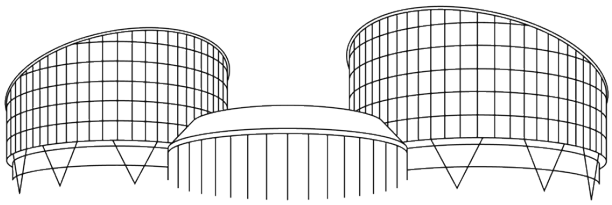

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF M.K.N. v. SWEDEN

(Application no. 72413/10)

STRASBOURG

27 June 2013

FINAL

09/12/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M.K.N. v. Sweden,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
André Potocki,
Paul Lemmens,
Helena Jäderblom, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 28 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 72413/10) against the Kingdom of Sweden 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 ("the applicant") on 24 November 2010. The President of the Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr A. Jussil, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agents, Ms C. Hellner and Ms H. Lindquist, of the Ministry for Foreign Affairs.

3. The applicant alleged that his deportation to Iraq would involve a violation of Article 3 of the Convention.

4. On 14 December 2010 the President of the Section to which the case had been allocated decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicant should not be deported to Iraq for the duration of the proceedings before the Court.

5. On 22 September 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1959 and originates from Mosul.

7. The applicant arrived in Sweden on 2 January 2008 and applied for asylum two days later. In support of his application, he submitted in essence the following. He is Christian, and is married and has two children. His wife and children lived in Syria. He claimed that he had been persecuted due to his Christian beliefs and the fact that he was well-off as part-owner of a sheet-metal workshop. In August 2006 he had been kidnapped at his work place. The kidnappers had told him to pay money to Al-Tawahid and Al-Jihad, groups fighting against the American troops. After paying 50,000 U.S. dollars he had been released. In December 2006 he had again been contacted by the groups mentioned, which demanded more money. They had threatened to kill his children and to blow up his workshop, if he failed to pay. He and his family had therefore left their house and stayed with various friends. Two months later, he had been told that his workshop had been plundered and blown up. In September 2007 the applicant and his family had left for Syria with the help of a smuggler. However, they had returned to Iraq shortly thereafter, since the smuggler could not arrange for their departure from Syria. Again, they had stayed with friends. In December 2007 the applicant had departed for Sweden. The rest of the family had left for Syria, where they remained in difficult circumstances. The applicant also claimed that his sister-in-law had been murdered outside her work place in late 2008, allegedly as retribution against the applicant and his family.

8. On 3 March 2009 the Migration Board (*Migrationsverket*) rejected the application. The Board noted that a long time had passed since the alleged incidents had taken place. It further pointed out that the applicant had stayed in Mosul for almost a year after the kidnapping in 2006 without facing any further threats. Also, the family had returned to Iraq after they had left for Syria. The Board further considered that there was nothing to indicate a connection between the applicant and the murder of his sister-in-law. In sum, there was no individual threat against the applicant.

9. The applicant appealed, adding that there was no internal relocation alternative for him in the Kurdistan Region, as there were entry restrictions and a requirement of a sponsor. Moreover, it was not a reasonable alternative due to the lack of, for instance, work, housing and food. Furthermore, he claimed that, after his departure from Iraq, the Mujahedin had found out that he had had a homosexual relationship and that, as a consequence, his partner had been stoned to death. The Mujahedin had also been looking for the applicant in 2009 due to this relationship. He had not revealed this information earlier as he had not been aware that homosexual

relationships were accepted in Sweden. Despite this relationship, his intention was to continue living with his wife.

10. In reply, the Migration Board submitted that the applicant, as a Christian, had a need of protection in regard to Mosul, according to the latest country information. However, he was not facing any risks outside of Mosul and the Kurdistan Region constituted a reasonable relocation alternative. As to the new personal information given by the applicant, the Board noted that it had not been submitted in the beginning of the proceedings, although the applicant must have understood the importance of stating all the important facts at once. Noting that there was no substantiation for the claim, the Board found that the story lacked credibility.

11. On 18 May 2010 the Migration Court (*Migrationsdomstolen*) upheld the decision of the Board. Like the Board, the court noted that a long time had passed since the occurrence of the alleged incidents. It further held that they were rather connected to the general security situation in Iraq than to the applicant's religious affiliation. In regard to the applicant's statement that he had had a homosexual relationship, the court found that he had not given a reasonable explanation for his having made this claim so late in the proceedings. It noted, in this respect, that he had been informed, during the interviews at the Board, that civil servants of the Board and all other people present were bound by professional secrecy. Having regard to this and the applicant's account of the events, the court found reason to strongly question the veracity of this statement. Referring to recent country information, the court went on to state that there was no reason to deviate from the Board's assessment that, being a Christian from Mosul, the applicant was in need of protection. In regard to the possibility of internal relocation, it held, however, that recent country information showed that there were no restrictions against entering the Kurdistan Region and that there were no systematic discrimination of any religious groups in that area. Considering this and the fact that the applicant was an adult married man in good health, the court found that it was reasonable for him to relocate to the Kurdistan Region.

12. On 13 July 2010 the Migration Court of Appeal (*Migrations-överdomstolen*) refused the applicant leave to appeal.

II. RELEVANT DOMESTIC LAW

13. The basic domestic provisions applicable in the present case are set out in *M.Y.H. and Others v. Sweden* (no. 50859/10, §§ 14-19, 27 June 2013 – in the following referred to as "*M.Y.H. and Others*").

III. RELEVANT INFORMATION ABOUT IRAQ

14. Extensive information about Iraq can be found in *M.Y.H. and Others*, §§ 20-36.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained that his return to Iraq would involve a violation of Article 3 of the Convention. This provision reads as follows:

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

A. Admissibility

16. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been invoked or established. It must therefore be declared admissible.

B. Merits

1. The submissions of the parties

(a) The applicant

17. The applicant claimed that, should he be returned to Mosul or other parts of Iraq, he would face a real risk of being subjected to treatment in breach of Article 3. He asserted that this claim was not based only on the general situation of violence in Iraq, but also on the fact that he was Christian. In his reply to the Government's observations in the present case, he also invoked his relationship with another man.

18. The applicant maintained that the events that he had experienced in Iraq attested to his being at real risk upon return. He referred to what he had stated about his kidnapping and the destruction of his sheet-metal workshop, the veracity of which had not been questioned in the domestic proceedings. The applicant was convinced that these incidents, as well as the murder of his sister-in-law, were interrelated and connected to his Christian beliefs, but the Migration Board and the Migration Court had erroneously concluded that they were rather due to the general security situation in Iraq,

despite the allegedly well-known fact that such crimes often had religious undertones. Also, contrary to what the Migration Court had found, the applicant maintained that he had left a reasonable explanation as to why he had not invoked his homosexual relationship earlier in the asylum proceedings and that, consequently, he should be given the benefit of the doubt in regard to this claim.

19. The applicant further stated that available country-of-origin information showed that Christians were subjected to lethal violence and economically motivated kidnappings in Iraq. He claimed that the Migration Board and the Migration Court had failed to take proper account of such relevant and objective information in the domestic proceedings.

20. As regards internal relocation, the applicant submitted that the crimes and persecution committed towards him and the threats he had received were so serious that it was not reasonable for him to relocate to the Kurdistan Region. Pointing out the short distance between Mosul and the Kurdistan Region, he stated that he would not be safe there.

(b) The Government

21. The Government acknowledged that country-of-origin information showed that the general security situation in the southern and central parts of Iraq was still serious and that Christians was one of the more exposed groups, in particular in Mosul. However, the Government maintained that there was no general need of protection for all Christians from Iraq and, that, consequently, assessments of protection needs should be made on an individual basis.

22. As to the applicant's personal situation, the Government pointed out that he had stayed in Mosul for almost a year after his kidnapping and the destruction of his workshop without anything further happening to him. Moreover, they contended that he had failed to show that these incidents were linked to his religious beliefs. As they could rather be seen as related to the general security situation in Iraq, the Government questioned that there would be a real risk of ill-treatment by members of Al-Tawahid and Al-Jihad upon return. As regards the applicant's claim that he had had a relationship with another man, the Government, while not underestimating the concerns that may legitimately be expressed with respect to the current situation of homosexuals in Iraq, pointed out that the applicant had expressed that the relationship had been conducted in secrecy and that he intended to stay with his wife and children. Thus, he had no intention to publicly demonstrate his sexual orientation upon return.

23. In any event, referring to international reports on Iraq as well as information obtained from the Migration Board, the Government contended that there was an internal flight alternative for the applicant in the three northern governorates of the Kurdistan Region. Allegedly, he would be able to enter without any restrictions or sponsor requirements into this region,

which had been identified as the safest and most stable in Iraq, and he would be able to settle there, with access to the same public services as other residents. As to the applicant's personal circumstances in relation to the possibility to relocate internally, the Government stressed that he is an adult man, born in 1959, and that no information had emerged about his health or any other circumstances that indicated that he was not fit for work. Thus, he would be able to provide for himself, even in an area of Iraq where he lacked a social network. Furthermore, his wife and children, currently living in Syria, would be able to join him in the Kurdistan Region. Also, in the Government's view, the homosexual relationship that he claimed to have had would not prevent him from settling there.

24. The Government further asserted that the Migration Board and the courts had provided the applicant with effective guarantees against arbitrary *refoulement* and had made thorough assessments, adequately and sufficiently supported by national and international source materials. In the proceedings, the applicant had been given many opportunities to present his case, through interviews conducted by the Board with an interpreter present and at an oral hearing held by the Migration Court, at all stages assisted by legal counsel. Moreover, having regard to the expertise held by the migration bodies, the Government maintained that significant weight should be given to their findings.

2. The Court's assessment

(a) General principles

25. 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, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, judgment of 28 May 1985, Series A no. 94, p. 34, § 67; *Boujlifa v. France*, judgment of 21 October 1997, *Reports* 1997-VI, p. 2264, § 42; and *Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, 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 receiving country. In these circumstances, Article 3 implies the 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-...).

26. The assessment of whether there are substantial grounds for believing that the applicant faces such a real risk inevitably requires that the Court assesses the conditions in the receiving country against the standards of Article 3 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC],

nos. 46827/99 and 46951/99, § 67, ECHR 2005-I). These standards imply that the ill-treatment the applicant alleges he will face if returned must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this is relative, depending on all the circumstances of the case (*Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). Owing to the absolute character of the right guaranteed, Article 3 of the Convention may also apply 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 to obviate the risk by providing appropriate protection (*H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, § 40).

27. The assessment of the existence of a real risk must necessarily be a rigorous one (*Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 96; and *Saadi v. Italy*, cited above, § 128). 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 would be exposed to a real risk of being subjected to treatment contrary to Article 3. In this respect, the Court acknowledges that, owing to the special situation in which asylum seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when it comes to assessing the credibility of their statements and the documents submitted in support thereof. However, when information is presented which gives strong reasons to question the veracity of an asylum seeker's submissions, the individual must provide a satisfactory explanation for the alleged discrepancies (see, among other authorities, *Collins and Akaziebie v. Sweden* (dec.), no. 23944/05, 8 March 2007; and *Hakizimana v. Sweden* (dec.), no. 37913/05, 27 March 2008).

28. In cases concerning the expulsion of asylum seekers, the Court does not itself examine the actual asylum applications or verify how the States honour their obligations under the Geneva Convention relating to the status of refugees. It must be satisfied, though, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other contracting or non-contracting states, agencies of the United Nations and reputable non-governmental organisations (*NA. v. the United Kingdom*, no. 25904/07, § 119, 17 July 2008).

(b) The general situation in Iraq

29. The Court notes that a general situation of violence will not normally in itself entail a violation of Article 3 in the event of an expulsion (*H.L.R. v. France*, cited above, § 41). However, the Court has never excluded the possibility that the general situation of violence in a country of destination may be of a sufficient level of intensity as to entail that any

removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (*NA. v. the United Kingdom*, cited above, § 115).

30. While the international reports on Iraq attest to a continued difficult situation, including indiscriminate and deadly attacks by violent groups, discrimination as well as heavy-handed treatment by authorities, it appears that the overall situation is slowly improving. In the case of *F.H. v. Sweden* (no. 32621/06, § 93, 20 January 2009), the Court, having at its disposal information material upto and including the year 2008, concluded that the general situation in Iraq was not so serious as to cause, by itself, a violation of Article 3 of the Convention in the event of a person's return to that country. Taking into account the international and national reports available today, the Court sees no reason to alter the position taken in this respect four years ago.

31. However, the applicant did not only claim that the general situation in Iraq was too unsafe for his return, but also that his status as a member of the Christian minority as well as his personal circumstances would put him at real risk of being subjected to treatment prohibited by Article 3.

(c) The situation of Christians in Iraq

32. In the mentioned case of *F.H. v. Sweden*, following its conclusion that the general situation in Iraq was not sufficient to preclude all returns to the country, the Court had occasion to examine the risks facing the applicant on account of his being Christian. It concluded then that he would not face a real risk of persecution or ill-treatment on the basis of his religious affiliation alone. In so doing, the Court had regard to the occurrence of attacks against Christians, some of them deadly, but found that they had been carried out by individuals rather than organised groups and that the applicant would be able to seek protection from the Iraqi authorities who would be willing and able to help him (§ 97 of the judgment).

33. During the subsequent four years, attacks on Christians have continued, including the attack on 31 October 2010 on the Catholic church Our Lady of Salvation in Baghdad, claiming more than 50 victims. The available evidence rather suggests that, in comparison with 2008/09, such violence has escalated. While still the great majority of civilians killed in Iraq are Muslims, a high number of attacks have been recorded in recent years which appear to have specifically targeted Christians and been conducted by organised extremist groups. As noted by the UNHCR (see *M.Y.H. and Others*, § 25) and others, Christians form a vulnerable minority in the southern and central parts of Iraq, either directly because of their faith or because of their perceived wealth or connections with foreign forces and countries or the practice of some of them to sell alcohol. The UK Border

Agency concluded in December 2011 that the authorities in these parts of the country were generally unable to protect Christians and other religious minorities (*M.Y.H. and Others*, § 26).

34. The question arises whether the vulnerability of the Christian group and the risks which the individuals face on account of their faith make it impossible to return members of this group to Iraq without violating their rights under Article 3. The Court considers, however, that it need not determine this issue, as there is an internal relocation alternative available to them in the Kurdistan Region. This will be examined in the following.

(d) The possibility of relocation to the Kurdistan Region

35. The Court reiterates that Article 3 does not, as such, preclude Contracting States from placing reliance on the existence of an internal flight or relocation alternative in their assessment of an individual's claim that a return to the country of origin would expose him or her to a real risk of being subjected to treatment proscribed by that provision. However, the Court has held that reliance on such an alternative does not affect the responsibility of the expelling Contracting State to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3. Therefore, as a precondition of relying on an internal flight or relocation alternative, certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of his or her ending up in a part of the country of origin where there is a real risk of ill-treatment (*Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 266, 28 June 2011, with further references).

36. The three northern governorates – Dahuk, Erbil and Sulaymaniyah – forming the Kurdistan Region of Iraq, or KRI, are, according to international sources, a relatively safe area. While there have been incidents of violence and threats, the rights of Christians are generally considered to be respected. As noted by various sources, large numbers of Christians have travelled to the Kurdistan Region and found refuge there.

37. As regards the possibility of entering the KRI, some sources state that the border checks are often inconsistent, varying not only from governorate to governorate but also from checkpoint to checkpoint (see the UNHCR Guidelines and the Finnish/Swiss report, which appears to rely heavily on the UNHCR's conclusions in this respect, *M.Y.H. and Others*, §§ 30 and 35 respectively). However, the difficulties faced by some at the KRI checkpoints do not seem to be relevant for Christians. This has been noted by, among others, the UNHCR. Rather, members of the Christian group are given preferential treatment as compared to others wishing to enter the Kurdistan Region. As stated by a representative of an international organisation and the head of Asaysih, the KRI general security authority, to

investigators of the Danish/UK fact-finding mission, this is because Christians are at particular risk of terrorist attacks in southern and central Iraq and as the Christians are not considered to pose any terrorist threat themselves (at 4.34 and 8.19 of the report, *M.Y.H. and Others*, § 36).

38. Moreover, while Christians may be able to enter the three northern governorates without providing any documentation at all (see Danish/UK report, at 4.34), in any event there does not seem to be any difficulty to obtain identity documents in case old ones have been lost. As concluded by the UK Border Agency (*M.Y.H. and Others*, § 31) and the UK Upper Tribunal in the recent country guidance case of *HM and others* (*M.Y.H. and Others*, § 34), it is possible for an individual to obtain identity documents from a central register in Baghdad, which retains identity records on microfiche, whether he or she is applying from abroad or within Iraq. In regard to the need for a sponsor resident in the Kurdistan Region, the Upper Tribunal further concluded, in the case mentioned above, that no-one was required to have a sponsor, whether for their entry into or for their continued residence in the KRI. It appears that the UNHCR is of the same opinion as regards entry, although its statement in the Guidelines directly concerns only the requirements of a tourist (*M.Y.H. and Others*, § 30). The Finnish/Swiss report states that Christians may be able to nominate senior clerics as sponsors (*M.Y.H. and Others*, § 35); thus, they do not have to have a personal acquaintance to vouch for them.

39. Internal relocation inevitably involves certain hardship. Various sources have attested that people who relocate to the Kurdistan Region may face difficulties, for instance, in finding proper jobs and housing there, not the least if they do not speak Kurdish. Nevertheless, the evidence before the Court suggests that there are jobs available and that settlers have access to health care as well as financial and other support from the UNHCR and local authorities. In any event, there is no indication that the general living conditions in the KRI for a Christian settler would be unreasonable or in any way amount to treatment prohibited by Article 3. Nor is there a real risk of his or her ending up in the other parts of Iraq.

40. In conclusion, therefore, the Court considers that relocation to the Kurdistan Region is a viable alternative for a Christian fearing persecution or ill-treatment in other parts of Iraq. The reliance by a Contracting State on such an alternative would thus not, in general, give rise to an issue under Article 3.

(e) The particular circumstances of the applicant

41. It remains for the Court to determine whether, despite what has been stated above, the personal circumstances of the applicant would make it unreasonable for him to settle in the Kurdistan Region. In this respect, the Court first notes that the applicant's account was examined by the Migration Board and the Migration Court, which both gave extensive reasons for their

decisions that he was not in need of protection in Sweden. The applicant was able to present the arguments he wished with the assistance of legal counsel and language interpretation.

42. As regards the incidents to which the applicant was subjected in Iraq, as well as the alleged murder of his sister-in-law, the Court notes, without underestimating their serious nature, that they all occurred in Mosul between 2006 and 2008. It has not been substantiated that the perpetrators of these crimes would have a continued interest in the applicant several years after the events or that they would search for him in the Kurdistan Region. Nor is there any indication that he would suffer further injustice there on account of his Christian beliefs.

43. Turning to the applicant's statement that he had had a sexual relationship with another man and that, as a consequence, the Mujahedin was looking for him in 2009 and that they had killed his partner, the Court is aware of the very difficult situation for real or perceived homosexuals in Iraq and that these difficulties are present also in the Kurdistan Region. It notes, however, that the applicant has expressed the intention of living with his wife and children. More importantly, the Court has regard to the fact that, in the domestic proceedings, the applicant did not make this claim until he appealed against the Migration Board's negative decision on his asylum application, more than one year after his arrival in Sweden. Moreover, no mention of the relationship in question was made in the present proceedings before he replied to the Government's observations, almost a year and a half after lodging the application to the Court. In this connection, it is noteworthy that, in that application, he stated that there were threats against him emanating from Al-Tawahid and Al-Jihad, but did not even mention the Mujahedin. The Court agrees with the Migration Court that the applicant did not give a reasonable explanation for the delay in making this claim in the domestic proceedings. Having regard to all the circumstances, including the similar delay in the present proceedings, the Court considers that the applicant's claim concerning the homosexual relationship is not credible.

(f) Conclusion

44. Having regard to the above, the Court concludes that, although the applicant, as Christian, belongs to a vulnerable minority and irrespective of whether he can be said to face, as a member of that group, a real risk of treatment proscribed by Article 3 of the Convention in the southern and central parts of Iraq, he may reasonably relocate to the Kurdistan Region, where he will not face such a risk. Neither the general situation in that region, including that of the Christian minority, nor any of the applicant's personal circumstances indicate the existence of said risk.

Consequently, his deportation to Iraq would not involve a violation of Article 3.

II. RULE 39 OF THE RULES OF COURT

45. The Court recalls that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

46. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see § 4 above) must continue in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the application admissible;

2. *Holds* by five votes to two that the implementation of the deportation order against the applicant would not give rise to a violation of Article 3 of the Convention;

3. *Decides* unanimously to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to deport the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 27 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Power-Forde joined by Judge Zupančič is annexed to this judgment.

M.V.
C.W.

DISSENTING OPINION OF JUDGE POWER-FORDE JOINED BY JUDGE ZUPANČIČ

For the same reasons as those set out in my dissenting opinion in the case of *M.Y.H. and Others v. Sweden*, I voted against the majority in finding that Article 3 would not be breached in the event that the deportation order made in respect of this applicant were to be executed.

My dissent was based on the failure of the majority to test whether the requisite guarantees required by the Court's case law prior to a deportation based on internal flight options, were established in this case.