CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 7749/07
by Shasoar Karim SHAZEMAN
against Norway

The European Court of Human Rights (First Section), sitting on 12 February 2008 as a Chamber composed of:

Christos Rozakis, *President*,
Nina Vajić,
Anatoli Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 19 February 2007,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together.

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court.

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Shasoar Karim Shazeman, is an Iraqi national who was born in 1979 and who currently resides in Norway. He was represented before the Court by Mr A. Holden, a lawyer practising in Oslo. The

Norwegian Government ("the Government") were represented by their Agent, Mrs F. Platou Amble, Attorney, Attorney-General's Office (Civil Matters).

The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant left Iraq in 1999 and applied for asylum in Norway on 21 June 1999. Before leaving his home country he lived in Kirkuk, situated in Central Iraq.

Initially, in his asylum application to the Immigration Directorate, the applicant invoked his fear of the Baath Party, which was then in power in Iraq. He did not revert to this in his application to the Court.

On 26 May 2000 the Immigration Directorate rejected his application. The Directorate noted that the applicant had resided in other countries in which he had been registered under a different identity. He had omitted to mention that he had sojourned in Denmark. Having given false information on central points, the applicant was not considered credible. On humanitarian grounds he was however granted temporary work- and residence permit for a renewable period of one year. The applicant was given notice that the permit might be revoked in the event that he should reacquire travel documents from his home country. He was also advised that the authorities were preparing a voluntary repatriation programme for refugees and asylum seekers (presumably from Iraq) who had been granted residence permits on humanitarian grounds. The permit was not reviewed beyond 25 April 2003, apparently due to the criminal proceedings against him referred to below.

The applicant appealed against the Directorate's rejection of his asylum application but on 11 December 2000 the Ministry of Justice (then the competent authority for examining appeals, later replaced by the Immigration Appeals Board) upheld the rejection, observing that the applicant had given contradictory information. In the form completed for the registration of his asylum application, he had stated that he had not been politically active or a member of any party; he had been arrested in 1998 due to suspicion of his being a member of the Patriotic Union of Kurdistan (PUK). In contrast, in his asylum interview the applicant had stated that he had been a member of the PUK since 5 May 1999 and had been imprisoned for two weeks in 1998 on account of smuggling of goods. In the interview he had also related an event on 29 May 1999 which had not been mentioned in the registration form. Nor had he mentioned his stay in Denmark in the latter.

On 30 March 2005 the Immigration Directorate decided to expel the applicant to Iraq. It observed that, on 25 March 2004, the Gulating High

Court had upheld a conviction of the applicant by Bergen City Court of 28 November 2003 and sentenced him to seven years' imprisonment for sexual offences committed with assault and threats against one child under 14 years and two children under 16 years. Against this background and having regard to the particular gravity of the offences and to the absence of any family links or other attachment to Norway, the Directorate found that the applicant's expulsion would not be a disproportionate measure vis-à-vis him. Nor was it found that he would risk persecution, loss of life or ill-treatment upon return. The decision to expel implied that the applicant was to leave the Schengen area and was prohibited re-entry into the area without permission by the country concerned, and could not normally be granted visa for entry into Norway for a period of two years. The applicant, however, had claimed that he was innocent and that he had requested the reopening of the proceedings.

After rejection by the Immigration Directorate, the applicant appealed to the Immigration Appeals Board adducing a new additional ground, namely his fear of being killed by his former father-in-law. Because he had divorced his wife and had failed to pay marriage dowry, he risked murder of honour.

The Immigration Appeals Board rejected his appeal on 30 January 2006. It found that the applicant's expulsion would not be a disproportionate measure either for the purposes of section 29(2) of the Immigration Act or Article 8 of the Convention. Nor did the Immigration Appeals Board find that the expulsion would be incompatible with section 15(2) of the Immigration Act or Article 3 of the Convention. The situation in Kirkuk was not generally such as to prevent return, which was also undisputed by the applicant. His initial ground for asylum, namely fear of the Baath Party, was no longer pertinent in view of the regime change. His new contention that he risked murder of honour by his father-in-law had not been substantiated or made out, either with respect to the allegation that the applicant was divorced and had failed to pay dowry or that it would entail the consequences alleged. In any event, this would be a matter he could pursue with the authorities in Iraq. It would be open for him to settle in the part of the country which he found the most suitable. In the light of the above, the Board ordered the applicant to leave Norway with a prohibition to re-enter for an indefinite period.

On 27 June 2006 the Immigration Appeals Board rejected a request by the applicant to amend its decision of 30 January 2006.

The applicant does not appear to have challenged the above decisions before the national courts or to have sought an interlocutory injunction to stay the execution of his expulsion.

According to a report of 18 December 2006 by the United Nations High Commissioner of Refugee (UNHCR Return Advisory and Position on International Protection Needs of Iraqis Outside Iraq) no forcible return of Iraqis from Southern or Central Iraq should take place until there was a

substantial improvement in the security and human rights situation in the country.

On 30 January 2007, after having served seven twelfths of his sentence, the applicant was released on probation, on the condition that his expulsion be effected upon release. Immediately or shortly thereafter he was placed in provisional detention with a view to his expulsion.

On 12 February 2007 the Norwegian Association of Asylum Seekers ("*NOAS*") requested on the applicant's behalf the Immigration Appeals Board to reconsider its decisions of 30 January and 27 June 2006. It stated that the situation in Kirkuk, the applicant's home town, was such that it would be inadvisable to return him there. The situation was both dangerous and unclear. Until it became stabilised it would be indefensible to implement the expulsion. Moreover, the expulsion order was more than two years old and the situation, and thus the very basis for the decision, had significantly deteriorated in the meantime.

On 1 June 2007, after holding an oral hearing on the same date, at which both the applicant and his lawyer were present, the Immigration Appeals Board unanimously decided to uphold the decisions of 30 January and 27 June 2006 to expel the applicant but that the implementation of this decision was to be deferred. The Board did not find that there was sufficient proof, on the balance of probabilities, that there was a considerable danger of the applicant being killed or subject to inhuman treatment if returned. As to the general security situation in Kirkuk, the Board observed:

> "In the opinion of the Board, based on the information available, the security situation of the civilian population of Kirkuk is generally unsafe and problematic. Nevertheless, the Board finds that, in view of the size of the city's population and the extent of the acts being carried out and the persons being targeted, the situation today cannot be said to be so serious that the civilian population is in 'considerable danger' of being the victims of random acts. Compared with other central and southern regions of Iraq, the violence is currently more limited in scope and, to a greater degree than in the south, seems to be directed against specific target groups. To the Board's knowledge, the appellant's personal background as a Kurd, with no special occupation or political position, would not generally make him more exposed or vulnerable to being the victim of a violent or random act than other civilians residing in Kirkuk.
>
> Accordingly, in the assessment of the Board, the appellant is not at the present time covered by the protection against return afforded by section 15 (1), second sentence, of the Immigration Act and Article 3 of the Convention.
>
> Accordingly, in the Board's opinion, there are no grounds for reversing the expulsion decision. The appellant is permanently expelled from Norway pursuant to section 29 (4) of the Immigration Act."

The Board then went on to discuss future developments that could be expected in the Kirkuk area, in particular with regard to the referendum that was to be held on whether to incorporate Kirkuk into the Kurdish federation of the new Iraq. It emphasised that although Kurdish political leaders had

insisted on a referendum, there were other influential groups that were strongly opposed to or not supporting a referendum. The Board concluded:

> "In view of the uncertain security situation in connection with the possibly imminent referendum the Board has concluded that the implementation of the expulsion decision is to be postponed until such time as the future security situation appears to be somewhat clearer.
>
> The Board will of its own motion consider the issue of implementation again, at the latest within one year from the date of the administrative decision."

COMPLAINT

The applicant, who initially lodged his application without legal representation, did not invoke any particular Article of the Convention. He submitted *inter alia* that, in view of the general security situation in Iraq, he was anxious that his life and health would be at risk were he to be returned to Iraq.

THE LAW

In light of the Immigration Appeals Board's decision of 1 June 2007, the Government requested the Court on 31 August 2007 to lift its indication under Rule 39 of the Rules of Court and to strike the application out of its list of cases pursuant to Article 37 § 1 of the Convention. They maintained that even though the applicant's expulsion order was still in force, he was no longer under any specific or imminent threat of expulsion to Iraq. The expulsion decision could not be implemented without a new assessment and decision by the Immigration Appeals Board. Should the Board decide against the applicant, it would be open to the applicant not only to challenge that decision before the national courts but also to request an interlocutory injunction from the courts under Chapter 15 of the Legal Enforcement Act 1992. He could also request the Court to restore his application to its list of cases pursuant to Article 37 § 2.

The Court notes that there has been no friendly settlement or agreed arrangement in the present case. The Immigration Appeals Board's decision of 1 June 2007 to stay the execution of the expulsion order was taken in view of the uncertain security situation in the relevant area of Iraq and until such time as the situation became somewhat clearer. Thus, it appears that the alleged threat of violation of the Convention has been removed at least temporarily. It is also to be noted that, at the latest within one year from the date of the said decision, the Board was to reassess, of its own motion, the issue of implementation. Should the Board find that the expulsion of the

applicant could be implemented, it would be open to him to challenge that decision before the national courts. Having regard to the possibility that the situation in Iraq may change significantly with time, the Court cannot speculate on the future outcome of a new assessment by the Immigration Appeals Board and, eventually, the national courts. The Court therefore considers that, in the circumstances, it is no longer justified to continue the examination of the application (Article 37 § 1 (c)) (see, *mutatis mutandis*, *Rubina and Rubin v. Sweden* (dec.), no. 35733/04, 31 January 2006).

Moreover, the Court discerns no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case (Article 37 § 1 *in fine*).

Accordingly, it is appropriate to discontinue the application of Article 29 § 3, lift the interim measure indicated under Rule 39 of the Rules of Court and strike the case out of the list.

For these reasons, the Court by a majority

Decides to strike the application out of its list of cases.

Søren Nielsen
Registrar

Christos Rozakis
President