



A disabled asylum seeker failed to prove that his removal would expose him to inhuman or degrading treatment

In today's Chamber judgment in the case of [S.H.H. v. the United Kingdom](#) (application no. 60367/10), which is not final¹, the European Court of Human Rights held by four votes to three, that:

there would be **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights if Mr S.H.H., a failed asylum-seeker with physical disabilities were removed to Afghanistan.

The Court noted in particular that Article 3 did not oblige a Contracting State to provide all irregular migrants with free and unlimited health care. It held that the responsibility of Contracting States under Article 3 could only be engaged in very exceptional cases of general violence where the humanitarian grounds against removal were compelling, which the applicant had failed to prove in his case.

Principal facts

The applicant, Mr S.H.H, is an Afghan national who was born in 1979 and lives in London (United Kingdom).

Seriously injured during a rocket launch in Afghanistan in 2006 and left disabled following several amputations, he arrived in the United Kingdom on 30 August 2010. On 1 September 2010, he applied for asylum alleging that his removal to Afghanistan would expose him to ill-treatment. The Secretary of State deemed the applicant's claims to be unfounded and refused his asylum application on 17 September 2010.

The applicant was twice refused permission to appeal by the First-Tier Tribunal, on 4 and 7 October 2010, as well as subsequently by the Upper Tribunal, on 13 October 2010.

Complaints, procedure and composition of the Court

Mr S.H.H complained that his removal to Afghanistan would breach Article 3 (prohibition of inhuman or degrading treatment) on two grounds linked with his disability: first, he asserted that disabled persons were at higher risk of violence in the armed conflict currently underway in Afghanistan; and, second, that, since he had lost contact with his family, he would face a total lack of support as well as general discrimination.

The application was lodged with the European Court of Human Rights on 18 October 2010.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

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

Ineta **Ziemele** (Latvia), *President*,
David Thór **Björgvinsson** (Iceland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **de Gaetano** (Malta),
Paul **Mahoney** (the United Kingdom),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court recalled that an expulsion by a Contracting State might give rise to an issue under Article 3. However, the Court reiterated that Article 3 did not place an obligation on Contracting States to provide all irregular migrants with free and unlimited health care. Accordingly, expulsions might only lead to a breach of Article 3 in very exceptional cases of general violence where the humanitarian grounds against removal were compelling.

In this case, Mr S.H.H. neither complained before the Court that his removal to Afghanistan would put him at risk of deliberate ill-treatment from any party, nor that the levels of violence in Afghanistan were such as to entail a breach of Article 3.

Furthermore, the Court considered that Mr S.H.H. had failed to prove that his disability would put him at greater risk of violence than the general Afghan population.

As regards the foreseeable degradation of the applicant's living conditions, the Court noted that he had never given any reason why, in the event of his removal, he would not be able to make contact with his family in Afghanistan. Hence, it was unable to accept his claim that he would be left destitute due to a total lack of support there. Most importantly, the Court noted that the applicant had received both medical treatment and support throughout the four years he had spent there after his accident. In the light of the evidence provided by Mr S.H.H., it could neither be said that his condition had worsened since that period, nor that he would not benefit from the same care upon return. Finally, even though the Court acknowledged that the quality of the applicant's life would be negatively affected upon removal, this fact alone could not be decisive.

Therefore, there would be no violation of Article 3 if Mr S.H.H. were removed to Afghanistan.

Rule 39 of the Rules of Court

The Court decided unanimously to continue its indication to the United Kingdom Government (made under Rule 39 of the Rules of Court) that the applicant should not be removed until this judgment became final or until a request by one or both of the parties to refer the case to the Grand Chamber was accepted.

Separate opinions

Judges Ziemele, Björgvinsson and De Gaetano expressed dissenting opinions which are annexed to the judgment.

The judgment is available only in English.

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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.