

## ECtHR - A. A. M. v. Sweden, Application No. 68519/10

**Country of Applicant:**

Iraq

**Date of Decision:**

03-07-2014

**Citation:**

68519/10

**Court Name:**

ECtHR, Fifth Section

**Keywords:**[Internal protection](#) [1][Return](#) [2]**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3]Council of Europe Instruments

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**Headnote:**

The European Court of Human Rights has ruled that, due to the availability of internal protection, Sweden can deport an asylum seeker back to Iraq provided that he is not returned to parts of Iraq situated outside the Kurdistan Region.

**Facts:**

The applicant, A.A.M., is an Iraqi national and is originally from Mosul (Iraq). He alleges that in August 2008 he fled Mosul where he owned a shop when an Iraqi branch of al-Qaeda threatened him for refusing to dismiss a young woman in his employment who did not wear a veil. He claims that shortly afterwards his shop was destroyed by a bomb. He then entered Sweden and claimed asylum in November 2008. He submitted in particular to the Swedish authorities that he was wrongly convicted in Iraq in his absence and sentenced to ten years' imprisonment for aiding terrorists. In support of his claim, he provided copies of the arrest warrant against him and the judgment convicting him. He also claimed that he was at risk of persecution by al-Qaeda for having voiced unacceptable religious opinions. His request was examined by the Migration Board

and Migration Court and ultimately rejected in 2011 on the ground that the authenticity of the arrest warrant and judgment were questionable. They further found that, although the applicant was at risk of persecution by al-Qaeda in Mosul where there was a strong al-Qaeda presence, he could relocate to another part of Iraq. Relying on Article 3 (prohibition of inhuman or degrading treatment), A.A.M. alleged that, if returned to Iraq, he would be at real risk of persecution and possibly death.

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### **Decision & Reasoning:**

While the international reports on Iraq attest to a continued difficult situation, including indiscriminate and deadly attacks by violent groups, discrimination as well as heavy-handed treatment by authorities, it appears that the overall situation has been slowly improving since the peak in violence in 2007. In the case of *F.H. v. Sweden* (no. [32621/06](#) [4], § 93, 20 January 2009), the Court, having at its disposal information material up to and including the year 2008, concluded that the general situation in Iraq was not so serious as to cause, by itself, a violation of Article 3 of the Convention in the event of a person's return to that country. Taking into account the international and national reports available in the current case the Court sees no reason to alter the position taken in this respect four years ago.

However, the applicant asserts that this situation together with the threats received from al-Qaeda in Iraq and the Iraqi authorities' charges and conviction against him for terrorism-related crimes would put him at real risk of being subjected to treatment prohibited by Article 3.

The Court reiterates that the Migration Board, while questioning the veracity of some details of the applicant's story, accepted his claim that his life had been threatened and that he would face a real risk of persecution by al-Qaeda. The Court sees no reason to deviate from the Board's assessment as to the threat posed by al-Qaeda. Accordingly, although the incidents occurred in 2008, five years ago, the applicant may be considered to face a real risk of treatment contrary to Article 3 of the Convention at the hands of that organisation if he is returned to Mosul or to other parts of Iraq where it has a strong presence.

The Court reiterates that Article 3 does not, as such, preclude Contracting States from placing reliance on the existence of an internal flight or relocation alternative in their assessment of an individual's claim that a return to the country of origin would expose him or her to a real risk of being subjected to treatment proscribed by that provision.

However, the Court has held that reliance on such an alternative does not affect the responsibility of the expelling Contracting State to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3.

Therefore, as a precondition of relying on an internal flight or relocation alternative, certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of his or her ending up in a part of the country of origin where there is a real risk of ill-treatment (*Sufi and Elmi v. the United Kingdom*, nos. [8319/07](#) [5] and [11449/07](#) [6], 28 June 2011).

The Court further notes that internal relocation inevitably involves certain hardship. Nevertheless, the evidence before the Court suggests that there are jobs available and that settlers have access to health care as well as financial and other support from the UNHCR and local authorities. In any event, there is no indication that the general living conditions in the KRI for an Arab Sunni Muslim settler would be unreasonable or in any way amount to treatment prohibited by Article 3. Nor is

there a real risk of his or her ending up in other parts of Iraq.

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

The Court concludes that, although the applicant may face a real risk of being subjected to treatment contrary to Article 3 of the Convention at the hands of al-Qaeda if returned to Mosul or other parts of southern and central Iraq where that organisation has a strong presence, he may reasonably relocate to the Kurdistan Region, where he will not face such a risk. Neither the general situation in that region nor any of the applicant's personal circumstances indicates the existence of said risk. Moreover, the fact that the applicant entered the Kurdistan Region in late August 2008 and thereafter stayed in Dahuk for a month before leaving for Sweden attests that he will be able to enter and reside in that region.

Consequently, his deportation to Iraq would not involve a violation of Article 3, provided that he is not returned to parts of the country situated outside the Kurdistan Region.

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#### **Outcome:**

The implementation of the deportation order against the applicant would not give rise to a violation of Article 3 of the Convention, provided that he is not returned to parts of Iraq situated outside the Kurdistan Region.

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#### **Observations/Comments:**

##### Dissenting opinion of Judge de Power-Forde

Judge Power-Forde notes that as a precondition for relying on an internal flight alternative, the following guarantees must be in place: (i) the person to be expelled must be able to travel safely to the area concerned; (ii) he or she must be able to gain admittance to the area concerned; and (iii) he or she must be able to settle in the area concerned. She relies on *M.Y.H. and Others v. Sweden*, which specifies that "guarantees" in place before deportations on the basis of internal relocation, is to set a high threshold of evidence in terms of a returnee's future safety. She concludes that "guarantees" are not synonymous with nor can they be satisfied by mere likelihoods, chances or positive indications. This is rightly so given the seriousness of what is in issue in forcibly returning a person with a clear history of persecution in his home country to a different region therein. It is entirely appropriate that the Court should and has set the bar at the level of "guarantee."

In view of the volatile and rapidly changing security situation in the region published reports on the situation in Iraq are at risk of becoming quickly outdated. It is the situation that prevails at the date of deportation that is relevant for the purposes of an assessment under Article 3 of the Convention.

Currently instability and insecurity have, once more, taken hold in major parts of Iraq. It is common knowledge that the situation in the country has deteriorated significantly during the last 12 months. 2013 was the worst year for civilian casualties since the height of the war in 2006. Given the rapid escalation in violence and the general volatility in Iraq today, the situation as it stands can only be considered as being, once again, "precarious."

Judge Power-Forde considers there is insufficient material before the Court for her to conclude that as of March 2014 the single, male, Sunni, Arab will arrive safely at the KRG border, will be

able to enter Kurdistan without a sponsor or reference person and will be able to settle there in safety.

She further continues that merely noting the general regularity of flights is hardly sufficient to establish that this Court's specific legal requirements have been met. She highlights that the treatment that violates Article 3 is always suffered by an individual, by a specific person. Where a real risk of such treatment has been established, it is incumbent on States to ensure that measures aimed at preventing it are also 'specific' to the person concerned. Generalizations are not enough. The guarantees required to be in place prior to deportation in order to ensure that this particular applicant will be protected against treatment prohibited by Article 3 have not been established in this case.

#### **Case Law Cited:**

ECtHR - F.H. v. Sweden, Application no. 32621/06

[ECtHR - A.G.A.M., D.N.M., M.K.N., M.Y.H. and Others, N.A.N.S., N.M.B., N.M.Y. and Others and S.A. v. Sweden, Application Nos. 71680/10, 28379/11, 72413/10, 50859/10, 68411/10, 68335/10, 72686/10 and 66523/10 \[7\]](#)

ECtHR - Hakizimana v. Sweden, Application No. 37913/05

UK - HM and others (Article 15(c)) Iraq CG, [2012] UKUT 00409 (IAC)

ECtHR - Abdulaziz, Cabales and Balkandali v. the United Kingdom, Application Nos. 9214/80, 9473/81 and 9474/81

[ECtHR - Sufi and Elmi v. the United Kingdom, Application Nos. 8319/07 and 11449/07 \[8\]](#)

UK - Upper Tribunal (Asylum and Immigration Chamber), MK(documents - relocation) Iraq CG [2012] UKUT 126 (IAC)

ECtHR - Boujlifa v. France, 21 October 1997, § 42, Reports of Judgments and Decisions 1997-VI

ECtHR - Üner v. the Netherlands [GC], Application No. 46410/99

ECtHR - Collins and Akaziebe v Sweden (Application no. 23944/05)

ECtHR - Hilal v United Kingdom, Application no. 45276/99

ECtHR - Mamatkulov Askarov v Turkey, Applications nos. 46827/99 and 46951/99

[ECtHR - Salah Sheekh v The Netherlands \(Application no. 1948/04\) - resource \[9\]](#)

[ECtHR - NA v United Kingdom \(Application No. 25904/07\) - resource \[10\]](#)

[ECtHR - Saadi v Italy, Application no. 37201/06 \[11\]](#)

#### **Attachment(s):**



[CASE OF A.A.M. v. SWEDEN.pdf\[12\]](#)

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**Other sources cited:**

*Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, UNHCR, 31 May 2012

*Report on Human Rights in Iraq: July ? December 2012*, June 2013, the Human Rights Office of the United Nations Mission for Iraq (UNAMI)

The UK Border Agency *Iraq Operational Guidance Note* of December 2012

*Report on Joint Finnish-Swiss Fact-Finding Mission to Amman and the Kurdish Regional Government (KRG) Area, May 10-22, 2011*, the Finnish Immigration Service and the Swiss Federal Office for Migration, 1 February 2012 the

*Joint Report of the Danish Immigration Service / UK Border Agency Fact Finding Mission to Erbil and Dahuk, Kurdistan Region of Iraq (KRI), conducted 11 to 22 November 2011*, March 2012

**Authentic Language:**

English

**State Party:**

Sweden

**National / Other Legislative Provisions:**

Sweden - Government Bill 2004/05:170

Sweden - Utlänningslagen (Aliens Act) (2005:716)

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**Links:**

[1] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A44](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A44)

[2] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A2490](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2490)

[3] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[4]

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{&quot;appno&quot;:\[&quot;32621/06&quot;\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{&quot;appno&quot;:[&quot;32621/06&quot;])

[5]

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{&quot;appno&quot;:\[&quot;8319/07&quot;\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{&quot;appno&quot;:[&quot;8319/07&quot;])

[6]

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{&quot;appno&quot;:\[&quot;11449/07&quot;\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{&quot;appno&quot;:[&quot;11449/07&quot;])

[7] <https://www.asylumlawdatabase.eu/en/content/ecthr-agam-dnm-mkn-myh-and-others-nans-nmb-nmy-and-others-and-sa-v-sweden-application-nos>

[8] <https://www.asylumlawdatabase.eu/en/content/ecthr-sufi-and-elmi-v-united-kingdom-application-nos-831907-and-1144907-0>

[9] <https://www.asylumlawdatabase.eu/en/content/ecthr-salah-sheekh-v-netherlands-application-no-194804-resource>

[10] <https://www.asylumlawdatabase.eu/en/content/ecthr-na-v-united-kingdom-application-no-2590407-resource>

[11] <https://www.asylumlawdatabase.eu/en/content/ecthr-saadi-v-italy-application-no-3720106>

[12]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20A.A.M.%20v.%20SWEDEN>