning the circumstances under which child marriage, forced marriage and honour crimes could constitute "persecution" on the basis of gender. She also questioned the extent to which asylum seekers should be required to seek protection in their home countries before international protection may be granted in circumstances where international sources indicate the difficulties which certain groups, such as, women, face in seeking and obtaining help from the authorities. These are important issues raised by this case and they merit the attention of this Court too.