

# EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

## CHAMBER JUDGMENT BADER AND OTHERS v. SWEDEN

The European Court of Human Rights has today notified in writing a judgment<sup>1</sup> in the case of *Bader and Others v. Sweden* (application no. 13284/04).

The Court held unanimously that the applicants' deportation to Syria would amount to a **violation of Article 2** (right to life) **and Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

No claim for just satisfaction was submitted by the applicants. (The judgment is available only in English.)

### 1. Principal facts

The applicants, Kamal Bader Muhammad Kurdi, Hamida Abdilhamid Mohammad Kanbor and their two minor children, are Syrian nationals who were born in 1972, 1973, 1998 and 1999, respectively, and live in Sweden.

Soon after their arrival in Sweden in August 2002 they made several requests for asylum which were all rejected, and a deportation order was served on them.

In January 2004, the family submitted a new application for asylum to the Aliens Appeals Board and requested a stay of execution of the deportation order. They referred to a judgment that had been delivered on 17 November 2003 by the Regional Court in Aleppo (Syria) which stated that Mr Bader had been convicted, in absentia, of complicity in a murder and sentenced to death. The judgment stated that Mr Bader and his brother had, on several occasions, threatened their brother-in-law because they considered that he had ill-treated their sister and paid too small a dowry, thereby dishonouring their family. In November 1998 Mr Bader's brother had shot the brother-in-law, after planning the murder with Mr Bader, who had provided the weapon. Noting that the two brothers had absconded, the court went on to state: "[T]his judgment has been delivered in the accused's absence. [It] can be re-opened."

Mr Bader denied the charges. He also claimed he had spent nine months in custody in 1999/2000 on suspicion of complicity in the murder and had been released on bail.

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

In April 2004 the Aliens Appeals Board, rejected the applicants' request for asylum. They considered, on the basis of research carried out by a local lawyer engaged by the Swedish Embassy in Syria, that, if Mr Bader returned to Syria, the case against him would be re-opened and he would receive a full retrial. If he was convicted, he would not be given the death sentence, as the case was "honour related". The board therefore found that the applicants' fears were not well-founded and that they were not in need of protection.

On 19 April 2004, following the European Court of Human Right's indication under Rule 39 (interim measures) of the Rules of Court, the Migration Board granted a stay of execution of the deportation order until further notice. The stay is still in force.

## **2. Procedure and composition of the Court**

The application was lodged with the European Court of Human Rights on 16 April 2004 and declared admissible on 26 October 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul **Costa** (French), *President*,  
Ireneu **Cabral Barreto** (Portuguese),  
Volodymyr **Butkevych** (Ukrainian),  
Antonella **Mularoni** (San Marinese),  
Elisabet **Fura-Sandström** (Swedish),  
Danute **Jočienė** (Lithuanian),  
Dragoljub **Popović** (citizen of Serbia and Montenegro), *judges*,

and also Sally **Dollé**, *Section Registrar*.

## **3. Summary of the judgment<sup>1</sup>**

### **Complaints**

The applicants complained that, if deported from Sweden to Syria, the first applicant would face a real risk of being arrested and executed contrary to Articles 2 and 3 of the Convention.

### **Decision of the Court**

#### Article 2 and 3

The Court noted that the Swedish Government had obtained no guarantee from the Syrian authorities that Mr Bader's case would be re-opened and that the public prosecutor would not request the death penalty at any retrial. In those circumstances, the Swedish authorities would be putting Mr Bader at serious risk by sending him back to Syria.

The Court considered that Mr Bader had a justified and well-founded fear that the death sentence against him would be executed if he was forced to return to his home country. Moreover, since executions are carried out without any public scrutiny or accountability, the circumstances surrounding his execution would inevitably cause Mr Bader considerable fear

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<sup>1</sup> This summary by the Registry does not bind the Court.

and anguish while he and the other applicants would all face intolerable uncertainty about when, where and how the execution would be carried out.

Furthermore it transpired from the Syrian judgment that no oral evidence was taken at the hearing, that all the evidence examined was submitted by the prosecutor and that neither the accused nor even his defence lawyer was present at the hearing. The Court found that, because of their summary nature and the total disregard of the rights of the defence, the proceedings had to be regarded as a flagrant denial of a fair trial. Naturally, that gave rise to a significant degree of added uncertainty and distress for the applicants as to the outcome of any retrial in Syria.

In the light of the above, the Court considered that the death sentence imposed on Mr Bader following an unfair trial would inevitably cause the applicants additional fear and anguish as to their future if they were forced to return to Syria as there existed a real possibility that the sentence would be enforced in that country.

Thus, having regard to all the circumstances of the case, the Court considered that there were substantial grounds for believing that Mr Bader would be exposed to a real risk of being executed and subjected to treatment contrary to Articles 2 and 3 if deported to his home country. Accordingly, the Court found that the deportation of the applicants to Syria, if implemented, would give rise to violations of Articles 2 and 3 of the Convention.

Having reached that conclusion the Court did not find it necessary to consider the matter under Protocol No. 13 (abolition of the death penalty in all circumstances), as the Government had suggested it should.

Judge Cabral Barreto expressed a concurring opinion, which is annexed to the judgment.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.*