



Two cases against Sweden concerning failed asylum seekers facing expulsion resolved at national level and their applications before the ECHR struck out

In today's **Grand Chamber** judgments¹ in the cases of [M.E. v. Sweden](#) and [W.H. v. Sweden](#) (application nos. 71398/12 and 49341/10) concerning two failed asylum seekers facing expulsion the European Court of Human Rights held, unanimously, **that it was appropriate to strike their applications out** of its list of cases.

M.E., a Libyan national, alleged that he would be at risk of persecution and ill-treatment in Libya because he is a homosexual; and W.H., an Iraqi national, alleged that she would be at risk of ill-treatment in Iraq as a single woman of Mandaean denomination, a vulnerable ethnic/religious minority.

The Court found in particular that since both applicants had been granted permanent residence permits in Sweden – essentially on account of the authorities' concerns over the deterioration in the security situation in their home countries combined with their personal circumstances as a homosexual (M.E.) and as a single woman belonging to a religious minority (W.H.) – any potential violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights had now been removed and their cases had thus been resolved at national level. Nor did the Court find any special circumstances regarding respect for human rights as defined in the European Convention and its Protocols which required it to continue examining their cases.

M.E. v. Sweden

Principal facts

The case concerned an asylum seeker's threatened expulsion from Sweden to Libya, where he alleged he would be at risk of persecution and ill-treatment because he is a homosexual.

The applicant, M.E., a Libyan national, first arrived in Sweden in July 2010 and applied for asylum. In the ensuing domestic proceedings, he claimed that he was at risk if expelled to Libya on account of his prior involvement in the country in illegal weapons transport and because of his homosexuality. Indeed, he had been living with a man in Sweden since December 2010 and they had married in September 2011. His case was examined by the Migration Board and the Migration Court which found that his claims lacked credibility and concluded that he could temporarily return to Libya and from there could apply for family reunion with his partner. The Migration Court of Appeal refused leave to appeal. Subsequently, on 10 December 2012, the Migration Board refused his request for reconsideration of his case. His expulsion was, however, then suspended on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Swedish Government that the applicant should not be expelled to Libya whilst the Court was considering his case. Most recently, on 17 December 2014 M.E. was granted a permanent residence permit in Sweden.

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

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

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, M.E. alleged in particular that, if he were forced to return to Libya to apply for family reunion from there, he would be at real risk of persecution and ill-treatment, primarily because of his homosexuality but also due to previous problems with the Libyan military authorities following his arrest for smuggling illegal weapons. He lodged his application with the European Court of Human Rights on 3 November 2012.

In its Chamber [judgment](#) of 26 June 2014, the European Court of Human Rights, unanimously, declared inadmissible M.E.'s complaint under Article 8 of the Convention. The Court further held, by six votes to one, that the implementation of the expulsion order against M.E. would not give rise to a violation of Article 3 of the Convention, finding that there were no substantial grounds for believing the applicant would be subjected to ill-treatment on account of his sexual orientation if he was returned to Libya in order to apply for family reunion from there. The Court lastly decided to continue to indicate to the Swedish Government, under Rule 39 (interim measures) of its Rules of Court, not to expel the applicant to Libya until the Chamber judgment became final or until further order.

On 17 November 2014 the case was referred to the Grand Chamber at the request of the applicant².

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

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),
İşıl **Karakaş** (Turkey),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Ján **Šikuta** (Slovakia),
Dragoljub **Popović** (Serbia),
Päivi **Hirvelä** (Finland),
Nona **Tsotsoria** (Georgia),
Kristina **Pardalos** (San Marino),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Paul **Lemmens** (Belgium),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland), *judges*,
Johan **Hirschfeldt** (Sweden), *ad hoc judge*,

and also Erik **Fribergh**, *Registrar*.

2. 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.

W.H. v. Sweden

Principal facts

The case concerned an asylum seeker's threatened expulsion from Sweden to Iraq, where she alleged she would be at risk of ill-treatment as a single woman of Mandaean denomination, a vulnerable ethnic/religious minority.

The applicant, W.H., is an Iraqi national who was born in 1978 and currently lives in Sweden. She is originally from Baghdad and is of Mandaean denomination. She arrived in Sweden in August 2007 and subsequently claimed asylum. Her request was examined by the Migration Board and Migration Court which rejected it on the ground that she was not in need of protection in Sweden. The Migration Court of Appeal refused leave to appeal. Subsequently, the Migration Board refused her request for reconsideration of her case on two occasions, the last on 25 August 2010. Her expulsion was, however, then suspended on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Swedish Government that the applicant should not be expelled to Iraq whilst the Court was considering her case. Most recently, on 15 October 2014 W.H. was granted a permanent residence permit in Sweden.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, W. H. alleged that, a divorcee belonging to a small, vulnerable ethnic/religious minority, she would be at real risk of inhuman and degrading treatment if returned to Iraq. She submitted in particular that, without a male network or any remaining relatives in Iraq, she would be at risk of persecution, assault, rape, forced conversion to another religion and forced marriage. She lodged her application with the European Court of Human Rights on 27 August 2010.

In its Chamber [judgment](#) of 27 March 2014 the Court held, unanimously, that W.H.'s deportation to Iraq would not involve a violation of Article 3, provided that she was not returned to parts of the country situated outside the Kurdistan Region. The Court concluded that, although the applicant, as a Mandaean single woman, might face a real risk of being subjected to treatment contrary to Article 3 if returned to the southern and central parts of Iraq, she could reasonably relocate to the Kurdistan Region, where neither the general situation nor her personal circumstances would put her at risk of inhuman and degrading treatment. The Court further decided to indicate to the Swedish Government, under Rule 39 (interim measures) of its Rules of Court, not to deport the applicant to Iraq until the Chamber judgment became final or until further order.

On 8 September 2014 the case was referred to the Grand Chamber at the request of the applicant.

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

Dean **Spielmann** (Luxembourg), *President*,
 Josep **Casadevall** (Andorra),
 Guido **Raimondi** (Italy),
 Işıl **Karakaş** (Turkey),
 Elisabeth **Steiner** (Austria),
 Luis **López Guerra** (Spain),
 András **Sajó** (Hungary),
 Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
 Nebojša **Vučinić** (Montenegro),
 Kristina **Pardalos** (San Marino),
 Angelika **Nußberger** (Germany),
 Linos-Alexandre **Sicilianos** (Greece),
 Faris **Vehabović** (Bosnia and Herzegovina),

Ksenija Turković (Croatia),
Dmitry Dedov (Russia),
Jon Fridrik Kjølbro (Denmark), *judges*,
Johan Hirschfeldt (Sweden), *ad hoc judge*,

and also Erik Fribergh, *Registrar*.

Decision of the Court

In the case of *M.E. v. Sweden*, the Court noted that the applicant had been granted a residence permit by the Migration Board on 17 December 2014, which effectively repealed the expulsion order against him. The Board found that the security situation in Libya had deteriorated since the summer of 2014 and that the applicant, if expelled to his home country, would be at risk of persecution since he lived openly as a homosexual and could be expected to continue doing so on his return. He was therefore in need of protection in Sweden.

Although there was no friendly settlement between the parties, the Court considered – in line with its previous case-law on expulsion cases – that the potential violation of Article 3 of the Convention had now been removed and that the case had thus been resolved at national level. Nor did the Court accept the applicant’s argument that it should continue to examine his case as it raised serious issues of fundamental importance relating to homosexuals’ rights and how to assess those rights in asylum cases all over Europe, as the Migration Court had taken into account the applicant’s sexual orientation in its decision of 17 December 2014.

Similarly, in the case of *W. H. v. Sweden* the applicant had been granted a residence permit following a decision by the Migration Board of 15 October 2014. The Board found that the prevailing general security situation in Baghdad, combined with the fact that the applicant is a woman belonging to a religious minority and lacking any social network in Iraq, meant that she was in need of protection in Sweden. Following this decision the applicant submitted that she no longer wished to pursue her application before the European Court.

The Court therefore considered that the matter had been resolved at national level. Nor did it find any special circumstances regarding respect for human rights as defined in the European Convention and its Protocols which required the Court to continue examining her case.

It was therefore appropriate to strike both applications out of the Court’s list of cases.

The judgment is available in English and French.

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. To receive the Court’s press releases, please subscribe here: [@ECHRpress](http://www.echr.coe.int/RSS/en).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

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

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

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

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

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.