



## General deterioration of security situation in Iraq entails a real risk for the applicants if returned to their country of origin

In today's **Grand Chamber** judgment<sup>1</sup> in the case of **J.K. and Others v. Sweden** (application no. 59166/12) the European Court of Human Rights held, by ten votes to seven, that there would be: **a violation of Article 3 (prohibition of torture and inhuman or degrading treatment)** of the European Convention on Human Rights if the order for the applicants' deportation to Iraq were implemented.

The case concerned three Iraqi nationals who had sought asylum in Sweden and whose deportation to Iraq had been ordered.

Accepting that the general security situation in Iraq did not as such prevent the removal of Mr J.K. and his wife and son, the Court had to assess whether their personal circumstances were such that they would face a real risk of treatment contrary to Article 3 if expelled to Iraq.

The Court noted that the applicants' account of events was generally coherent, credible and consistent with relevant country-of-origin information available from reliable and objective sources. Given that the applicants had been subjected to ill-treatment by al-Qaeda, the Court found that there was a strong indication that they would continue to be at risk from non-State actors in Iraq. Mr J.K. belonged to a group of persons who were systematically targeted because of their relationship with the American armed forces, and it was established that he had been ill-treated until 2008.

The Court observed that the situation in Iraq had clearly deteriorated since 2011 and 2012, when the Migration Agency and the Migration Court respectively had assessed the situation and the latter had concluded that the Iraqi law-enforcement authorities were likely to be both willing and able to offer the necessary protection to those seeking it.

Against a background of a generally deteriorating security situation, marked by an increase in sectarian violence and attacks and advances by ISIS, large areas of the territory were outside the Iraqi Government's effective control. In the light of the complex and volatile general security situation, the Court found that the Iraqi authorities' capacity to protect citizens had to be regarded as diminished. Although the current level of protection might still be sufficient for the general public in Iraq, the situation was different for individuals belonging to a targeted group. The cumulative effect of the applicants' personal circumstances and the Iraqi authorities' diminished ability to protect them had to be considered to create a real risk of ill-treatment in the event of their return to Iraq.

### Principal facts

The applicants, Mr J.K. and his wife and son, are three Iraqi nationals who were born in 1964, 1965 and 2000 respectively.

Since the 1990s Mr J.K. had run his own construction and transport business with exclusively American clients, with its office at a United States military base. In October 2004 Mr J.K. was the target of a murder attempt carried out by al-Qaeda. In 2005 his brother was kidnapped by al-Qaeda

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

members, who threatened to kill him because of Mr J.K.'s collaboration with the Americans. His brother was released in exchange for a sum of money and immediately fled from Iraq.

Mr J.K. and his wife and son fled to Jordan and stayed there until December 2006, before returning to Iraq. Their house was the target of an attempted bomb attack, the perpetrator of which was arrested by the American forces and confessed that he had been paid by al-Qaeda to kill Mr J.K. He disclosed the names of 16 people who had been designated to monitor Mr J.K. and his wife and son. The applicants moved to Syria. Al-Qaeda destroyed their home in Iraq and Mr J.K.'s business stocks.

In January 2008 Mr J.K. and his wife and son returned to Baghdad. In October 2008 Mr J.K.'s daughter died after shots were fired at their car. Mr J.K.'s business stocks were attacked four or five times by al-Qaeda members. The family remained in Baghdad but changed address several times.

On 14 December 2010 Mr J.K. applied for asylum and a residence permit in Sweden. He submitted a further application on 25 August 2011, and his wife and son did likewise on 19 September 2011. On 26 September 2011 the three applicants were given an introductory interview by the Migration Agency, and subsequently the parents were given a further interview lasting almost three and a half hours. They were assisted by State-appointed counsel.

On 22 November 2011 the Migration Agency rejected the applicants' asylum application, finding that there were no grounds to grant the family residence permits, and ordered their deportation from Sweden. On 23 April 2012 the Migration Court upheld the Migration Agency's decision. The applicants appealed to the Migration Court of Appeal, which on 9 August 2012 refused them leave to appeal.

On 29 August 2012 the applicants applied to the Migration Agency for a review of their case. They maintained that Mr J.K. was under threat from al-Qaeda because of his political activities. In support of their application they submitted video recordings of Mr J.K. being interviewed in English, a demonstration, and a television debate. On 26 September 2012 the Migration Agency refused the applicants' application. They did not appeal against that decision.

## Complaints, procedure and composition of the Court

The applicants complained that their deportation to Iraq would entail a violation of Article 3 (prohibition of torture and inhuman or degrading treatment).

The application was lodged with the European Court of Human Rights on 13 September 2012.

On 18 September 2012 the President of the Third Section of the Court decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicants should not be deported to Iraq for the duration of the proceedings before the Court.

In a [Chamber judgment](#) delivered on 4 June 2015 the Court held, by five votes to two, that the implementation of the deportation order in respect of the applicants would not give rise to a violation of Article 3.

On 25 August 2015 the applicants requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber). On 19 October 2015 the panel of the Grand Chamber accepted that request. A hearing was held in Strasbourg on 24 February 2016.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,

Işıl **Karakaş** (Turkey),

Luis **López Guerra** (Spain),

Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),

Ledi **Bianku** (Albania),

Kristina **Pardalos** (San Marino),  
Helena **Jäderblom** (Sweden),  
Krzysztof **Wojtyczek** (Poland),  
Valeriu **Grițco** (the Republic of Moldova),  
Dmitry **Dedov** (Russia),  
Iulia **Motoc** (Romania),  
Jon Fridrik **Kjølbro** (Denmark),  
Síofra **O’Leary** (Ireland),  
Carlo **Ranzoni** (Liechtenstein),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Pere **Pastor Vilanova** (Andorra),  
Alena **Poláčková** (Slovakia),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar*.

## Decision of the Court

### Article 3

Since the applicants had not been deported, the question whether they would face a real risk of persecution upon their return to Iraq had to be examined in the light of the present-day situation.

The Court noted that the Migration Agency and the Migration Court had concluded in 2011 and 2012 respectively that the security situation in Iraq was not such that there was a general need for international protection for asylum-seekers. That finding had subsequently been confirmed by its [Chamber judgment](#) delivered on 4 June 2015. Referring to a report issued by the United Kingdom Home Office in April 2015, reports by Norwegian Landinfo from 2014 and 2015 and the most recent information provided by the Migration Agency, the Government stated in their written observations that the intensity of violence in Baghdad did not give rise to a real risk of individuals being subjected to treatment breaching Article 3. The applicants maintained that the security situation in Iraq was deteriorating.

Accepting that the general security situation in Iraq did not in itself prevent the removal of Mr J.K. and his wife and son, the Court had to assess whether their personal circumstances were such that they would face a real risk of treatment contrary to Article 3 if expelled to Iraq.

The Court observed first of all that several members of the applicants’ family had been subjected to threats, mainly as a result of Mr J.K.’s activities. The Court further noted that the applicants’ account of events occurring between 2004 and 2010 was generally coherent, credible and consistent with relevant country-of-origin information available from reliable and objective sources. Given that the applicants had been subjected to ill-treatment by al-Qaeda, the Court found that there was a strong indication that they would continue to be at risk from non-State actors in Iraq.

According to various reports from reliable and objective sources, persons who had collaborated in different ways with the authorities of the occupying powers in Iraq after the war had been and continued to be targeted by al-Qaeda and other groups. The United Kingdom Home Office’s Country of Origin Information Report on Iraq of December 2009 stated that civilians employed or otherwise affiliated with the Multi-National Force in Iraq were at risk of being targeted by non-State actors. Similarly, the Home Office’s report of 2014 stated that persons who were perceived to collaborate or had collaborated with the current Iraqi Government and its institutions, the former American or multinational forces or foreign companies were at risk of persecution in Iraq. Mr J.K. belonged to a group of persons who were systematically targeted because of their relationship with the American armed forces, and it was established that he had been ill-treated until 2008. Mr J.K.’s contacts with the American forces had been particularly visible as his office had been situated at a United States

military base. There was no support for the assumption that threats from al-Qaeda must have ceased once Mr J.K. had terminated his business relationship with the American forces. In the light of the particular circumstances of this case, the Court found that if they were returned to Iraq, Mr J.K. and his wife and son would face a real risk of continued persecution by non-State actors.

The most recent objective international human rights sources indicated that there were deficits in both the capacity and the integrity of the Iraqi security and legal system. Although the system still functioned, the shortcomings had increased since 2010. Moreover, the United States Department of State had noted that widespread corruption had exacerbated the lack of effective human rights protection and that the security forces had made only limited efforts to prevent or respond to violence. The situation in Iraq had thus clearly deteriorated since 2011 and 2012, when the Migration Agency and the Migration Court respectively had assessed the situation and the latter had found it likely that the Iraqi law-enforcement authorities were both willing and able to offer the necessary protection to those seeking it. Against a background of a generally deteriorating security situation, marked by an increase in sectarian violence and attacks and advances by ISIS, large areas of the territory were outside the Iraqi Government's effective control.

In the light of the complex and volatile general security situation, the Court found that the Iraqi authorities' capacity to protect citizens had to be regarded as diminished. Although the current level of protection might still be sufficient for the general public in Iraq, the situation was different for individuals belonging to a targeted group. The Court was therefore not convinced that the Iraqi State would be able to provide Mr J.K. and his wife and son with effective protection against threats by al-Qaeda or other private groups in the current situation. The applicants' personal circumstances and the Iraqi authorities' diminished ability to protect them had to be considered to create a real risk of ill-treatment in the event of their return to Iraq.

The Court found that substantial grounds had been shown for believing that the applicants would run a real risk of treatment contrary to Article 3 if returned to Iraq. Accordingly, the Court considered that the implementation of the deportation order in respect of them would entail a violation of Article 3.

#### Just satisfaction (Article 41)

The Court held, by 15 votes to two, that its finding under Article 3 constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants, and, by 12 votes to 5, that Sweden was to pay the applicant 10,000 euros in respect of costs and expenses.

#### Separate opinion

Judges Bianku and O'Leary each expressed a concurring opinion; Judges Jäderblom, Gričco, Dedov, Kjølbros, Kucsko-Stadlmayer and Poláčeková expressed a joint dissenting opinion; and Judge Ranzoni expressed a dissenting opinion. The opinions are annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.