



## Finnish decision to deport an Iraqi man who was killed when he arrived back in his country of origin violated the Convention

In today's **Chamber judgment**<sup>1</sup> in the case of [N.A. v. Finland](#) (application no. 25244/18) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 2 (right to life) and Article 3 (prohibition of torture and inhuman and degrading treatment)** of the European Convention on Human Rights owing to decisions to deport the applicant's father to his country of origin, Iraq, where he was subsequently killed.

The Court found in particular that the Finnish authorities had not carried out a thorough enough assessment of the individual risks faced by the applicant's father in Iraq although they had accepted his account of having faced two near deadly attacks in a context of tensions between Shia and Sunni Muslim groups, the father belonging to the latter.

The Finnish authorities' decision to expel the father, who had had a conflict with a Shia colleague in his place of work as an investigator for the Interior Ministry, had ultimately forced him to agree to return voluntarily to Iraq, where he had been shot and killed soon after arrival.

### Principal facts

The applicant, Ms N.A., is an Iraqi national who was born in 1996 and lives in Finland.

The applicant's father was a Sunni Muslim Arab from Baghdad. He served as a major in the army under former Iraqi leader Saddam Hussein and then for an American logistics company after the fall of that regime. Between 2007 and 2015 he worked in the Iraqi Office of the Inspector General, part of the Interior Ministry, where he was an investigator and then a leading officer on human rights crimes and corruption cases. He often had to investigate intelligence service officers or officers in militia groups. His work became more dangerous when Shia militia gained prominence.

He was investigating a case in 2015 when he had a disagreement with a colleague, who allegedly belonged to a leading Shia militia group, the Badr Organisation. The colleague assaulted the applicant's father and insulted him but was then transferred to the intelligence service and promoted. In February 2015 there was an attempt on the applicant's father's life when someone tried to shoot him. He reported the attack but later concluded that it was not being investigated. Feeling that he would not be protected in Iraq or receive any justice, he resigned in March 2015.

In April 2015 a bomb exploded in the family car just after the applicant's father and mother had got out of it and in May of that year the applicant herself was the victim of an attempted kidnapping.

The family arrived in Finland in September 2015 and the father sought international protection. The authorities rejected his asylum application in December 2016, the Immigration Service accepting his account of the facts but deciding that Sunni Arabs did not *per se* face persecution in Iraq.

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](http://www.coe.int/t/dghl/monitoring/execution).

An appeal by the applicant's father was dismissed by the Helsinki Administrative Court in September 2017. It held that he faced no danger owing to his past work for the regime of Saddam Hussein or the American logistics company. There was no proof that the attacks on him had been due to his conflict with his former colleague at the Interior Ministry, rather the general security situation in Iraq was to blame. There was also no real risk of persecution owing to his Sunni background. He was refused leave to appeal to the Supreme Administrative Court at the end of November 2017.

The applicant's father returned to Iraq in November 2017 under assisted voluntary return. In December 2017 the applicant learned that her aunt's apartment, used previously by the family as a hiding place, had been attacked. Later that month she was informed that her father had been killed by unidentified gunmen. According to documents submitted by the applicant her father was shot three times in a street in Baghdad.

## Complaints, procedure and composition of the Court

The applicant complained that her father's expulsion to Iraq had violated Article 2 (right to life) and Article 3 (prohibition of torture and of inhuman or degrading treatment).

The application was lodged with the European Court of Human Rights on 23 May 2018.

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

Ksenija **Turković** (Croatia), *President*,  
Krzysztof **Wojtyczek** (Poland),  
Aleš **Pejchal** (the Czech Republic),  
Pauliine **Koskelo** (Finland),  
Tim **Eicke** (the United Kingdom),  
Jovan **Ilievski** (North Macedonia),  
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### [Article 2 and Article 3](#)

The Court took note of the Government's argument that Finland did not have jurisdiction as the applicant's father had returned voluntarily to his land of origin. However, the applicant had argued that the return had not been voluntary, but had rather been forced on him by the Finnish domestic authorities' decisions. Her father had not wanted to attract the attention of the Iraqi authorities by being forcibly returned and had not wanted to have a two-year Schengen area visa ban.

The Court found that the applicant's father would not have returned to Iraq if an enforceable expulsion decision had not been issued against him and so his decision had not been voluntary in the sense of being a free choice. The respondent State's jurisdiction could therefore be engaged under Article 1 of the Convention.

The Court also cited the lack of a genuinely free choice as a reason to reject a further implicit argument by the Government that the applicant's father had waived his right to Convention protection because he had signed a declaration that no agency or authority taking part in his return could be held liable or responsible.

The Court noted that the Finnish authorities had found the applicant's father's account of events in his asylum application to be both credible and coherent, including the possibility that he could be of interest to the Iraqi authorities or non-State actors.

The domestic authorities had also referred extensively to relevant country information on Iraq, which showed among other things that there were tensions between Shia militia groups and Sunni Arab Muslims, that there had been incidents where Iraqis who had worked for American companies had been killed, and that the security situation in Baghdad required decision makers to look at the risks faced by particular individuals facing deportation.

When taken cumulatively, and considered in the light of the general security situation and violence, it was possible that such factors could give rise to a real risk. However, the domestic authorities had not made such a cumulative assessment.

Even more importantly, the courts had not given enough consideration to the violent attempts on the applicant's father's life before he had left Iraq, although the Finnish authorities had acknowledged the shooting and car bomb as facts. Instead, they had seen those incidents as part of the general security situation, rather than being focussed on the applicant's father in particular.

The Court could not see a plausible explanation for why the Finnish authorities had not taken those two incidents more seriously or looked at them in terms of a risk that the father had been personally targeted. Furthermore, the dispute between the father and his colleague had been dismissed as a personal conflict rather than being examined for possible links with their religious affiliations and tensions between Shia and Sunni groups or the attempts on the father's life.

The Court was thus not convinced that the Finnish authorities' assessment of the risks faced by the father if he was returned to Iraq had met the requirements of Article 2 or Article 3. Indeed, those authorities were or should have been aware of the risks he faced.

The Court concluded that the Finnish authorities had failed to comply with their obligations under Article 2 or Article 3 when dealing with the applicant's father's asylum application and there had been a violation of both of those provisions. It rejected a complaint by the applicant about her own rights under Article 3 having been violated.

#### Just satisfaction (Article 41)

The Court held that Finland was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,500 in respect of costs and expenses.

*The judgment is available only in English.*

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#### Press contacts

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

**Patrick Lannin (tel: + 33 3 90 21 44 18)**

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

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

Inci Ertekin (tel: + 33 3 90 21 55 30)

**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.