



Real risk of ill-treatment facing Afghan national if deported not fully assessed by Swedish authorities

The case [D.M. v. Sweden](#) (application no. 32694/23) concerned an order to remove an Afghan national from Sweden. His removal was ordered because he was not entitled to a residence permit in Sweden after several unsuccessful applications for asylum since 2015.

In today's **Chamber** judgment¹ the European Court of Human Rights held, unanimously, that there would be a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights if the deportation order against the applicant, Mr D.M., was implemented.

An assessment of whether there was a real risk of ill-treatment had to be made on the basis of all relevant factors, considered cumulatively and against the backdrop of the general situation in the country in question. The national decisions in the applicant's case had not considered all such relevant factors cumulatively in their risk assessment.

The Court found that, although serious, the general security and human-rights situation in Afghanistan were not sufficient on their own to conclude that any removal to that country would necessarily breach Article 3. Furthermore, while the situation for Hazaras in Afghanistan was dire, it was not persuaded that this group was systematically exposed to ill-treatment in breach of Article 3.

However, the applicant faced heightened risks due to his Hazara ethnicity. He was moreover at risk because he had adapted to a Western way of life in Sweden over the last ten years, especially bearing in mind the current repressive regime in Afghanistan, which punished severely any failure to adhere to the rules and restrictions in place. During that time he had also engaged in behaviour which could be perceived as transgressing religious and moral norms in Afghanistan.

The Court concluded that the cumulative effect of his personal circumstances, against the background of the general human-rights situation in Afghanistan, created a real risk of ill-treatment if the applicant were deported.

For more information about the case, see the [FAQ](#).

Principal facts

The applicant, Mr D.M., is an Afghan national. He arrived in Sweden in 2015 when he was a teenager/young adult.

He immediately applied for asylum. Two sets of asylum proceedings ensued, ending unsuccessfully in 2018 and 2023, respectively. The authorities interviewed him on a number of occasions throughout these proceedings and he was represented by a lawyer. He submitted – among other things – that he was at risk because of the general situation in the country, his Hazara ethnicity and area of origin (Mazar-e Sharif in Balkh province), and his conversion to Christianity or in any event his having turned his back on Islam. He also alleged in 2022 in the second set of proceedings that he would face further risks from his so-called “westernisation” after having spent almost ten years in Sweden.

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.

Ultimately in 2023, both the Swedish Migration Agency and Migration Court concluded that asylum seekers did not need international protection because of the general security situation in Afghanistan. Nor were Hazaras generally at risk of treatment which would warrant their protection. They also found that Mr D.M. had not substantiated that his conversion was based on a personal and genuine conviction or that he intended to live as a Christian upon return to Afghanistan.

The Agency and court also found that individuals perceived as “westernised” did not generally risk being subjected to treatment warranting protection and that Mr D.M. had not shown that he personally was at risk. Moreover, they held that he would be able to adapt to the customs and practices of his country of origin.

Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr D.M. alleged that his removal to Afghanistan would expose him to a real risk of being ill-treated.

The application was lodged with the European Court of Human Rights on 16 August 2023.

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

Ivana Jelić (Montenegro), *President*,
Erik Wennerström (Sweden),
Raffaele Sabato (Italy),
Davor Derenčinović (Croatia),
Alain Chablais (Liechtenstein),
Artūrs Kučs (Latvia),
Anna Adamska-Gallant (Poland),

and also Ilse Freiwirth, *Section Registrar*.

Decision of the Court

The Court reiterated that, on the one hand, member States had the right to control the entry, removal and deportation of foreign nationals. On the other hand, States were obliged, under Article 3 of the Convention, not to remove or deport someone if substantial grounds had been shown for believing that they were at real risk of ill-treatment in the destination country, on account of the general situation and personal circumstances.

In the applicant’s case it was not satisfied that the national authorities had based their assessment of the general situation in Afghanistan, including regarding Hazara ethnicity, on adequate material.

It had therefore looked at various objective and reliable reports to carry out its own assessment with a focus on the present-day situation.

It found that the general security situation in Afghanistan was serious and fragile, with reports of armed violence and attacks on civilians. However, the level of violence was not sufficient to conclude that any removal would necessarily breach Article 3 of the Convention.

It furthermore found that the general human-rights situation in Afghanistan had steadily deteriorated since the Taliban takeover, with reports of widespread rights abuses, including arbitrary arrests and detention, extrajudicial killings and capital punishment, corporal punishment, torture and other forms of ill-treatment. Still, this was not sufficient to conclude that any removal would necessarily breach Article 3.

Similarly, while it recognised that the Hazara minority in Afghanistan faced widespread discrimination and were being targeted in attacks and killings particularly by the armed resistance group, the Islamic

State of Khorasan Province, it was not persuaded that Hazaras were systematically exposed to ill-treatment in breach of Article 3.

Nevertheless, an assessment of whether there was a real risk of ill-treatment had to be made on the basis of all relevant factors, taken together. In such an assessment both the general situation and the applicant's personal circumstances had to be taken into account. While a number of individual factors might not, when considered separately, constitute a real risk, the opposite might be the case if those same factors were considered cumulatively and against the backdrop of the general situation in the country in question.

The Court found that the national decisions in the applicant's case had not considered all such relevant factors cumulatively in their risk assessment.

The applicant faced heightened risks due to his Hazara ethnicity and his area of origin, Mazar-e Sharif, where the Islamic State of Khorasan Province was particularly active.

He had also claimed to have converted to Christianity. Although the Court did not find sufficient grounds to depart from the national authorities' conclusions as to the genuineness of the applicant's conversion, the potential risks associated with him being perceived as a convert or apostate had to be taken into account.

Moreover, he had no recent experience of living in Afghanistan and limited experience of living under the former Taliban regime. He had been in Sweden for 10 years which amounted to a substantial part of his life. In the asylum proceedings the Swedish authorities had recognised that he had adapted to a Western way of life. Indeed, during his time in Sweden he had engaged in behaviour which could be perceived as transgressing religious and moral norms in Afghanistan. The Court was not convinced that he would be able to hide these parts of his identity if returned, especially bearing in mind the current repressive regime in Afghanistan. The Taliban maintained a strict moral code and social control, dictating almost every aspect of life. Returnees who did not conform to the rules and restrictions in place risked detention and severe punishments, including flogging. Compliance was actively monitored and current reports showed that even minor transgressions or rumours about activities in the West could be sufficient to attract negative attention from the Taliban, relatives or neighbours.

The Court concluded that the cumulative effect of the applicant's personal circumstances, including his Hazara ethnicity, against the background of the general human-rights situation, created a real risk of ill-treatment if he were returned to Afghanistan. There would therefore be a violation of Article 3 if the deportation order against the applicant were implemented.

Interim measures (Rule 39)

The Court decided that the interim measures indicating that Sweden should not deport Mr D.M. should remain in force until this judgment became final or until it took a further decision.

Just satisfaction (Article 41)

The applicant made no claim in respect of pecuniary or non-pecuniary damage, and the Court therefore made no such award. It dismissed the claim for costs and expenses.

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.