



## Former UN driver and US forces interpreter can be removed from the United Kingdom to Afghanistan

In today's Chamber judgment in the case of [H. and B. v. the United Kingdom](#) (applications nos. 70073/10 and 44539/11), which is not final<sup>1</sup>, the European Court of Human Rights held by six votes to one that there would be:

**no violation of Article 3** (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights if either Mr H. or Mr B., failed asylum seekers, were removed to Afghanistan.

The case concerned two Afghan nationals' allegation that, if removed to their country of origin, they would be at risk of ill-treatment from the Taliban in reprisal for their past work for the United Nations as a driver and the United States forces as an interpreter, respectively.

The Court found that the two men, if removed to Afghanistan, would not be at risk as a result of the general situation in the country. Furthermore, they had failed to provide evidence to prove that their personal circumstances would expose them to a real risk of inhuman or degrading treatment if removed. Notably, their work for the international community had not been high profile and there was nothing to prove that the Taliban had the motivation or ability to pursue low level collaborators in Kabul, an area outside of Taliban control.

### Principal facts

The first applicant, Mr H., is an Afghan national born in 1975 who arrived in the United Kingdom on 30 October 2008. He claimed asylum on 3 November 2008, fearing that he was at risk of harm from both the Taliban and Hizb-i-Islam due to his perceived connections with the Afghan Government and the United Nations.

Mr H.'s asylum application was refused on 17 December 2008, as was his appeal at the Asylum and Immigration Tribunal on 4 January 2010, the Tribunal not believing his account but holding that, even if it were true, he could still safely relocate in Afghanistan. Mr H. applied for reconsideration of his asylum claim but this was refused on 26 January 2010 by a Senior Immigration Judge and, again, by the High Court on 15 June 2010.

The second applicant, Mr B., is an Afghan national born in 1988 who left Afghanistan on 30 April 2011 and arrived in the UK on 2 June 2011. He claimed asylum on 3 June 2011, fearing that he was at risk of harm from the Taliban due to his work as an interpreter for the United States armed forces and the International Security Assistance Force, particularly as a result of his involvement in the rescue of an aid worker.

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

Mr B.'s asylum application was refused on 20 June 2011, as was his appeal at the First-tier Tribunal on 30 June 2011 and the Upper Tribunal on 6 July 2011.

## Complaints, procedure and composition of the Court

Mr H. complained that his removal to Afghanistan would breach Article 3 (prohibition of inhuman or degrading treatment) as he was at real risk of ill-treatment by the Taliban and Hizb-i-Islami due to his past work for the UN. He claimed that he would be known throughout Afghanistan as a UN driver, that his home area was Wardak province, which remained unsafe, and that he would also be at risk if he lived in Kabul. The application was lodged on 30 November 2010.

Mr B. complained that his removal to Afghanistan would breach Article 3 (prohibition of inhuman or degrading treatment) as it would put his life at risk owing to his having worked as an interpreter for US forces. He claimed that he was at risk from both the Taliban and the Afghan Government. Mr B. relied on news articles to illustrate that those who had worked as interpreters for US forces were being targeted by the Taliban and that, as a result of the situation in Kabul, the police would not be able to protect him from them. Mr B. also complained that he should not be relocated to Kabul because he would be destitute there. The application was lodged on 21 July 2011.

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 **Araci**, *Deputy Section Registrar*.

## Decision of the Court

### Article 3

The Court recalled that an expulsion by a Contracting State could give rise to an issue under Article 3 but, in principle, it was for Mr H. and Mr B. to provide evidence illustrating this and for the Court to examine the foreseeable consequences of sending them to Afghanistan, bearing in mind the general situation and their personal circumstances.

As concerned the current general situation in Afghanistan, the Court considered that there would not be a real risk of ill-treatment if an individual was simply returned there.

Both applicants had instead concentrated on the risk of ill-treatment at the hands of the Taliban owing to their support of the international community.

### Mr. H

Mr H.'s claim had been based solely on his fear of the Taliban because he had worked as a driver for the UN between 2005 and 2008 and that evidence about Wardak province was irrelevant as he would be relocated to Kabul, an area outside of Taliban control. The Court found there to be insufficient evidence that the Taliban had the motivation or ability to pursue low level collaborators in Kabul, particularly given that four years had

passed since Mr H. had stopped working for the UN. Furthermore, Mr H. was not known throughout Afghanistan as a UN driver and he had not suffered any problems whilst working for the UN with the exception of one telephone threat. Indeed, the Secretary of State and the Asylum and Immigration Tribunal had had the benefit of seeing, hearing and questioning Mr H. and, consequently, were best placed to assess his credibility. The Court therefore found no reasons to conclude that the decisions of the Secretary of State and Tribunal had been deficient or that their assessment or reasoning had been inadequate. Nor had Mr H. offered any new evidence to cast doubt on their decisions.

The Court concluded that Mr H. had failed to provide evidence to prove that there were substantial grounds for believing that he would be exposed to a real risk of ill-treatment if removed to Afghanistan. Therefore, there would be no violation of Article 3 of the Convention if Mr H. were removed to Kabul, Afghanistan.

#### Mr B.

Mr B.'s claim was based on his fear of the Taliban and Afghan authorities because of his work as an interpreter for US forces. The Court noted that this claim had been comprehensively examined by the national authorities who accepted that Mr B. had been an interpreter for US forces but did not accept that he had been involved in the rescue of an aid worker. The Court recalled that it would need convincing reasons to depart from the finding of facts of national courts and made it clear that no such reasons had been found in Mr B.'s case. The Court did not accept Mr B.'s recent claim that he was at risk from the Afghan authorities as he never raised this claim at a national level and did not submit any evidence supporting this claim.

The Court rejected Mr B.'s claims that he would not be safe in Kabul because of his profile and the security situation there. The Court was not convinced that Mr B. would be at risk solely because of his work as an interpreter for the US forces and noted that he had worked in a different province where he had no particular profile. Mr B had not submitted any evidence or reason to suggest that he would be identified or come to the adverse attention of the Taliban in Kabul, an area outside of Taliban control.

Finally, regarding Mr. B's claim that he would be destitute if returned to Kabul, the Court recalled that humanitarian conditions in a country of return could give rise to a breach of Article 3 in very exceptional cases. However, the Court found that Mr B. had failed to submit any evidence to the Court to suggest that his removal to Kabul, an urban area under government control where he still has family members, would meet that standard.

Therefore, there would be no violation of Article 3 of the Convention if Mr B. 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 applicants 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 opinion

Judge Kalaydjieva expressed a dissenting opinion, which is annexed to the judgment.

*The judgment is available only in English.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHR\\_Press](https://twitter.com/ECHR_Press).

### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

Jean Conte (tel: + 33 3 90 21 58 77)

**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.