



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

SECOND SECTION

CASE OF J.A. AND A.A. v. TÜRKİYE

(Application no. 80206/17)

JUDGMENT

Art 2 and Art 3 (procedural) • Expulsion (Iraq) • Removal of applicants and their children without a fresh *ex nunc* assessment of their claims would entail a breach • Assessment conducted by the domestic authorities regarding relevant facts and risks faced on their return did not satisfy requirements of Arts 2 and 3

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 February 2024

FINAL

06/05/2024

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

In the case of J.A. and A.A. v. Türkiye,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenç,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having deliberated in private on 16 January 2024,

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

PROCEDURE

1. The case originated in an application (no. 80206/17) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Iraqi nationals, J.A. and A.A., on 18 November 2017. The Chamber decided of its own motion to grant the applicants anonymity pursuant to Rule 47 § 4 of the Rules of Court.

2. The applicants were represented by Mr E. Kafadar, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. On 24 November 2017 the applicants’ lawyer requested the Court to suspend the applicants’ threatened deportation to Iraq under Rule 39.

4. Following an initial adjournment of the examination of the request for the interim measure and the receipt of further information from the parties, on 16 February 2018 the Court decided to indicate to the Government, under Rule 39, that the applicants should not be expelled from Türkiye for the duration of the proceedings before the Court. It further decided to give priority to the application under Rule 41.

5. On 6 April 2018 the Court notified the Government of the complaint concerning the applicants’ threatened deportation to Iraq and the lack of effective remedies in respect of their complaint.

INTRODUCTION

6. The application concerns the threatened expulsion of the applicants and their four children to Iraq and the alleged failure of both the administrative authorities and the courts to conduct a proper assessment of the applicants’ allegation that they would be exposed to a real risk of death or ill treatment if removed to their country of origin.

THE FACTS

7. The applicants were born in 1971 and 1984 and live in Istanbul, Türkiye.

8. The facts of the case may be summarised as follows.

I. THE APPLICANTS' ARRIVAL IN TÜRKİYE AND THEIR ADMINISTRATIVE DETENTION

9. The applicants, a husband and a wife, are Iraqi nationals of Sunni faith, and have four children, who were all minors at the time of the lodging of the present application.

10. According to the applicants' submissions, they lived in a village located in the Ninewa governorate (also referred to as "Nineveh" or "Ninewah") in northern Iraq until 2014. As a result of the ongoing armed conflict between the Iraqi security forces and the Islamic State of Iraq and al-Sham ("ISIS" or "IS" – also known as Islamic State of Iraq and the Levant (ISIL)), and following the bombing of their house by ISIS, they left Iraq and entered Türkiye on 2 March 2014 via Istanbul Atatürk Airport on valid tourist visas. On 27 March 2014 they submitted an application for a residence permit in Türkiye.

11. On 7 July 2014 the applicants went to the Istanbul police headquarters for their residence permit appointment, whereupon they were arrested. According to the official records, subsequent to the applicants' arrival in Türkiye, two entry bans had been issued against them on grounds that they were foreigners (i) against whom criminal proceedings had been initiated (*hakkında adli işlem yapılan yabancı kişiler*) and (ii) who were considered to constitute a threat to general security (*genel güvenlik açısından tehlike arz edilen kişiler*).

12. On the same day the Istanbul governor's office issued an order for the applicants' deportation under section 54(1)(i) of the Foreigners and International Protection Act (Law no. 6458) for entering Türkiye despite the entry bans. It also ordered their administrative detention in advance of their deportation. Allegedly, the applicants were not notified of the deportation order.

13. On 16 July 2014 the applicants lodged an application with the Istanbul Magistrates' Court, challenging the lawfulness of their administrative detention and requesting their release. By a decision dated 25 July 2014 the Istanbul 2nd Magistrates' Court dismissed the request. On 7 August 2014 the applicants submitted a second request for their release. On the same day the Istanbul 3rd Magistrates' Court ruled that the applicants' administrative detention did not comply with the law. It noted at the outset that the applicants' administrative detention had been ordered on the basis of sections 54(1)(i) and 57(2) of Law no. 6458 (see paragraph 21 below), however no

evidence had been provided to demonstrate why their detention was called for on those grounds. The court was also mindful of the fact that the applicants had four children between the ages of four and nine. It further noted that the applicants had in the meantime submitted asylum requests, which were pending. On the basis of those findings, the Istanbul 3rd Magistrates' Court ordered their release. It stated that less restrictive measures – such as residence at a designated address and reporting duties – could be imposed at the administration's discretion. Later the same day the applicants were released from detention with an order to leave Türkiye within fifteen days.

14. According to the latest information in the case file, the applicants remain at liberty and reside in Istanbul.

II. PROCEEDINGS BEFORE THE DOMESTIC COURTS CONCERNING THE APPLICANTS' THREATENED DEPORTATION

15. On 19 August 2014 the applicants' lawyers brought an action before the Istanbul Administrative Court for the annulment of the deportation order issued against the applicants. They argued that the applicants' threatened deportation to Iraq would expose them to a real risk of death or ill-treatment in view of the ongoing internal conflict, the specific threat posed by ISIS in the applicants' region and their opposition to the religious and political ideology of ISIS. In support of their claims, they submitted a number of documents, including photos of the applicants' house in Iraq which was allegedly bombed by ISIS, and copies of their asylum applications lodged with the Immigration Office at the Foreigners' Directorate (*Yabancılar Şube Müdürlüğü İltica Büro Amirliği*). They argued, *inter alia*, that pursuant to section 55 of Law no. 6458, the applicants were among the individuals in respect of whom deportation decisions could not be issued on account of serious indications that they would face a real risk of being subjected to the death penalty, torture, or inhuman or degrading treatment or punishment if returned to Iraq.

16. On 21 January 2015 the Istanbul Administrative Court dismissed the applicants' request solely on the basis of information obtained from the National Intelligence Agency of Türkiye (*Milli İstihbarat Teşkilatı*), according to which the applicants were considered to be individuals who might potentially enter conflict zones in Syria via Türkiye in order to participate in terrorist activities. On the basis of this information, the Istanbul Administrative Court concluded that the administrative decision to deport the applicants from Türkiye had been lawful. It did not assess the applicants' allegations that they would be exposed to a real risk of ill-treatment or death in the event of their eventual removal to Iraq. The submissions made by the administrative authorities in respect of the applicants' allegations were not

admitted to the case file for being out of time and they were therefore not served on the applicants.

17. On 4 March 2015 the applicants lodged an individual application with the Constitutional Court, complaining that the national authorities, including the Administrative Court, had failed to fulfil their obligation to conduct an adequate examination of their allegations that they would be exposed to a real risk of death or ill-treatment if removed to Iraq. In this connection, they stressed that as a family living in ISIS-controlled territory in Iraq, they had feared for their lives and had had to flee because of the risk of persecution due to the ongoing armed conflict and the existing threat posed by ISIS. They also mentioned their discord with both ISIS and the Iraqi government. They submitted to the case file several photos of a house – allegedly owned by them – that had been destroyed after being bombed by ISIS. They further asserted that they had not had at their disposal an effective domestic remedy in relation to their complaints, particularly on account of their inability to access the information and documents submitted by the administrative authorities to the Istanbul Administrative Court. They also requested the suspension of their deportation by way of an interim measure.

18. On 27 March 2015 the Constitutional Court granted the applicants' request for an interim measure. Having regard to the fact that the entry ban, which served as the legal ground for the deportation order, had been imposed subsequent to the applicants' entry into Türkiye and considering the ongoing armed conflict in Iraq, it found that the applicants had laid the basis of an arguable claim that there was an immediate and serious risk to their lives or their physical or mental integrity on account of their threatened deportation to Iraq. On 17 September 2015 it extended of its own motion the interim measure for another three months.

19. In its plenary decision of 1 March 2017 the Constitutional Court found that the applicants' allegations were not manifestly ill-founded and unanimously declared the application admissible. By a majority of nine votes to six, the Constitutional Court decided on the merits that the applicants' rights under Article 17 of the Constitution (prohibition of torture and inhuman or degrading treatment or punishment) had not been violated as a result of the deportation order. While expressly stating that the domestic authorities had failed to carry out an assessment of the applicants' claim that they would run a real risk of ill-treatment in the event of their removal to Iraq, the majority held that it remained for the applicants to provide a satisfactory explanation of their own personal circumstances. Bearing in mind the overall security and humanitarian situation in Iraq and the timing of the applicants' departure from there, the Constitutional Court considered that the applicants' fear of being subjected to inhuman or degrading treatment in the event of their deportation to Iraq was well-founded. However, it went on to state that the existence of a well-founded fear of persecution did not always correspond to an arguable claim of the existence of a real risk of persecution. According to the

Constitutional Court, in the present case the applicants had failed to demonstrate such an arguable claim. This was because, the applicants had not provided the court with sufficient evidence or information concerning either their actual place or region of residence in Iraq or their allegation that the house in the photos submitted had in fact belonged to them. In this connection, the Constitutional Court stressed that according to international sources on the general security and humanitarian situation in Iraq, ISIS had effective control only in certain parts of the country and security was maintained in other areas, controlled by the Iraqi government. Finally, the applicants' submissions as to their "discord" with the Iraqi government did not require further examination, as they had not argued that this discord, the nature of which remained unknown, constituted a real risk that they would be subjected to inhuman or degrading treatment.

20. The dissenting judges considered that the applicants had put forth reasonable and arguable claims that required further examination. In reaching that conclusion, the minority took into consideration the combined effect of the applicants' claims, which had been supported by photos, the overall security situation in Iraq as described in the reports of international organisations and the timing of the applicants' departure from Iraq, which had coincided with mass migration flows out of the country due to the increasing threat posed by ISIS. They further pointed to the discrepancy in unanimously declaring the complaints admissible, yet later ruling that there had been no violation on account of the applicants' failure to bring forward arguable claims. In their view, the majority had not put forward any reason demonstrating why the claims which had been found substantiated while granting the interim measure were subsequently not found to be arguable. The minority then went on to examine the merits of the applicants' complaints and stated that there had been a procedural violation of their rights under Article 17 of the Constitution, since the domestic authorities had failed in their positive obligation to carry out an assessment of the applicants' claim that they would run a real risk of ill-treatment in the event of their deportation to Iraq.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

21. A description of the relevant domestic law and practice at the material time can be found in *G.B. and Others v. Turkey* (no. 4633/15, §§ 42-44, 17 October 2019). The relevant provisions of Law no. 6458 read as follows:

Individuals in respect of whom deportation decisions may be issued
Section 54

“(1) A deportation decision may be issued in respect of foreigners:

...

(1) who have entered into Türkiye despite having had an entry ban imposed on them,

...”

Individuals in respect of whom deportation decisions may not be issued

Section 55

“(1) A deportation decision may not be issued in respect of foreigners [in the circumstances] listed below, regardless of whether they are within the scope of section 54:

a) when there are serious reasons to believe that they would be subjected to the death penalty, torture, or inhuman or degrading treatment or punishment in the country to which they would be returned;

...”

Administrative detention preceding deportation and the duration of detention

Section 57

“...

(2) A [foreigner] in respect of whom a deportation decision has been issued shall be placed in administrative detention by a decision of the governor’s office if [he or she] poses a risk of absconding or disappearing, has violated the rules for entry into and exit from Türkiye, has used false or fabricated documents, has not left Türkiye within the period granted without an acceptable excuse, or constitutes a threat to public order, public security or public health. Those in respect of whom an administrative detention order has been issued shall be transferred to a removal centre within forty-eight hours by the law-enforcement unit that apprehended them.

...”

II. RELEVANT INTERNATIONAL MATERIAL

22. Extensive country information about the general security and human rights situation in Iraq, the possibility of internal relocation as well as the relevant guidelines and other material from the Office of the United Nations High Commissioner for Refugees (UNHCR) regarding the period prior to 2016 can be found in *J.K. and Others v. Sweden* ([GC] no. 59166/12, §§ 30-46 and 52-54, 23 August 2016). Information regarding the period after 2016 can be found in *D and Others v. Romania* (no. 75953/16, §§ 46-53, 14 January 2020), *A.S. v. Belgium* ((dec.), no. 68739/14, §§ 38-43, 19 September 2017) and *K.S. v. Sweden* ((dec.), no. 31827/18, 16 December 2020).

23. The information set out below concerns further material obtained by the Court of its own motion in relation to the situation in the period after 2016, which corresponds to the time during which the domestic authorities conducted their assessments in relation to the applicants, as well as the most recent developments in Iraq.

A. Developments pertaining to the period when the applicants' claims were assessed by the domestic authorities

1. United Nations documents

24. The UNHCR's position on returns to Iraq, published on 14 November 2016, which superseded the UNHCR's previous position document cited in *J.K. and Others v. Sweden* (cited above), provides as follows (footnotes omitted):

“...

UNHCR Position on Returns

47. Under the present circumstances, UNHCR urges States to refrain from forcibly returning any Iraqis who originate from areas of Iraq that are affected by military action, remain fragile and insecure after having been retaken from ISIS, or remain under control of ISIS. Such persons, including persons whose claims for international protection have been rejected, should not be returned either to their home areas, or to other parts of the country. Many Iraqis from these areas are likely to meet the criteria of the 1951 Convention for refugee status. When 1951 Refugee Convention criteria are found not to apply, broader refugee criteria as contained in relevant regional instruments or complementary forms of protection are likely to apply. Depending on the profile of the individual case, exclusion considerations may need to be examined.

48. Where decision-makers consider the availability of an internal flight or relocation alternative, the burden is on the decision-maker to identify a particular area of relocation and to show that in respect of this location the requirements for the relevance and reasonableness of the proposed relocation alternative are met. In the current circumstances, with large-scale internal displacement, a serious humanitarian crisis, mounting intercommunal tensions, access/residency restrictions in virtually all parts of the country and increasing pressure exercised on IDPs [internationally displaced persons] to prematurely return to their areas of origin following the retaking of these areas from ISIS, UNHCR does not consider it appropriate for States to deny persons from Iraq international protection on the basis of the applicability of an internal flight or relocation alternative. An internal flight or relocation alternative would only be available in the exceptional circumstances where an individual can legally access and remain in the proposed area of relocation, would not be exposed to a new risk of serious harm there, and has close family links in the proposed area, with the family willing and able to support the individual. In light of the difficult humanitarian conditions in many parts of the country, especially in areas hosting large numbers of IDPs, family members who are themselves in a situation of internal displacement would generally not be considered as being able to provide such support. ...”

25. The third report of the UN Secretary-General to the Security Council pursuant to paragraph 7 of resolution 2233 (2015), dated 27 April 2016 (S/2016/396), in relation to the progress made towards fulfilling the mandate of the United Nations Assistance Mission for Iraq (UNAMI) provides, *inter alia*:

“...

18. The security situation in Iraq remained highly volatile during the reporting period. Militarily, pro-Government forces continued to register further successes in fighting

ISIL... Government control over areas freed from ISIL in Salah al-Din and Ninewa governorates was also consolidated.

...

20. The security situation in areas freed from ISIL continues to be challenging owing to terrorist, sectarian, intercommunal and criminal violence.

...

41. Iraqis continue to be affected by armed conflict, acts of violence and terrorism. From 27 January to 31 March 2016, UNAMI recorded a minimum of 3,418 civilian casualties (1,039 killed and 2,379 wounded), bringing the total number of civilian casualties since the upsurge of violence and armed conflict in the country that commenced in January 2014 to at least 62,656 (21,272 killed and 41,384 wounded).

42. During the reporting period, there was a rise in asymmetric and terrorist attacks, many claimed by ISIL, resulting in high numbers of civilian casualties.

...

44. UNAMI continued to receive reports of abductions, killings and persecution by ISIL of those opposed to its ideology or rule.

45. Reports of worsening living conditions in ISIL-controlled areas persist, as well as of civilians continuing to be killed by ISIL for trying to flee ...

...

55. The security situation remains the single most important factor affecting humanitarian assistance and protection. Anbar, Ninewa, Salah al-Din and Kirkuk governorates, as well as southern Erbil, continue to be affected by active hostilities. ... Civilians fleeing violence are often victimized by parties to the conflict, held at checkpoints and prevented from entering safe areas and moving freely within certain camps, including the Nazrawa and Garmawa camps in Kirkuk and Ninewa governorates. ...

...”

26. The report of the UN Secretary-General to the Security Council pursuant to resolution 2299 (2016), dated 11 July 2017 (S/2017/592), in relation to the progress made towards fulfilling the mandate of UNAMI, includes the following under the heading “Human rights developments and activities”:

“...

44. Armed conflict, terrorism and acts of violence continued to take a toll on civilians. Between 23 May and 11 June 2017, at least 445 civilian men, women and children were killed and at least 326 were wounded, bringing the total number of civilian casualties in Iraq since the beginning of the armed conflict in January 2014 to at least 82,365 (28,938 killed and 53,427 wounded).

45. As more civilians are liberated from ISIL, the extent of the group’s human rights violations is becoming evident. UNAMI has received an overwhelming number of reports indicating serious and systematic violations of international humanitarian law and gross abuses of human rights perpetrated by ISIL. The group continued to use civilians and civilian infrastructure and private homes as shields and has conducted organized terrorist activities directly targeting civilians. ...

...

47. ISIL continued to target civilians in areas retaken by Iraqi security forces, including through shelling and weaponized drones. ...

48. ISIL continued to punish civilians accused of cooperating with Iraqi security forces and for trying to flee areas under its control. ...

...

66. The United Nations in Iraq continues to work in a high risk and fluid security environment to implement its programmes and activities based on programme criticality ... Ninawa governorate and in particular Mosul remain at the centre of the conflict, resulting in a large number of displacements and increasing humanitarian needs ...

...”

27. The relevant parts of the UNAMI Report on Human Rights in Iraq covering the period from July to December 2017 noted the following in respect of Iraq:

“...[d]uring the reporting period, the internal armed conflict between the Government of Iraq and pro-Government forces and ISIL continued to exacerbate violence and terrorism in Iraq and impact a broad range of human rights.

Civilians continued to suffer from the ongoing violence; the number of casualties (killed and injured) in the reporting period was 2,373. The total number of casualties for 2017 was 8,079, bringing the number of overall casualties from June 2014 to end of 2017 to 85,123. These figures should be considered an absolute minimum ...

Mass graves continued to be discovered in areas previously controlled by ISIL including in Anbar and Ninewa governorates. As of 29 January 2018, at least 115 mass graves have been discovered in Iraq since June 2014, with the largest number of mass graves, 39, being discovered in Ninewa Governorate ...

...

On 9 December, Prime Minister Haider al-Abadi declared final victory over the Islamic State in Iraq and the Levant (ISIL) after Iraqi Security Forces (ISF) had regained full control over the Iraqi-Syrian border and cleared vast desert areas in western Ninewa and Anbar governorates. However, from July to December, as ISIL’s control over parts of Iraq decreased, it continued to intentionally target civilians to cause civilian casualties and terrorize the population. ...”

2. Reports of Amnesty International

28. In its report entitled “Banished and Dispossessed: Forced Displacement and Deliberate Destruction in Northern Iraq”, released in January 2016, Amnesty International provided an overview of the situation in the region, particularly as regards the housing, land and property rights and IDPs in the region. The report pointed to the forced displacement of residents and unlawful destruction of civilian homes and property in northern Iraq, which were not isolated incidents.

29. On 18 October 2016 Amnesty International issued another report entitled “Punished for Daesh’s Crimes – Displaced Iraqis Abused by Militias and Government Forces”, in which it noted, *inter alia*, the following:

“... Many of the displaced cannot return home because their towns and villages are under IS control or in front line areas, and others have nothing to go back to because their homes have been destroyed by IS or in fighting or by the parties who recaptured the areas. Others have been unable to return to homes in or near areas recaptured from IS and the prospect of a safe return remains distant for many. The recapture of territory from IS has been accompanied by revenge attacks against Sunni communities, often perceived as having collectively supported or collaborated with IS. PMU [Popular Mobilization Units] militias, and in some instances security forces, have killed, forcibly disappeared and tortured hundreds of Sunni men with utter impunity, in apparent acts of revenge for the heinous crimes committed by IS, and have used such crimes as a pretext to forcibly displace Sunni communities or prevent Sunni IDPs who had fled conflict from returning home. ...”

B. Recent developments in Iraq

1. General security situation

30. In its 2021 Country Report on Terrorism in Iraq, the United States Department of State Bureau of Counterterrorism stated the following:

“... ISIS, though severely diminished in capacity, continued to conduct operations, particularly in northern and western rural areas with limited Iraqi Security Forces (ISF) presence. ISIS sought to re-establish footholds in Anbar, Diyala, Kirkuk, Ninewa, and Salah al-Din provinces, especially in the gaps between those areas frequently patrolled by the Peshmerga and ISF. ...”

31. In its 2022 Country Report on Human Rights Practices in Iraq, the United States Department of State noted, *inter alia*, the following:

...Conflict-related Abuses

“Despite its territorial defeat in the country, ISIS remained a major perpetrator of abuses and atrocities. The remaining fighters operated from sleeper cells and strike teams that carried out sniper attacks, ambushes, kidnappings, and killings against security forces and community leaders. These abuses were particularly evident in Anbar, Baghdad, Diyala, Kirkuk, Ninewa, and Salah al-Din Provinces. ...”

32. The report of the UN Secretary-General to the Security Council pursuant to resolution 2631 (2022), dated 11 May 2023 (S/2023/340), in relation to the progress made towards fulfilling the mandate of UNAMI provides, *inter alia*:

“... ”

Security situation

16. Da’esh continued to conduct asymmetric attacks, primarily in Anbar, Baghdad, Diyala, Kirkuk, Ninawa and Salah al-Din Governorates, while Iraqi security forces continued counter-terrorism operations in response to Da’esh activity. From 4 February

to 19 April, 96 attacks were attributed to Da'esh, most of which targeted Iraqi security forces. A total of 92 attacks were attributed to Da'esh in the first quarter of 2023, compared with 188 attacks in the first quarter of 2022, which is the lowest quarterly figure reported since Iraq declared victory over Da'esh in December 2017 and is indicative of the overall decline in attacks that have been attributed to the group in recent years. ...”

33. The United Kingdom Home Office’s Country Policy and Information Note on the security situation in Iraq of November 2022 (updated on 1 August 2023) stated (footnotes omitted):

“...

2.4 Risk

2.4.1 In general a person is not likely to face a serious and individual threat of serious harm as a result of indiscriminate violence across Iraq with exception of the mountainous area north of Baiji in Sahal al-Din governate. However, whether a person is returning to areas formerly contested by Daesh - the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din - faces serious harm will require a fact sensitive, sliding scale assessment taking into account a number of factors. All cases must be considered on their facts, with the onus on the person to demonstrate a risk of serious harm. ...

2.4.4 ... There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of [Daesh] ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, the intensity of the internal armed conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm ...

The only exception to the general conclusion above is the small mountainous area north of Baiji in Sahal al-Din governorate. ISIL continues to exercise doctrinal control in the area and the risk of indiscriminate violence is at a level which would engage [subsidiary protection] as a general matter ...

2.4.7 However, while the number of security incidents documented by Armed Conflict Location & Event Data Project (ACLED), including battles, remote explosions, protests, riots and violence against civilians generally, have increased in 2022 compared to 2021 (2,753 events) - with highest number in the northern governorates of Duhok, Nineveh and Erbil as well as Baghdad compared to 2021 – they remain far below the numbers experienced in 2016 and 2017.

There also continue to be civilian fatalities in all governorates – a proxy for general levels of indiscriminate violence – with numbers highest in Baghdad, Diyala, Ninewa and Maysan. However, ACLED data indicates similar levels in 2021, at 537 for the year, compared to January to July of 2022 (213). The number of fatalities remain a very small proportion of the total population and significantly lower than during the period of intense conflict between government forces and Daesh during 2014 and 2017. ...

2.4.9 The Upper Tribunal [(Immigration and Asylum Chamber) in the case [2022] UKUT 110 (IAC)], ... held that [the assessment] whether or not the return of an individual to one of the formerly contested areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) would be contrary to Article 15(c) [of the

Qualification Directive] ... must take into account the following factors and characteristics:

- Opposition to or criticism of the Government of Iraq, the Kurdistan Regional Government or local security actors;
- Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in *de facto* control of that area;
- LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
- Humanitarian or medical staff and those associated with Western organisations or security forces;
- Women and children without genuine family support; and
- Individuals with disabilities ...

2.4.11 The [Upper Tribunal] also held that ‘[t]hose with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk’. ...

...”

34. The relevant parts of the Country Guidance on Iraq, published on 29 June 2022 by the European Union Agency for Asylum (EUAA), state as follows (footnotes omitted):

“... ”

1.4. The Islamic State of Iraq and the Levant (ISIL)

ISIL controlled significant territory in Iraq but was declared militarily defeated in December 2017. The military campaign to eliminate ISIL has significantly reduced the group’s operational capabilities and ISIL has not held territory in Iraq since its military defeat, however, it continues to operate as a more traditional insurgent group. ... ISIL controls no territory in Iraq. The group reportedly remains active but is considered very weak despite its sufficient combat capabilities to threaten security and stability. ...

Indiscriminate violence in Iraq

Territories where indiscriminate violence is taking place, however not at a high level and, accordingly, a higher level of individual elements is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD [Qualification Directive]. This includes the governorates of Anbar, Baghdad, Erbil, Kirkuk, Ninewa, Salah al-Din. ...

Ninewa

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of Ninewa, however not at a high level. Accordingly, a higher level of individual elements is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD. ...

...”

2. *Returns and internal relocation in Iraq*

35. In its Relevant Country of Origin Information assessing the ability of Iraqis to legally access and settle durably in proposed areas of internal relocation, released in November 2022, the UNHCR noted, *inter alia*, the following (footnotes omitted):

...

II. Access Requirements

“Federal Iraq:

An individual’s ability to pass checkpoints and be admitted to the proposed area of relocation will require the individual to hold valid identity documentation (such as the CSID/UNID [Civil Status ID Card/Unified ID Card], nationality certificate, or passport). Security screenings remain in place at governorate, district, and city entrance checkpoints.

Additionally, some areas continue to apply sponsorship requirements. This means in practice that the individual needs to know someone in the proposed area of relocation who is a resident of that area and who is willing to act as a sponsor, guaranteeing that the individual does not pose a security risk.

1) Governorates Without Sponsorship Requirements

Most governorates / districts under control of the Federal Government do not impose entry requirements. These include Al-Anbar, Babel, Baghdad, Basra, Dhi-Qar (with exceptions), Diyala (with exceptions), Kerbala, Kirkuk, Missan, Muthanna, Najef, Ninewa (with exceptions), Qadissiyah, and Wassit Governorates. ...

...”

3. *Situation of Sunni Arabs and persons perceived to be affiliated with ISIS*

36. The 2022 Country Guidance on Iraq published on 29 June 2023 by the EUAA stated, *inter alia*, the following:

“...

2.1 Persons (perceived to be) affiliated with ISIL

...

People were reportedly arrested at checkpoints for not carrying identification documents. It was reported that the military and security forces would assume that men and boys who left ISIL controlled areas without documents must be affiliated with ISIL and were therefore trying to conceal their identities. Reportedly, thousands of men disappeared after being arrested. ...

...

Risk Analysis

In case of individuals with (perceived) affiliation with ISIL, in general, a well-founded fear of persecution would be substantiated, as persons perceived to be associated with ISIL are a priority target of all security actors.

For family members with (perceived) ISIL affiliation, the individual assessment of whether there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk impacting circumstances such as: family status (e.g. single or widowed woman, female heads of households, child with single or widowed mother and/or a foreign, dead or missing father), tribal affiliation, area of origin. ...

...

2.2 Sunni Arabs

...

Sunni Arabs may be perceived to be affiliated with ISIL based on certain individual factors, such as (perceived) family links to ISIL members, area of origin and time of fleeing, tribe, name, etc. ...

The acts to which Sunni Arabs perceived to be affiliated with ISIL could be exposed to are of such severe nature that they would amount to persecution (e.g. arbitrary arrest, death penalty, torture). ...

Available information indicates that the mere fact that an individual is a Sunni Arab would normally not lead to a well-founded fear of persecution. The individual assessment of whether there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: area of origin, tribe, age, gender etc. ...

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 13 OF THE CONVENTION ON ACCOUNT OF THE APPLICANTS’ THREATENED DEPORTATION TO IRAQ

37. The applicants complained that their deportation to Iraq without a proper assessment of their asylum claims would amount to a breach of their rights under Articles 2 and 3 of the Convention. They further complained under Article 6 that they had been unable to access information and documents submitted by the administrative authorities to the domestic courts and that the latter had failed to duly examine their claims that there existed substantial grounds for fearing a real risk of treatment contrary to Articles 2 and 3 of the Convention in the event of their deportation to Iraq.

38. Having regard to the manner in which the applicants formulated their complaints in the application form and being the master of characterisation to be given in law to the facts of the case, the Court considers that the above-mentioned complaints fall to be examined from the standpoint of

Articles 2 and 3 taken alone and in conjunction with Article 13 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). Articles 2, 3 and 13 read as follows:

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.”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

39. The Government argued at the outset that the applicants had failed to lodge their application within six months of the date on which the final decision had been taken. While admitting that the postmark on the envelope containing the application form had been dated 18 November 2017, they noted that the form had been received by the Court on 24 November 2017 and that this latter date should be taken into consideration for the purposes of calculating the six-month time-limit.

40. The applicants submitted that their application had been submitted to the Court within the time-limit.

41. The Court reiterates that according to its established case-law in relation to complaints concerning removals that entail risks under Articles 2 and/or 3, if the removal decision has not been enforced and the individual remains on the territory of the State wishing to remove him or her, the time-limit has not yet started to run (see *M.Y.H. and Others v. Sweden*, no. 50859/10, §§ 38-42, 27 June 2013, and *O.D. v. Bulgaria*, no. 34016/18, §§ 32-33, 10 October 2019). Accordingly, the Government’s objection in that regard must be dismissed.

42. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

43. In their submissions dated 2 January 2019, the applicants submitted that their threatened deportation to Iraq would expose them to a real risk of ill-treatment on account of the general circumstances in Iraq as well as their personal situation. They stated that the Ninewa governorate, where they came from, was a region densely populated by Sunni Muslims and that it had been taken over by ISIS following massive terrorist attacks. In their request of 18 November 2017 for an interim measure, they asserted that they feared persecution on account of their perceived affiliation to ISIS due to their Sunni identity. Furthermore, prior to the takeover of the region by ISIS, the first applicant had worked as a protection officer in a State-owned sulphur factory and had participated in anti-government protests in 2013, following which he had been tracked by government agents. In this connection, he submitted a copy of a threatening message which he had allegedly received on Facebook on 21 March 2017 from a military general who had been his supervisor when he worked at his former post in the above-mentioned factory.

44. The applicants also argued that the Iraqi State did not have effective control over significant areas of the country and that, in certain regions such as Ninewa, the central government was incapable of protecting its citizens from violence, including sectarian conflicts. In that regard, they submitted that following the seizure of Mosul by ISIS, their house had been destroyed by members of ISIS, as the applicants had not agreed with their radical beliefs. When they had subsequently wanted to bring a formal complaint against the perpetrators, they had been told by the prosecutor not to press charges or they would be arrested.

45. In their submissions the applicants also provided undated petitions for asylum, which they had submitted to the Immigration Office (see paragraph 15 above), in which they had expressed their fear of persecution on account of the ongoing armed conflict and the risk of sectarian strife in Iraq and had mentioned the bombing of their house as well as the first applicant's previous employment as a security officer within the Ministry of Industry. The applicants stated that they had initially submitted their asylum claims on 5 August 2014. Subsequently, on 30 March 2015, they applied for international protection before the UNHCR in Ankara, which referred the applicants to the Istanbul governor's office with a tentative registration date.

46. The applicants further contended that, as was confirmed by the decision of the Constitutional Court, the Istanbul Administrative Court had not made any assessment of their assertion that they would face a real risk of ill-treatment if removed to Iraq. With regard to their individual application before the Constitutional Court, they stressed that even though their claims

had been found to be substantiated at the stage of granting the interim measure, when subsequently examining the merits of those claims the Constitutional Court had taken a decision to the contrary without providing justification, which had led to a finding of non-violation for lack of demonstration of an arguable claim. The applicants also stated that their inability to challenge the order for their deportation in an effective manner was further exacerbated by the fact that they had not had access to information and documents submitted by the administrative authorities to the Istanbul Administrative Court, as these had not been served on them.

(b) The Government

47. In their submissions dated 18 October 2018, the Government argued that the Constitutional Court had assessed the applicants' allegations in a detailed manner and in line with the Court's case-law. Reiterating the findings made by that court, the Government contended that the applicants had failed to put forth an arguable claim demonstrating that their removal to Iraq would expose them to a real risk of ill-treatment, as they had not substantiated their allegations with sufficient information and documents.

48. In particular, they stressed that the applicants should have proved the existence of a real risk of ill-treatment and that the Iraqi authorities would be unable to protect the applicants against such risk. In this connection, they stated that in the proceedings before the Administrative Court and the Constitutional Court, the applicants had failed to submit any evidence to prove that the house in the photos had actually belonged to them and that they had refrained from providing information regarding their place of residence or which region of Iraq they came from.

49. The Government further argued that the Constitutional Court, after examining the relevant materials from reliable and objective international sources on the general security and humanitarian situation in Iraq, had reached the conclusion that ISIS had not had effective control over the entire Iraqi territory, but only over certain regions of the country and that there had been no indication that the State of Iraq remained incapable of ensuring the safety of its citizens in the regions under its control.

50. Regarding the applicants' allegation that they had been opponents of the government of Iraq, the Government reiterated the findings of the Constitutional Court, stating that no further assessment had been required in this connection, since the applicants had not asserted that they had been or would be subjected to ill-treatment by the Iraqi government on account of a dispute, the nature of which remained unclear. In the light of the foregoing, the Government asserted that the applicants' allegations of ill-treatment were not defensible and that their rights under Articles 2 and 3 of the Convention had not been violated.

51. As to the reason why the administrative authorities' submissions to the Istanbul Administrative Court had not been served on the applicants, the

Government stated that these documents had not been admitted to the case file for having been submitted outside the time-limit, which consequently had not required that the applicants be notified. The Government further explained that neither the applicants nor their representative had had any restrictions on accessing the case file and that they could have requested any document or information throughout the proceedings before the Istanbul Administrative Court.

52. The Government, moreover, contested the applicants' allegation that they had submitted an asylum request, stating that no such request could be found in the official records.

53. In their subsequent submissions dated 11 February 2019 the Government also asserted that on 16 January 2019 the Court had asked the applicants to provide translated copies of the documents in Arabic which had been annexed to their observations (that is, translated copies of the first applicant's staff identity card showing that he had been a worker in a State-owned factory and of the threatening message he had allegedly received on Facebook from a military general, as noted in paragraph 43 above). Arguing that these documents had not been furnished to the domestic authorities, the Government requested that they not be admitted to the file.

2. *The Court's assessment*

(a) **Articles 2 and 3 of the Convention**

(i) *General principles*

54. The relevant case-law principles have been set out by the Court in *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, 23 March 2016), *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, 23 August 2016), *Khasanov and Rakhmanov v. Russia* ([GC], (nos. 28492/15 and 49975/15, §§ 93-116, 29 April 2022) and *M.N. and Others v. Turkey* (no. 40462/16, §§ 33-42, 21 June 2022).

55. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-47, Series A no. 324, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 174 and 177, ECHR 2011 (extracts)). Within the context of expulsion – where there are substantial grounds to believe that the person in question, if expelled, would face a real risk of capital punishment, torture, or inhuman or degrading treatment or punishment in the destination country – both Articles 2 and 3 of the Convention imply that the Contracting State must

not expel that person (*M.D. and Others v. Russia*, nos. 71321/17 and 8 others, § 89, 14 September 2021). In the context of Article 3, the Court has held that a claim that there exist substantial grounds for fearing a risk of treatment contrary to that provision in the event of deportation must be subjected to a close review and an independent and rigorous examination, given that that provision prohibits in absolute terms torture and inhuman or degrading treatment or punishment (see *Babajanov v. Turkey*, no. 49867/08, § 42, 10 May 2016, and the cases cited therein).

56. The assessment must focus on the foreseeable consequences of the applicants' removal to the country of destination in the light of the general situation there and of their personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 108, Series A no. 215).

57. Accordingly, the starting point for the assessment should be the examination of the general situation in the destination country. A general situation of violence will not normally in itself entail a violation of Article 3 in the event of an expulsion to the country in question, unless the level of intensity of the violence is sufficient to conclude that any removal to that country would necessarily breach Article 3 of the Convention. The Court would adopt such an approach only in the most extreme cases, where there is a real risk of ill-treatment simply by virtue of the individual concerned being exposed to such violence on returning to the country in question (see *Khasanov and Rakhmanov*, cited above, § 96, and the cases cited therein). Accordingly, the mere possibility of ill-treatment due to an unstable situation in a country at the material time does not in itself lead to a violation of Article 3 (see *Muslim v. Turkey*, no. 53566/99, § 70, 26 April 2005, and the cases cited therein).

58. By contrast, in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court considers that the protection of Article 3 of the Convention enters into play when the applicant establishes, where necessary on the basis of information obtained from reliable and objective sources, that there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned (see *Saadi v. Italy* [GC], no. 37201/06, § 132, ECHR 2008).

59. In cases where – despite a possible well-founded fear of persecution in relation to certain risk-enhancing circumstances – it cannot be established that a group is systematically exposed to ill-treatment, the applicants are under an obligation to demonstrate the existence of further special distinguishing features which would place them at a real risk of ill-treatment. Failure to demonstrate such individual circumstances would lead the Court to find no violation of Article 3 of the Convention (see *Khasanov and Rakhmanov*, cited above, § 100, and the cases cited therein).

60. The Court reiterates, in particular, that it is in principle for the person seeking international protection in a Contracting State to submit, as soon as

possible, his or her claim for asylum with the reasons in support of it, and to adduce evidence capable of proving that there are substantial grounds for believing that deportation to his or her home country would entail a real and concrete risk of exposure to a life threatening situation covered by Article 2 or to treatment in breach of Article 3 (see *F.G. v. Sweden*, cited above, § 125). As a general rule, an asylum-seeker cannot be seen as having discharged the burden of proof until he or she provides a substantiated account of an individual, and thus a real, risk of ill-treatment upon deportation that is capable of distinguishing his or her situation from the general perils in the country of destination. Where such evidence has been adduced, it is for the Government to dispel any doubts raised by it (*ibid.*, § 120; see also *Khasanov and Rakhmanov*, cited above, § 109).

61. The Court, however, acknowledges the fact that with regard to asylum seekers, it may be difficult, if not impossible, for the person concerned to supply evidence within a short time, especially if such evidence must be obtained from the country from which he or she claims to have fled. 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 assessing the credibility of their statements and any supporting documents (see, in particular, *J.K. and Others v. Sweden*, cited above, §§ 92-93, and *K.I. v. France*, no. 5560/19, § 139, 15 April 2021). The lack of direct documentary evidence thus cannot be decisive *per se* (see *J.K. and Others v. Sweden*, cited above, § 92, and the cases cited therein). Even if an applicant's account of some details may appear somewhat implausible, the Court has considered that this does not necessarily detract from the overall general credibility of their claim (*ibid.*, § 93; see also *S.H. v. Malta*, no. 37241/21, § 85, 20 December 2022).

62. However, in relation to asylum claims based on a well-known general risk, when information regarding such a risk is freely ascertainable from a wide number of sources, the obligations incumbent on the States under Articles 2 and 3 of the Convention in expulsion cases entail that the authorities carry out an assessment of that risk of their own motion (see *F.G. v. Sweden*, cited above, § 126, and the references cited therein, and *M.D. and Others v. Russia*, cited above, § 97, 14 September 2021).

63. In respect of the standard of review of claims of ill-treatment at the domestic level, the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic material as well as by material originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see, for example, *Mamazhonov v. Russia*, no. 17239/13, § 135, 23 October 2014, and the cases cited therein).

64. As for the timing of the risk assessment, under the Court's established case-law, the existence of a risk of ill-treatment must be assessed primarily

with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion (see *F.G. v. Sweden*, cited above, § 115). However, if the applicant has not yet been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court as, while the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive and it is therefore necessary to take into account information that has come to light after the final decision taken by the domestic authorities (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007, and *NA. v. the United Kingdom*, no. 25904/07, § 112, 17 July 2008). Accordingly, in such instances, a full and *ex nunc* evaluation is required.

(ii) Application of the general principles to the facts of the present case

65. In the light of the foregoing general principles, it has to be considered firstly whether the applicants presented the national authorities with substantial grounds for believing that they would face a real risk of ill-treatment in the destination country. Secondly, the Court will inquire into whether the claim was assessed adequately by the competent national authorities discharging their procedural obligations under Articles 2 and 3 of the Convention and whether their conclusions were sufficiently supported by relevant material (see *F.G. v. Sweden*, cited above, §§ 117-18; *Mamazhonov*, cited above, § 161; *K.I. v. France*, cited above, §§ 121 and 128-46, 15 April 2021; and *S.H. v. Malta*, cited above, §§ 80-102).

66. The Court agrees at the outset with the national authorities that the applicants' account manifests some weaknesses, especially when it comes to the non-submission to the domestic courts of certain information and documents which they subsequently presented to the Court (see paragraph 43 above). In this regard, their submissions before the Istanbul Administrative Court and the Constitutional Court do not mention the allegation that the first applicant was being tracked by government officials subsequent to his participation in anti-government protests or that he continued to receive threats on social media from the head at his former workplace in Iraq.

67. Nevertheless, the Court observes that with regard to their threatened deportation, the applicants expressly raised their fear of persecution if they were to be returned to Iraq and mentioned the ongoing armed conflict, the presence of ISIS in the Ninewa region where they came from, and the political and sectarian strife associated with their Sunni identity. In this regard, they submitted translated copies of their passports, issued by the competent Iraqi authorities in the Ninewa region, to the Turkish immigration authority, the magistrates' courts and the Istanbul Administrative Court. To support their arguments, they also submitted photos of a house allegedly owned by them which had been destroyed by members of ISIS.

68. At this juncture, the Court takes note of the general situation of violence existing in Iraq and in the Ninewa region, which was supported by a wide range of international sources available during the period when the applicants' claims were assessed by the domestic authorities (see paragraphs 22-29 above). Accordingly, it observes that the information obtained from various governmental sources and reports of independent international human rights protection organisations indicated that the overall security situation in Iraq was highly insecure, mainly as a result of ongoing armed conflict, terrorism and criminal violence and as a grave humanitarian crisis. The security situation in the areas freed from ISIS, including the Ninewa region where applicants came from, was recounted to be even more volatile, as these regions had continued to be affected by active hostilities which had resulted in high numbers of civilian casualties. Reportedly, ISIS had continued to target and punish civilians whom it accused of cooperating with Iraqi security forces and of trying to flee areas under its control; the unlawful destruction of civilian homes had not been isolated incidents. On the other hand, the recapture of territory from ISIS had been accompanied by revenge attacks against Sunni communities, as they had often been perceived as having collectively supported or collaborated with the terrorist organisation.

69. The Court further notes that the above-mentioned sources clearly advised against the forcible return of Iraqis to Iraq at the material time, especially those who originated from parts of the country that were affected by military action and previous or ongoing ISIS presence. In a similar vein, it was ill-advised to use the possibility of internal flight or relocation alternatives as a ground for refusing to grant international protection to Iraqis.

70. The Court points out that when granting the interim measure and later extending it, the Constitutional Court took into account the overall security situation in Iraq and the ongoing armed conflicts there at the material time and found that the applicants had laid the basis of an arguable claim that they would be subjected to treatment contrary to Articles 2 and 3 if returned to Iraq. Subsequently, however, the Constitutional Court held that the applicants had not satisfied the burden of proof incumbent on them as regards the existence of a real risk of ill-treatment in Iraq if returned there.

71. The Court observes, with due regard for the considerations set out above, that the domestic authorities were aware or ought to have been aware of facts which indicated that the applicants could be exposed to a real risk of ill-treatment upon their return. It was therefore for them to address the applicants' arguments and to carefully assess the risk of ill-treatment in order to dispel any doubts about possible ill-treatment (see *Babajanov*, cited above, § 45, and the cases cited therein). The Court must therefore examine whether the authorities conducted a rigorous examination and relied on sufficient relevant material in discharging their obligation to adequately assess those claims (see *F.G. v. Sweden*, cited above, § 117).

72. While it is contested between the parties whether the applicants had submitted asylum claims (see paragraphs 45 and 52 above), the case file contains copies of two asylum petitions, in which the applicants clearly stated their requests for international protection, and refugee registration certificates issued by the UNHCR office in Ankara. Furthermore, in its decision dated 7 August 2014, the Istanbul 3rd Magistrates' Court expressly stated that the applicants had submitted asylum requests which were pending at the time (see paragraph 13 above). In the light of the foregoing, the Court discerns that the applicants had brought their asylum requests to the attention of the domestic authorities.

73. For their part, the Government failed to submit any document showing that the administrative authorities subjected the applicants' asylum request to proper examination in the light of the principles embodied in Articles 2 and 3 of the Convention, either at the stage when the applicants lodged their asylum applications, or subsequently, when reviewing their objection to the deportation orders. Nor did they demonstrate that the applicants had been notified of the outcome of the decision to dismiss their asylum claims. Moreover, there are no documents in the case file to show that the authorities issued formal deportation orders of which the applicants were duly notified.

74. In their observations, the Government submitted that the applicants' claims had been assessed first by the Istanbul Administrative Court and later by the Constitutional Court. The Court notes, however, that the examination of the Istanbul Administrative Court did not include any assessment whatsoever regarding the presence of a real risk of ill-treatment in Iraq, as its examination focused solely on the issue of whether the legal conditions for the issuance of deportation orders had been met. The Constitutional Court similarly did not give adequate consideration to their claims that there existed substantial grounds for fearing persecution in the event of their expulsion to Iraq. Rather, it held that the applicants had failed to present an arguable claim in respect of the existence of a real risk of persecution if they were to be expelled to Iraq, without however, paying due regard to the situation in Iraq, especially in the region where the applicants came from. At this point, the Court also notes that the findings of the Constitutional Court, according to which the applicants had refrained from providing information regarding their place of residence or the region they came from, were not pertinent to the extent that the applicants had indeed submitted translated copies of their passports to the domestic courts and that these documents expressly indicated Ninewa as their place of issue.

75. The foregoing considerations are sufficient to enable the Court to conclude that the assessment conducted by the domestic authorities regarding the relevant facts and the risk to which the applicants would be exposed upon their removal to Iraq did not satisfy the requirements under Articles 2 and 3 of the Convention. Accordingly, while the Court is mindful of the improved security situation in Iraq as compared to the period when the applicants

initially brought their complaints before the national authorities and subsequently before the Court (see paragraphs 30-36 above), it holds that there would be a violation of Articles 2 and 3 in their procedural aspect if the applicants were to be removed to Iraq without a fresh, *ex nunc* assessment of their claims (see for a similar approach *M.D. and M.A. v. Belgium*, no. 58689/12, § 67, 19 January 2016, and *S.H. v. Malta*, cited above, § 102).

(b) Article 13 of the Convention

76. Having regard to the reasoning which has led it to conclude that Articles 2 and 3 of the Convention would be breached in the present case, the Court finds nothing that would justify a separate examination of the same facts from the standpoint of Article 13 of the Convention. It therefore considers it unnecessary to rule separately on the merits of the applicants' complaint under this head (see *Babajanov*, cited above, § 52, and *Amerkhanov v. Turkey*, no. 16026/12, § 59, 5 June 2018).

II. RULE 39 OF THE RULES OF COURT

77. 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 referral 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 (see *A.A. v. Sweden*, no. 4677/20, § 57, 13 July 2023).

78. The Court considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

80. The applicants claimed, in total, 20,000 euros (EUR) in respect of non-pecuniary damage.

81. The Government contested that claim as excessive.

82. The Court observes that a violation of Articles 2 and 3 of the Convention has not yet occurred in the present case. In this situation it takes the view that its finding to the effect that the deportation, if it were to be implemented without a prior *ex nunc* assessment of the reality of the risks faced by the applicants in the event of their removal to Iraq, would constitute a violation of those Articles, represents sufficient just satisfaction (see *K.I. v. France*, cited above, § 155).

B. Costs and expenses

83. The applicants also claimed EUR 4,130 in respect of lawyer's fees and EUR 123 for other costs and expenses incurred before the Court, such as travel expenses, stationery, photocopying, translation and postage. In that connection, they submitted a time sheet showing that their legal representatives had carried out thirty-five hours of legal work, and a legal services agreement signed with their representatives. They did not submit any invoice for the remaining costs and expenses.

84. The Government contested these claims, pointing out that only costs actually incurred could be reimbursed.

85. Regard being had to the documents in its possession and the criteria established in the Court's case-law (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 429, 26 September 2023), the Court considers it reasonable to award the sum of EUR 2,500 covering costs and expenses under all heads.

C. Default interest

86. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there would be a violation of Articles 2 and 3 of the Convention in its procedural aspect if the applicants were to be returned to Iraq without an assessment by the Turkish authorities of the risks that they would face in that country;
3. *Holds* that there is no need to examine the merits of the complaint under Article 13 of the Convention ;
4. *Decides* 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 expel the applicants until such time as the present judgment becomes final or until further order;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 6 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President