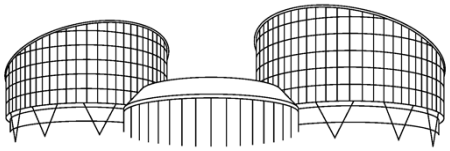

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF N.A. v. FINLAND

(Application no. 25244/18)

JUDGMENT

Art 2 • Art 3 • Expulsion • Sunni Muslim killed shortly after removal to Iraq where he had previously suffered life-threatening incidents • Inadequate assessment of risks with regard to tensions between Shia and Sunni Muslims

STRASBOURG

14 November 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of N.A. v. Finland,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Aleš Pejchal,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 15 October 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 25244/18) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Iraqi national, Ms N.A. ("the applicant"), on 23 May 2018. The President of the Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Ms Marjaana Laine, a lawyer practising in Helsinki. The Finnish Government ("the Government") were represented by their Agent, Ms Krista Oinonen, from the Ministry for Foreign Affairs.

3. The applicant alleged, in particular, that her late father's expulsion to Iraq violated Articles 2 and 3 of the Convention, and that her father's expulsion and his violent death caused her considerable suffering under Article 3 of the Convention.

4. On 13 September 2018 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1996 and lives in Finland.

6. The applicant's complaints mainly concern the fate of her father who died in December 2017 in Iraq.

A. Background of the case

7. The applicant's father, born in 1971, was a Sunni Muslim Arab from Baghdad. He served as a Major in the army under Saddam Hussein's regime until 2002. After the fall of Saddam Hussein's regime, he worked for an American logistics company. From 2007 he was employed by the Iraqi Ministry of the Interior and worked there as an investigator of the Office of the Inspector General (hereinafter "the Office"). He was the only civil servant in the Office with a Sunni background. During his tenure at the Office, he was promoted to lieutenant colonel. From 2008 onwards he questioned hundreds of persons suspected of having committed crimes.

8. In March 2014 the applicant's father became a leading officer at the Office, whose task was to conduct internal investigations and to deal with human rights crimes as well as corruption. The investigations often concerned officers of the intelligence service or officers of the militia groups. His work became all the more dangerous when the Shia militia gained a substantial and official position in Iraq.

9. In early 2015 the applicant's father was investigating his last case when he had a disagreement with one of his colleagues in the Office, Mr A., who allegedly belonged to the Badr Organisation.[1] Mr A. insulted him, physically assaulted him and threatened his life. After the incident Mr A., who was of Shia background, was transferred to the intelligence service and was promoted. In February 2015 there was an attempt to kill the applicant's father by shooting him when he was leaving the Office with his driver. He reported the shooting to the police but subsequently realised that no investigation had been started and that the case file had been archived. He understood that he had no chance of receiving justice or protection from the Iraqi authorities and therefore he resigned from his post on 5 March 2015.

10. In April 2015 there was another attempt to kill the applicant's father when a car bomb exploded in his car only minutes after he and his wife had got out. After this incident, the family left their house and went into hiding in several residences belonging to the wife's relatives. In May 2015 the applicant was the victim of an attempted kidnapping but she was able to escape. She stopped going to school and went into hiding with the rest of the family. In August 2015 the applicant's father, his adult son and the applicant managed to flee from Iraq. The applicant's mother and two minor sisters stayed in Iraq and remain in hiding.

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1. Badr Organisation is one of the main armed Shia militia groups operating in Iraq. It was the armed wing of the Islamic Supreme Council of Iraq, a mainstream Shiite party, headed now by Ammar al-Hakim. The Badr Organisation was largely disarmed after Saddam's fall and integrated immediately into the political process. Its leader is Hadi al-Amiri, an elected member of the National Assembly. It might have as many as 30,000 militia fighters (source: the United Kingdom Home Office's Country Policy and Information Note on Iraq: Sunni (Arab) Muslims, of June 2017).

11. On 2 September 2015 the applicant, her father and her brother arrived in Finland.

12. The applicant was married in Finland in October 2015 and has two small children born in 2016 and 2017 respectively.

B. Asylum proceedings

13. On 3 September 2015 the applicant's father sought international protection in Finland.

14. On 16 December 2016 the asylum application of the applicant's father was rejected by the Finnish Immigration Service *(Maahanmuuttovirasto, Migrationsverket*) which ordered that he be expelled to Iraq, his country of origin. In its reasoning, the Immigration Service accepted as established facts the account of the applicant's father's background, his employment history and the incidents that had taken place in Iraq (see paragraphs 9 and 10 above). There was no issue of credibility. Concerning Mr A., the Service found that the disagreement had been between two private individuals and that the allegation that Mr A. belonged to the Badr Organisation was only based on hearsay. Moreover, the Service accepted that the shooting at the applicant's father's car and the car bomb attack had taken place, but concluded that those incidents had nothing to do with his personal circumstances or background. As regards the work performed for an American company, the Service considered that this could have given rise to problems before 2011, but since the applicant's father had later been able to obtain a post in the Ministry of the Interior, there was no indication that he was the subject of any special interest from the authorities. The Service acknowledged that Sunni Arab men were unlikely to obtain protection from the authorities in Iraq. However, the applicant's father had not brought up any problems relating to his Sunni background, other than the argument with Mr A. In conclusion, the Service did not accept that the applicant's father would be in danger of persecution upon return to Iraq.

15. By letter dated 7 February 2017 the applicant's father appealed against the Immigration Service's decision to the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*).

16. On 26 September 2017 the Helsinki Administrative Court dismissed his appeal. It found that people who had worked for Saddam Hussein's regime were no longer subject to systematic persecution. The applicant's father had also stopped working for the American company in question more than ten years earlier. This part of his work history alone did not make it likely that he would be subject to persecution by non-State actors. The court considered it improbable that the applicant's father would be at serious risk upon return to Iraq due to his earlier work history. As to his work at the Ministry of the Interior, the court noted that the applicant's

father had lived for several months in Baghdad after his disagreement with Mr A. and that the latter had not threatened him after the first incident. The shooting at the applicant's father's car, the car bomb and the alleged link between these incidents and the grounds invoked to justify his fear of persecution had only been based on his own conclusions. He did not know who the perpetrators had been, nor had he received any new threats during those three and a half months he had spent in Iraq after the shooting and the explosion. The court concluded that the shooting and the explosion had had nothing to do with him personally but with the general security situation in Baghdad. It was therefore improbable that the applicant's father would be at serious risk upon return to Iraq due to his work at the Ministry of the Interior. His Sunni Arab background gave no reason to believe that he would be at real risk of persecution upon return to Iraq.

17. By letter dated 18 October 2017 the applicant's father appealed to the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen*), requesting leave to appeal and that the court order a stay on his removal.

18. The Supreme Administrative Court did not order a stay on removal. In respect of the merits, on 30 November 2017 the court refused the applicant's father leave to appeal.

C. Enforcement of the expulsion decision and the subsequent events

19. On 12 October 2017 the applicant's father applied for assisted voluntary return to Iraq. On the same day he signed a declaration with the Finnish representative of the International Organization for Migration (IOM) in which he agreed, in return for receiving financial aid for the return, that any agency or government participating in the voluntary return could not in any way be held liable or responsible.

20. On 13 October 2017 assisted voluntary return was granted to the applicant's father. On 29 November 2017 he left Finland.

21. On 2 December 2017 the applicant learned that her aunt's apartment, which the applicant's family had previously used as a hiding place, had been attacked. Since then, the applicant has not been able to contact her family in Iraq.

22. Later in December 2017 the applicant learned from a neighbour that her father had been killed. Apparently he was shot by unidentified persons on 17 December 2017. The applicant has submitted photocopies of a death certificate and a translation into Finnish, stating that the applicant's father was deceased in a street in Baghdad and that the cause of death was three shot wounds to the head and body. The applicant has also submitted photocopies and translations of a police report concerning the fatal incident as well as of a crime report filed by the deceased's father in Baghdad. According to the Government, the original death certificate has not been

submitted to any Finnish authority or domestic court. Thus, the latter have not been in a position to verify its authenticity and origin.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Finland

23. According to Article 9, paragraph 4 of the Constitution of Finland (*Suomen perustuslaki, Finlands grundlag*, Act no. 731/1999):

> "The right of foreigners to enter Finland and to remain in the country is regulated by an Act. A foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity."

B. Aliens Act

24. Section 87, subsection 1, of the Aliens Act (*ulkomaalaislaki, utlänningslagen*, Act no. 301/2004) provides the following:

> "Aliens residing in the country are granted asylum if they reside outside their country of origin or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country."

25. According to section 88 of the Act (as amended by Act no. 323/2009):

> "An alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements for granting asylum under Section 87 are not met, but substantial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country.
>
> Serious harm means:
>
> 1) the death penalty or execution;
>
> 2) torture or other inhuman or degrading treatment or punishment;
>
> 3) serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts."

26. Section 52, subsection 1, of the Act provides that aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly considering the circumstances they would face in their country of origin or of their vulnerable position.

27. Section 146a of the Act (as amended by Act no. 1214/2013) reads as follows:

> "For the purposes of this Act, return shall mean a process of removal from the State, during which a third country national having received a decision on refusal of entry, deportation or expulsion either leaves the State voluntarily or he or she is forcibly removed ..."

28. According to section 147 of the Act (as amended by Act no. 1214/2013), no-one may be deported, or refused entry and sent back to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity or from where he or she could be sent to such an area.

29. Section 147a, subsection 1, of the Act (as amended by Act no. 194/2015) provides that:

> "A decision on refusal of entry referred to in section 142(2) or on deportation sets a time-limit of at least seven and no more than thirty days within which the alien may leave the country voluntarily. The time-limit for voluntary return is counted from the day the decision is enforceable. The time-limit may be extended for special reasons. ..."

30. Section 198a of the Act (as amended by Act no. 432/2009) reads as follows:

> "An administrative court or the Supreme Administrative Court may decide that an appeal relating to international protection expires if the appellant has left Finland at his or her own initiative without any measures being taken by authorities, or he or she is considered in all likelihood to have left Finland in a manner referred to in section 95c(1)."

31. According to section 201, subsection 1, of the Act (as amended by Act no. 194/2015), a decision on removal may not be enforced until a final decision has been issued on the matter, unless otherwise provided in the Act. Applying for leave to appeal from the Supreme Administrative Court does not prevent the enforcement of a decision, unless otherwise ordered by the Supreme Administrative Court.

32. In its decision KHO:2017:165, the Supreme Administrative Court held that an asylum seeker could be granted asylum under section 87 of the Aliens Act and issued a residence permit on grounds of subsidiary protection under section 88 of the Act only on the condition that he or she resides in Finland. Therefore, the *non-refoulement* prohibition laid down in section 147 of the Aliens Act could not apply and the enforcement of an expulsion decision could not be prohibited if an appellant had already returned voluntarily, prior to the issuing of an enforceable expulsion decision, to an area in relation to which he or she had applied for international protection.

33. In its decision KHO:2019:5, the Supreme Administrative Court confirmed that an administrative court could decide, in accordance with section 198a of the Aliens Act, that an appeal relating to international protection expires if the appellant has left Finland at his or her own initiative before any measures have been taken by the authorities.

C. Tort Liability Act

34. According to Chapter 5, section 1, of the Tort Liability Act (*vahingonkorvauslaki, skadeståndslagen*, Act no. 412/1974, as amended by Act no. 509/2004), damages shall be awarded in compensation for personal injury and damage to property as well as for suffering, provided that the conditions in sections 4 a and 6 are fulfilled. Where the injury or damage has been caused by an act punishable by law or in the exercise of public authority, or in other cases, where there are especially weighty reasons for the same, damages shall also be awarded in compensation for economic loss that is not connected to personal injury or damage to property.

35. Section 4a of the Act (as amended by Act no. 61/1999) provides that:

> "The parents, children and spouse of a person who has died, as well as another comparable person who was especially close to that person, shall be entitled to damages for the anguish arising from the death, if the death has been caused deliberately or by a grossly negligent act and if the awarding of the damages is deemed reasonable in view of the close relationship between the deceased and the person seeking the damages, the nature of the act, and other circumstances."

36. According to section 6 of the Act (as amended by Act no. 509/2004),

> "a person shall have the right to compensation for suffering caused by a violation if:
>
> 1) his or her liberty, peace, honour or private life has been violated by an offence;
>
> 2) he or she has been discriminated against by an offence;
>
> 3) his or her personal integrity has been seriously violated by a wilful act or by gross negligence; or
>
> 4) his or her human dignity has been seriously violated by a wilful act or by gross negligence in other ways comparable to those mentioned in points 1–3.
>
> Compensation will be awarded on the basis of the suffering which the violation is prone to cause, taking into account, in particular, the nature of the violation, the position of the victim, the relationship between the perpetrator and the victim and the publicity of the violation."

III. RELEVANT COUNTRY INFORMATION ON IRAQ

37. At the time of the domestic proceedings, the following country information was available on Iraq.

A. General security situation

38. The United Kingdom Home Office's Country Information and Guidance on the security situation in Iraq, issued in November 2015, stated as follows under the heading "Policy Summary":

"The security situation in the 'contested areas' of Iraq, identified as the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-din, has reached such a level that a removal to these areas would breach Article 15(c) of the Qualification Directive (QD).

The security situation in the parts of the 'Baghdad Belts' (the areas surrounding Baghdad City), which border Anbar, Salah Al-Din and Diyala governorates, has reached such a level that a removal to these areas would breach Article 15(c) of the QD.

In the rest of Iraq – the governorates of Baghdad (including Baghdad City), Babil, Basrah, Kerbala, Najaf, Muthanna, Thi-Qar, Missan, Quadissiya and Wassit, and the Kurdistan Region of Iraq (KRI) which comprise Erbil, Sulaymaniyah and Dahuk governorates – indiscriminate violence does not reach such a level that is in general a 15(c) risk. However, decision makers should consider whether there are particular factors relevant to the person's individual circumstances which might nevertheless place them at enhanced risk.

The security situation remains fluid and decision makers should take into account up-to-date country information in assessing the risk."

B. Situation of Sunni (Arab) Muslims

39. The United Kingdom Home Office's Country Policy and Information Note on Iraq: Sunni (Arab) Muslims, of June 2017 provided the following:

"2.2 Assessment of risk

a. Sunni identity

2.2.1 The Upper Tribunal, in the Country Guidance case of BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC), heard on 24-25 August 2016 and promulgated on 23 January 2017, found:

'Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL [Daesh]. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm' (paragraph 107, (v)).

'Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR [European Convention on Human Rights] if assessed on a cumulative basis. The assessment will depend on the facts of each case' (paragraph 107 (vi)).

b. State treatment

2.2.2 Sunnis, though marginalised by the Shia majority in Baghdad, are still represented in society and government. There are sectarian tensions, but Haider al-Abadi's government has attempted reconciliation with the Sunni population (see Sunnis in Baghdad and Political and sectarian context).

2.2.3 There are reports that Government forces have abused Sunnis, mainly in areas of current or recent Daesh control (see State treatment).

2.2.4 In general the treatment of Sunnis by the state is not sufficiently serious by its nature and repetition that it will reach the high threshold of being persecutory or otherwise inhuman or degrading treatment.

2.2.5 However, decision makers must consider whether there are particular factors relevant to the specific person which might make the treatment serious by its nature and repetition.

c. Non-state treatment

2.2.6 Various non-state actors, primarily the powerful Shia militia (who number, in some estimates, in the tens of thousands), have violated the human rights of Sunnis in a number of governorates including Baghdad, Diyala, Kirkuk and Salah al-Din. These abuses increased following the remobilisation of the Shia militia in response to the Daesh insurgency in 2014 (see Shia militia and Shia militia abuses).

2.2.7 A Sunni may be able to demonstrate a real risk of persecution or serious harm from a Shia militia, but this will depend on their personal profile, including their family connections, profession and origin.

2.2.8 Sunni Internally Displaced Persons (IDPs), who generally lack support networks and economic means, are more vulnerable to suspicion and abuse. Decision makers need to consider each case on its merits.

2.2.9 There are a few reports that Sunnis experienced human rights abuses at the hands of Shia militia or unknown perpetrators in the southern governorates (Babil, Basra, Kerbala, Najaf, Missan, Muthanna, Qaddisiya, Thi-Qar and Wassit) (see Shia militia abuses and Abuses by other non-state actors).However, it does not appear to form part of a consistent or systematic risk to Sunnis.

2.2.10 In general, Sunnis in the southern governorates are not subject to treatment which would be persecutory or cause serious harm. However, decision makers must consider whether there are particular factors specific to the person which would place them at real risk. The onus is on the person to demonstrate this.

...

2.3 Protection

2.3.1 Where the person's fear is of persecution and/or serious harm from non-state actors, decision makers must assess whether the state can provide effective protection.

2.3.2 The Upper Tribunal, in BA (Returns to Baghdad), found: 'In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection' (paragraph 107 (vii)).

2.3.3 However, decision makers must explore whether there are circumstances – such as family, tribal or political links – in which a person can obtain protection. Each case must be assessed on its merits."

C. Situation of persons who collaborated with foreign companies or armed forces

40. The interim report of 14 January 2011 issued by the Norwegian Country of Origin Information Centre (Landinfo) and the Swedish Migration Agency on their fact-finding mission to Iraq observed that there had been a number of incidents where Iraqis who had worked for American

forces or companies had been killed. The United States had an assistance programme for Iraqis who had been subjected to threats for working at the Embassy in Baghdad. Recruitment was carried out only after careful scrutiny, which could take three to six months.

41. The United Kingdom Home Office's Operational Guidance Note on Iraq, of 22 August 2014, stated the following:

> "3.10.9 Conclusion. Persons perceived to collaborate or who have collaborated with the current Iraqi Government and its institutions, the former US/multi-national forces or foreign companies are at risk of persecution in Iraq. This includes certain affiliated professionals such as judges, academics, teachers and legal professionals. A claimant who has a localised threat on the basis that they are perceived to be a collaborator may be able to relocate to an area where that localised threat does not exist. The case owner will need to take into consideration the particular profile of the claimant, the nature of the threat and how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate. A claim made on these grounds may be well founded and a grant of refugee status due to political opinion or imputed political opinion may be appropriate depending on the facts of the case."

42. According to Amnesty International Deutschland's 2015 Report on Iraq (translation from German original at https://www.amnesty.de/jahresbericht/2015/irak):

> "ISIS soldiers also killed Sunnis, blaming them for insufficient support or alleging that they were working for the Iraqi government and their security forces or were at the service of the US troops during the war in Iraq."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION CONCERNING THE APPLICANT'S FATHER

43. The applicant complained that her late father's expulsion to Iraq had violated Articles 2 and 3 of the Convention. The risk assessment by the Finnish authorities had not been undertaken with necessary diligence and it had been in clear conflict with the Court's case-law.

44. Articles 2 and 3 of the Convention read as follows:

Article 2

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. Submissions by the parties

(a) The Government

45. The Government raised a preliminary objection that this complaint was incompatible *ratione loci* with the provisions of the Convention. The applicant's father had submitted an application for assisted voluntary return already before lodging his appeal and requesting a stay on execution of the Administrative Court's decision. The applicant's father had then returned voluntarily to his country of origin while his case was still pending before the Supreme Administrative Court, and his death had taken place in Iraq. The Finnish authorities had not exposed him to a risk of ill-treatment. Given his voluntary departure from Finland, there was no causal connection between the subsequent removal order and the exposure of the applicant's father to an alleged risk in Iraq, where he had chosen to return. In any event, a sending State could be held responsible under Articles 2 and 3 of the Convention only at the time when a measure was taken to remove an individual from its territory. Articles 2 and 3 of the Convention did not create a general positive obligation for the Contracting States to protect people from voluntarily exposing themselves to potential risks outside their jurisdiction. This complaint should therefore be rejected as incompatible *ratione loci* with the provisions of the Convention.

46. Secondly, the Government argued that, following the applicant's father's voluntary departure to Iraq, it could be considered that his voluntary departure put an end to his victim status and that after his departure he could no longer be regarded as a potential victim of any violation of the Convention. Furthermore, before his departure, he had signed a declaration in which he had agreed that any agency or government participating in the voluntary return could not in any way be held liable or responsible. In any event, the applicant's father's death could not be imputable to the Government of Finland nor engage the responsibility of the State in any respect.

47. The Government further submitted that the applicant could not be regarded as an indirect victim of the alleged violation of Articles 2 and 3 of the Convention concerning her father, and that this complaint should therefore be rejected as incompatible *ratione personae* with the provisions of the Convention.

(b) The applicant

48. The applicant disagreed with the Government and maintained that her father had not returned voluntarily to Iraq but had left as a result of the execution of an enforceable expulsion order issued by the State of Finland. Contrary to the facts in the Supreme Administrative Court's case KHO:2017:165 (see paragraph 32 above), his return to Iraq was not genuinely voluntary but part of a process to execute an enforceable expulsion order. If he had not cooperated with the authorities, he would have risked being detained. He had left Finland only on 29 November 2017 when the deadline for his voluntary return had already expired and the Supreme Administrative Court had declined to grant a stay on the execution of his removal order pending the resolution of his appeal. The applicant's father had preferred to opt for a voluntary return instead of forced return in order to avoid detention, to attract less attention from the Iraqi authorities upon return and in order to avoid a two-year entry ban to the Schengen area. He was planning to flee from Iraq again with his family and to seek international protection elsewhere.

49. The applicant maintained that the violation of Articles 2 and 3 had been committed when the State of Finland ordered the applicant's father's expulsion to Iraq in spite of the existence of a real and well-substantiated risk to his life. The Finnish authorities had known, or should have known, that he was at risk of irreparable harm if returned to Iraq and nevertheless they had decided to expel him. According to the well-established case-law of the Court, Articles 2 and 3 could conditionally trigger the responsibility of the respondent State outside the State's territory and jurisdiction in situations like the present one. The Finnish State had both the negative obligation to abstain from expelling the applicant as well as a positive obligation to protect him from a real risk of harm to his life and physical integrity which were known, or ought to have been known, to them. Finally, the applicant pointed out that the Court had recognised the standing of the victim's next-of-kin to submit an application where the direct victim had died or disappeared.

2. The Court's assessment

(a) *Locus standi* of the applicant

50. The Court notes that, according to its well-established case-law, it may be possible for a person with the requisite legal interest as next-of-kin to introduce an application raising complaints related to the death or disappearance of his or her relative in a situation in which the alleged victim of a violation has died before the introduction of the application (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 112, ECHR 2009). In such cases, the Court has accepted that close family members, such as children, of a person whose death or disappearance is

alleged to engage the responsibility of the State can themselves claim to be indirect victims of the alleged violation of Article 2, the question of whether they were legal heirs of the deceased not being relevant (see *Tsalikidis and Others v. Greece*, no. 73974/14, § 64, 16 November 2017, and *McKerr v. the United Kingdom*, no. 28883/95, ECHR 2001-III).

51. The next-of-kin can also bring other complaints, such as under Articles 3 and 5 of the Convention on behalf of deceased or disappeared relatives, provided that the alleged violation is closely linked to the death or disappearance giving rise to issues under Article 2 (see *Lykova v. Russia*, no. 68736/11, §§ 63-66, 22 December 2015).

52. In the present case, such a close link between the Article 3 complaints and the subsequent death of the applicant's father does exist. Therefore the Court considers that, being the daughter of the direct victim, the applicant can legitimately claim to be an indirect victim of any omissions in her father's case. In view of the foregoing, the Government's objection as to the applicant's lacking *locus standi* must be dismissed.

(b) Compatibility *ratione loci*

53. The Court notes that according to the Government's argument, the circumstances of the case did not engage the jurisdiction of Finland, because the applicant's father had left Finland voluntarily for Iraq, where he had subsequently been killed. The applicant in turn argues that her father's return had not been genuinely voluntary but based on the decisions already taken by the Finnish authorities with a view to his expulsion, and that her father's death had thus been a consequence of the risk to which he had been exposed by the actions of the Finnish authorities.

54. The Court reiterates that it has already had to consider whether Articles 2 and 3 (*inter alia*) were engaged in respect of a person who had voluntarily left the respondent Contracting State and returned to another State and whose complaint was based on facts that had occurred in that latter State (see *Abdul Wahab Khan v. the United Kingdom* (dec.), no. 11987/11, 28 January 2014). In that case the Court held, in the context of its consideration of whether a person could be said to be "within the jurisdiction" of the United Kingdom for the purposes of Article 1 of the Convention, that there was no principled reason to distinguish between, on the one hand, someone who was in the jurisdiction of a Contracting State but voluntarily left that jurisdiction and, on the other hand, someone who was never in the jurisdiction of that State (see *Abdul Wahab Khan,* cited above, § 26).

55. In the present case, the applicant's complaint is based on the allegation that her father had not left Finland voluntarily but had been forced to return to Iraq because of the adverse decisions already taken by the Finnish authorities, and that those decisions therefore engaged the

responsibility of Finland for having exposed the applicant's father to a real risk of losing his life after his involuntary return to Iraq.

56. The Court must therefore assess whether under the circumstances of the present case the applicant's complaint falls outside the jurisdiction of Finland *ratione loci* on the grounds that the applicant's father had voluntarily left Finland for Iraq where, as alleged, he was subsequently killed.

57. As to the voluntary nature of the applicant's father's return, the Court notes that the applicant's father left Finland on 29 November 2017, that is, at a time when the Supreme Administrative Court had not granted his request to stay the enforcement of his removal. The removal order was thus enforceable. At that point, he opted for voluntary return, a possibility available for him under section 147a, subsection 1, of the Aliens Act. His situation was therefore different from the circumstances underlying the Supreme Administrative Court's decision KHO:2017:165 referred to by the Government (see paragraph 32 above). For the Court the fact that the applicant's father had first lodged an application under the voluntary returns programme before submitting his application for leave to appeal before the Supreme Administrative Court cannot be regarded as decisive, either. In the light of the circumstances of the case, in particular the factual background of the applicant's father's flight from Iraq as acknowledged by the domestic authorities, the Court sees no reason to doubt that he would not have returned there under the scheme of "assisted voluntary return" had it not been for the enforceable removal order issued against him. Consequently, his departure was not "voluntary" in terms of his free choice. The circumstances of the present case are thus different from those in the case of *Abdul Wahab Khan*, cited in paragraph 54 above. It cannot therefore be held that the facts complained of were incapable of engaging the respondent State's jurisdiction under Article 1 of the Convention.

(c) Whether the applicant's father had waived his rights

58. The Government also argued that the applicant's father had, before his departure, signed a declaration with the Finnish representative of the IOM in which he had agreed, in return for receiving financial aid for the return, that any agency or government participating in the voluntary return could not in any way be held liable or responsible. While the Government raised this argument by reference to a loss of victim status, the Court, taking into account the circumstances of the present complaint, finds it appropriate to consider this point as an implied submission to the effect that the applicant's father had waived his right to protection under Articles 2 and 3 of the Convention.

59. The Court notes that Article 3 of the Convention, together with Article 2, must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies

making up the Council of Europe (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention (see *Pretty v. the United Kingdom*, no. 2346/02, § 49, ECHR 2002-III). Without taking a stand *in abstracto* on whether the rights guaranteed under Articles 2 and 3 can be waived, the Court notes that a waiver must, if it is to be effective for Convention purposes, in any event be given of one's own free will, either expressly or tacitly, be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 135, 17 September 2009, and *M.S. v. Belgium*, no. 50012/08, § 123, 31 January 2012).

60. In the present case, the applicant's father had to face the choice between either staying in Finland without any hope of obtaining a legal residence permit, being detained to facilitate his return by force, and handed a two-year entry ban to the Schengen area, as well as attracting the attention of the Iraqi authorities upon return; or agreeing to leave Finland voluntarily and take the risk of continued ill-treatment upon return. In these circumstances the Court considers that the applicant's father did not have a genuinely free choice between these options, which renders his supposed waiver invalid. Since no waiver took place, his removal to Iraq must be considered as a forced return engaging the responsibility of the Finnish State (see, *mutatis mutandis*, *M.S. v. Belgium*, cited above, §§ 124-125).

(d) Conclusions

61. On the above basis, the Court concludes that the Government's preliminary objections must be dismissed.

62. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

63. The applicant argued that the credibility of her late father was not at any point called into question in the proceedings before the Finnish authorities. In the light of the information submitted to the domestic authorities and the relevant country information the authorities knew, or ought to have known, of the existence of a real risk of ill-treatment or loss of life if the applicant's father were returned to his country of origin, Iraq. The authorities had failed to take into account his personal circumstances,

background, previous experience of persecution and the cumulative factors in his personal circumstances pointing to an increased risk, as well as the Iraqi authorities' lack of ability and willingness to provide protection, and had ended up with an erroneous result in the risk assessment. This had resulted in the death of the applicant's father upon return.

64. The applicant stressed that the authorities had found the applicant's father's account credible and coherent. The country information had corroborated his credible claims but this had been completely ignored by the authorities. Their conclusions were therefore clearly erroneous. The Finnish authorities had also applied a standard of proof which was inconsistent with the Court's case-law, UNHCR guidelines and EU law. The applicant's father had clearly substantiated to a reasonable degree why his stay in Iraq had become intolerable: he had done everything to prove his case.

65. The applicant's father's account had clearly contained several elements distinguishing his case from the general perils in Baghdad. All parts of his account had been accepted as fact by the authorities. Although taken individually his personal circumstances might not have created a real risk for him, taken cumulatively they clearly amounted to a risk profile. No such cumulative assessment was ever made by the Finnish authorities. The authorities had rejected all of these individual reasons, considering that they had either taken place too long ago (working for Saddam Hussein's regime and for an American company) or that, alone, they would not increase his risk of being ill-treated. In particular, the fact that he had twice experienced persecutory acts targeted at him personally had increased this risk considerably. In another similar case concerning a lower ranking officer, the Finnish authorities had recognised, after the application of an interim measure by the Court, that the person in question would face a real risk of persecution if returned to Iraq (see *A.-G. v. Finland* (dec.), no. 27155/18, 3 September 2019).

66. Moreover, the applicant's father had requested an oral hearing before both the Administrative Court and the Supreme Administrative Court but his request had been denied by both courts. There was thus a violation of Articles 2 and 3 of the Convention.

(b) The Government

67. The Government noted that the Immigration Service had accepted as an established fact the applicant's father's account of his identity, nationality, background, and work history. The Service had also accepted as an established fact that the applicant's father had had a disagreement with another officer but it had been a dispute between two private individuals. It had appeared during the asylum interview that the applicant's father was not a member of the Baath party but had only been accused of being one. After the fall of Saddam Hussein's regime, he had been able to continue his work for the authorities and had even been promoted. On the basis of these

circumstances and the relevant country information, the Service had not accepted that the applicant's father would in the future risk being subjected to serious violations on account of his presumed Baath connections or the disagreement with another officer.

68. According to the Immigration Service, the applicant's father's description of his shooting had been brief. Nevertheless, the Service had accepted the shooting and the blowing up of his car, in the light of the relevant country information, as established facts while holding that they had nothing to do with the applicant's father's personal circumstances or background. As to his work for an American company, the Service had considered that it had not profiled the applicant's father personally so that he would be of any special interest to anyone. Nor had his Sunni background profiled him personally in such a manner that he would risk being subjected to serious violations of his rights in Iraq.

69. The Government noted that the Administrative Court had taken into account that the applicant's father had remained in Iraq for three and a half months after the blowing up of his car and had not reported any threats or violations of his rights. The court had considered that this incident, together with the shooting, had been connected with the general security situation in Iraq and not with the applicant's father's person. Moreover, the Administrative Court had held that the country information did not permit the conclusion that all Sunni Muslims in Baghdad risked suffering serious harm only on account of their staying in the city and their religious conviction.

70. Emphasising the importance of resisting the temptations offered by the benefit of hindsight, the Government maintained that both the Immigration Service and the Administrative Court had carefully examined all the asylum grounds and held, taking into account all relevant country information, that the applicant's father could not be granted asylum, subsidiary protection or a residence permit on other grounds. There was no indication that the domestic proceedings had lacked effective guarantees to protect the applicant's father against arbitrary *refoulement* or had otherwise been flawed. Moreover, the original death certificate had not been submitted to any Finnish authority or domestic court so they had thus not been in a position to verify its authenticity and origin. There was thus no violation of Articles 2 and 3 of the Convention.

2. The Court's assessment

(a) General principles

71. The Court has on many occasions acknowledged the importance of the principle of *non-refoulement* (see, for example, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 286, ECHR 2011, and *M.A. v. Cyprus*, no. 41872/10, § 133, ECHR 2013 (extracts)). The Court's main concern in

cases concerning the expulsion of asylum-seekers is "whether effective guarantees exist that protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled" (see, among other authorities, *M.S.S. v. Belgium and Greece*, cited above, § 286; *Müslim v. Turkey*, no. 53566/99, §§ 72-76, 26 April 2005; and *T.I. v. the United Kingdom* (dec.), no. 43844/98, ECHR 2000-III).

72. The Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (see, for example, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 113, ECHR 2012; *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII; and *F.G. v. Sweden* [GC], no. 43611/11, § 111, ECHR 2016). However, it would hardly be compatible with the "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment or punishment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 68, ECHR 2005-I, and *Soering*, cited above, § 88). Consequently, the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the destination country. In these circumstances, Article 3 implies an obligation not to deport the person in question to that country (see, among other authorities, *Saadi v. Italy* [GC], no. 37201/06, §§ 124-125, ECHR 2008).

73. Owing to the absolute character of the right guaranteed, Article 3 of the Convention applies not only to the danger emanating from State authorities but also where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able or willing to obviate the risk by providing appropriate protection (see *NA. v. the United Kingdom*, no. 25904/07, § 110, 17 July 2008; *F.H. v. Sweden*, no. 32621/06, § 102, 20 January 2009; and *J.K. and Others v. Sweden* [GC], no. 59166/12, § 80, 23 August 2016).

74. With regard to the assessment of evidence, it has been established in the Court's case-law that "the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of expulsion" (see *F.G. v. Sweden*, cited above, § 115, and *J.K. and Others v. Sweden,* cited above, § 87). The Court acknowledges that it must avoid allowing its assessment be influenced by the benefit of hindsight. The Court is not precluded, however,

from having regard to information which comes to light subsequent to the deportation. This may be of value in confirming or refuting the assessment that has been made by the Contracting Party of the well-foundedness or otherwise of an applicant's fears (see *Mamatkulov and Askarov,* cited above, § 69, and *X v. Switzerland*, no. 16744/14, § 62, 26 January 2017). The Contracting State therefore has the obligation to take into account not only the evidence submitted by the applicant but also all other facts which are relevant in the case under examination.

75. In assessing the weight to be attached to country material, the Court has found in its case-law that consideration must be given to the source of such material, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi*, cited above, § 143; *NA. v. the United Kingdom*, cited above, § 120; and *J.K. and Others v. Sweden,* cited above, § 88).

76. Regarding the burden of proof in expulsion cases, it is the Court's well-established case-law that it is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3; and that where such evidence is adduced, it is for the Government to dispel any doubts about it (see *F.G. v. Sweden*, cited above, § 120; *Saadi*, cited above, § 129; *NA. v. the United Kingdom*, cited above, § 111; and *J.K. and Others v. Sweden,* cited above, § 91).

77. Moreover, although a number of individual factors may not, when considered separately, constitute a real risk, the same factors may give rise to a real risk when taken cumulatively and when considered in a context of general violence and heightened security (see *NA. v. the United Kingdom*, cited above, § 130, and *J.K. and Others v. Sweden,* cited above, § 95). In its previous case-law, the Court has referred to the following elements, which may represent such risk factors: previous criminal record and/or arrest warrant, the age, gender and origin of a returnee, a previous record as a suspected or actual member of a persecuted group, and a previous asylum claim submitted abroad (see *NA. v. the United Kingdom*, cited above, §§ 143-144 and 146, and *J.K. and Others v. Sweden,* cited above, § 95).

78. Specific issues arise when an asylum-seeker alleges that he or she has been ill-treated in the past, since past ill-treatment may be relevant for assessing the level of risk of future ill-treatment. According to the established case-law, in the evaluation of the risk of future ill-treatment it is necessary to take due account of whether the applicant has made a plausible case that he or she was subjected to ill-treatment contrary to Article 3 of the Convention in the past (see *J.K. and Others v. Sweden,* cited above, § 99).

(b) Application of the above-mentioned principles in the present case

79. The Court notes at the outset that it does not see any reason to doubt that the applicant's father was killed in Iraq. Although the original death certificate was not submitted to the Finnish authorities or courts who thus were not in a position to verify its authenticity and origin, the Court finds that the submitted photocopies and translations of the death certificate together with the photocopies and translations of the police report provide sufficient proof of the matter.

80. In accordance with the general principles referred to in paragraph 74 above, the Court will consider the applicant's father's situation primarily as it presented itself at the time of his expulsion.

81. Thus, the Court must examine whether, in the light of the circumstances at the time of the removal of the applicant's father to Iraq, the Finnish authorities failed in their duty adequately to assess the risk that the applicant's father, if expelled, would be subjected to treatment contrary to Articles 2 and/or 3 of the Convention. The Court notes that the applicant's father consistently claimed before the domestic authorities that the reasons invoked by him and regarding his personal background, professional history and events preceding his flight from Iraq, gave rise to a real risk of death or ill-treatment if he were removed back there. He provided the domestic authorities with specific information about his personal situation and the reasons for his fear of ill-treatment and death. The applicant's father thus clearly adduced evidence capable of proving that there were substantial grounds for believing that, upon removal, he would be exposed to a real risk of being subjected to treatment contrary to Articles 2 and/or 3. It was thus for the Government to dispel any doubts about this.

82. The Finnish authorities and courts found the applicant's father's account of the factual background of his asylum application both credible and coherent. They thus accepted that the applicant's father could be of interest to the Iraqi authorities and/or non-State actors. In their decisions, the domestic authorities and courts extensively referred to relevant country information on Iraq. The Court observes that, as can be seen from the country information and materials publicly available to the domestic authorities and courts at the relevant time, there were then, *inter alia*, sectarian tensions between the Shia militia and the Sunni (Arab) Muslims; a number of incidents had been reported where Iraqis who had worked for Americans had been killed; and there was a heightened security situation in Baghdad which did not reach the level of indiscriminate violence but which in any case required decision makers to consider whether deportees' individual circumstances might nevertheless place them at increased risk. Moreover, in general, the Iraqi authorities in Baghdad were unable and unwilling to provide sufficient protection for Sunni Muslims (see paragraphs 38-42 above). The Court observes that any of these individual factors may not, when considered separately, necessarily have given rise to

a real risk. However, when taken cumulatively and when considered in a situation of general violence and heightened security concerns in Iraq at the relevant time, they could have given rise to such risk (see paragraph 77 above). It appears from the domestic decisions that such a cumulative assessment was not made at any stage by the domestic authorities and courts.

83. Even more importantly, the Court considers that the domestic authorities have not given adequate consideration to the fact that in the period preceding his decision to leave Iraq, the applicant's father had twice experienced violent acts of a life-threatening nature, albeit that on both occasions he escaped unhurt. The Court reiterates in this context that past ill-treatment may be relevant for assessing the level of risk of future ill-treatment. Both the incident in February 2015 when the applicant's father was shot at when leaving the Office with his driver and the car bomb which exploded in his car in April 2015 were acknowledged as facts by the Finnish authorities. However, the latter did not accept the contention that these acts were targeted at the applicant's father. Instead, these incidents were placed exclusively in the context of the general security situation in Baghdad. Given the circumstances relating to the personal background and professional profile of the applicant's father (see paragraphs 8 and 9 above), the Court does not see any plausible explanation as to why two serious incidents of this nature were not more carefully and specifically assessed in terms of the risk of the applicant's father having been targeted personally. In this context, the Court also notes that the altercation between the applicant's father and his colleague (see paragraph 9 above), was dismissed by the domestic authorities as a mere dispute between individuals, and not assessed in terms of its possible links with their respective religious affiliations and the tensions between the Shia and Sunni groups, nor with the subsequent violent events mentioned above.

84. In the light of the above observations, the Court is not convinced in the present case that the quality of the assessment conducted by the domestic authorities regarding the relevant facts and the risk to which the applicant's father would be exposed upon removal to Iraq satisfied the requirements under Articles 2 and 3 of the Convention. It also reiterates that the Grand Chamber of the Court found a conditional violation of Article 3 in a relatively similar case concerning Iraq in August 2016 (see *J.K. and Others v. Sweden*, cited above).

85. Hence, the Court finds that the domestic authorities and courts were aware, or ought to have been aware, of facts which indicated that the applicant's father could be exposed to a danger to life or a risk of ill-treatment upon his returning to Iraq. The Court therefore concludes that the Finnish authorities and courts failed to comply with their obligations under Articles 2 and/or 3 of the Convention when dealing with the applicant's father's asylum application.

86. There has accordingly been a violation of Articles 2 and 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION CONCERNING THE APPLICANT

87. The applicant also complained under Article 3 of the Convention that her father's expulsion and his violent death caused her considerable suffering. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Submissions by the parties

88. The Government raised the preliminary objection that the applicant could not be considered a direct victim under Article 3 on her own as her father could not be considered a victim under Articles 2 and 3 of the Convention. Moreover, she had failed to exhaust the domestic remedies in this respect. This complaint should thus be declared inadmissible under Article 35 §§ 1, 3 (a) and 4 of the Convention.

89. The Government noted that the applicant had not even claimed to have experienced any period of uncertainty as to her father's fate, nor had she been a direct witness to the events in Iraq. She was not able to demonstrate any evidence of a causal link between her father's decision to return voluntarily to his country of origin and his death, which could be seen as engaging the State's responsibility. In the special circumstances of the case, the Government were of the view that there were no such special factors in place giving the applicant's suffering a dimension and character distinct from the emotional distress which inevitably stemmed from the alleged violation itself. There was thus no violation of Article 3 of the Convention.

90. The applicant claimed to be a direct victim of a violation of Article 3 due to the fact that the State of Finland had decided to expel her father, following which he was violently killed within three weeks, causing her a considerable suffering. There was no appropriate and effective remedy for her to exhaust at the national level as Finnish law did not recognise the award of compensation for non-pecuniary damage in cases of human rights violations. Chapter 5, sections 4a and 6, of the Tort Liability Act applied only if the death was caused by a wilful act or gross negligence committed by the authorities. Although the Finnish authorities' responsibility was triggered under the Convention, the present case did not amount to wilful killing or death caused by gross negligence. Otherwise, the Tort Liability Act provided compensation only for pecuniary damage.

B. The Court's assessment

91. The Court notes that, in addition to their status as "indirect victims", family members can also be "direct victims" of treatment contrary to Article 3 of the Convention on account of the suffering stemming from serious human rights violations affecting their relatives (see the relevant criteria in *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 177-181, ECHR 2013, and *Selami and Others v. the former Yugoslav Republic of Macedonia*, no. 78241/13, §§ 54-56, 1 March 2018). As there is no doubt about the victim status of the applicant's father, the applicant can be considered a victim due to the suffering stemming from her father's fate.

92. The Court reiterates that the existence of a remedy to be exhausted before addressing the Court must be sufficiently certain not only in theory but in practice, failing which it will lack the requisite accessibility and effectiveness (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 222, ECHR 2014 (extracts)).

93. The Court notes that, in the present case, there is no need to rule on the effectiveness of the domestic remedies as, in any case, the applicant's complaint is manifestly ill-founded.

94. The Court has always been sensitive in its case-law to the profound psychological impact of a serious human rights violation on the victim's family members who are applicants before the Court. However, in order for a separate violation of Article 3 of the Convention to be found in respect of the victim's relatives, there should be special factors in place giving their suffering a dimension and character distinct from the emotional distress inevitably stemming from the aforementioned violation itself. The relevant factors include the proximity of the family ties, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question and the involvement of the applicants in the attempts to obtain information about the fate of their relatives (see *Janowiec and Others*, cited above, § 177, and *Selami and Others*, cited above, § 54).

95. The Court notes that the applicant is a 23-year-old woman who married in October 2015 and has two small children born in 2016 and 2017 respectively. Although she had a very close relationship with her father, it does not appear from the case file that they lived in a single household. After her father returned to Iraq, the applicant was unaware of his whereabouts for about fifteen days (see paragraphs 20-22 above). In the Court's view, such a short period of uncertainty as to his fate is not sufficient for her emotional suffering on those grounds to constitute

inhuman treatment contrary to Article 3 of the Convention. Nor was the applicant a direct witness to the events leading to his death (see *Selami and Others*, cited above, § 55). Lastly, the applicant has not shown that she was in some manner involved in the attempts to obtain information on her father from the Iraqi authorities.

96. In these circumstances, the Court does not consider that there are special elements which give the applicant's suffering a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human-rights violation.

97. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

99. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

100. The Government considered the amount claimed in respect of non-pecuniary damage excessive and were of the view that a finding of a violation constituted in itself sufficient just satisfaction. In any event, an award for non-pecuniary damage should not exceed EUR 1,000.

101. Having regard to the circumstances giving rise to the violation of Articles 2 and 3 in the present case, while bearing in mind the principle of *ne ultra petitum* ("not beyond the request" or "not beyond the scope of the dispute"), the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

102. The applicant also claimed EUR 4,923.50 for the costs and expenses incurred before the Court.

103. The Government noted that an expense of EUR 199 relating to the translation of the Court's upcoming judgment had not yet been incurred and should not therefore be compensated for. In any event, the applicant's claim for costs and expenses was excessive as to quantum. The Government considered that the award in this respect should not exceed EUR 800.

104. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,500 for the proceedings before the Court.

C. Default interest

105. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Articles 2 and 3 of the Convention in respect of the applicant's father admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Articles 2 and 3 of the Convention in respect of the applicant's father;

3. *Holds*,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Ksenija Turković
Registrar	President