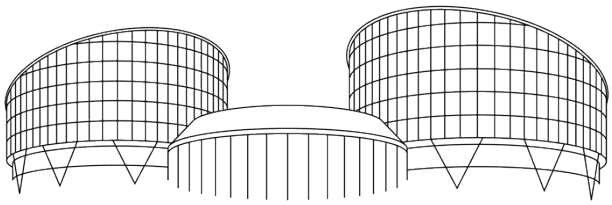

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF N. v. SWEDEN

(Application no. 23505/09)

JUDGMENT

STRASBOURG

20 July 2010

FINAL

20/10/2010

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

In the case of N. v. Sweden,

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

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 29 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 23505/09) 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 Afghan national, Ms N. ("the applicant"), on 28 April 2009. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms Irina Tkatsenko, a lawyer practising in Stockholm. The Swedish Government ("the Government") were represented by their Agent, Ms Inger Kalmerborn from the Ministry for Foreign Affairs.

3. The applicant alleged that an implementation of the order to deport her to Afghanistan would be in breach of Article 3 of the Convention.

4. On 11 May 2009 the President of the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to deport the applicant until further notice. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The applicant and the Government each filed written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Proceedings before the Swedish authorities and courts

6. The applicant was born in 1970 and lives in Fagersta.

7. On 13 August 2004 the applicant and her husband, X, arrived in Sweden and on 16 August 2004 they applied to the Migration Board (*Migrationsverket*) for asylum and residence permits. The applicant was interviewed on 4 October 2004 and 8 March 2005. She had no identity papers and could not prove her identity. She stated that she was born and grew up in Kabul, where her parents, one of her two brothers, an aunt and an uncle resided. Her other brother had left Afghanistan a long time ago. She also had an uncle in Mazar-e-Sharif. The applicant had attended school for twelve years in Kabul and had studied at the university.

8. The applicant and her spouse also submitted that they had been persecuted since 1996 because X had been a politically active member of the communist party, leading to his arrest on two occasions. Following his second release they had moved to Kabul, but they alleged that some fundamentalists had come looking for X there as well with the intention of killing him. The applicant submitted that she also had shown her political stance by acting as a teacher for women, which was not accepted by parts of the leading elite in Kabul. Therefore, they had fled the country. When they had left their home, they had stayed with her uncle in Mazar-e-Sharif and the latter had helped them finance their journey to Sweden by paying a smuggler 24,000 US Dollars. Lastly, X invoked his poor mental health, stating that he was suffering from anxiety, sleeplessness and aggressive behaviour.

9. On 29 March 2005 the Migration Board rejected the couple's application. It first noted that the security situation in Afghanistan varied between different parts of the country but that it was better in Kabul than in other parts of the country. The Board then considered that X had given vague information about his activities and had failed to demonstrate that he had held a prominent or leading position within the communist party. Hence, it questioned the claim that his life would be endangered because of his membership of that party. The Board therefore found that neither X nor the applicant had shown that they had been persecuted in Afghanistan or that they would risk persecution upon return. Thus, even having regard to X's poor mental health, the Board found that there were no grounds on which to grant them leave to remain in Sweden.

10. The applicant and her husband appealed against the decision to the then Aliens Appeal Board, which subsequently transmitted the case to the Migration Court (*Migrationsdomstolen*). The applicant maintained her claims and added that the threats against her and X stemmed from X's previous political activities and from her activities in educating women and that the authorities had not been able to protect them, not even in Kabul. The applicant further submitted that she had separated from X in June 2005, lived alone and intended to obtain a divorce although X opposed it. Due to this, she had been criticised by some of X's friends, been called a "bad woman" and some other Afghans had spread untrue rumours about her. By separating from X, she had broken with Afghan traditions which meant that she risked serious persecution if forced to return to her home country. In this respect, she pointed out that she would not be able to obtain a divorce in Afghanistan and that by trying to obtain a divorce in Sweden she had dishonoured both her own and X's family. Consequently, her own family had disowned her and she would risk reprisals from X's family. It would also be impossible for her to find work and, since she and X had no children, she would be a social outcast. She further mentioned that the punishment for adultery in Afghanistan was stoning. Lastly, she stated that she suffered from psychological problems and was in need of treatment in Sweden.

11. The Migration Board contested the appeal and submitted, *inter alia*, that X had stated that his father had held a higher position than him in the party but that he had not been threatened. It further claimed that, having regard to X's poor mental health, it should be possible for the applicant to obtain a divorce. Moreover, it appeared that X would agree to a divorce. Lastly, it did not question that the applicant's family was dissatisfied with her decision to separate from her husband but it had not been shown that they had disowned her.

12. On 19 March 2007, after holding an oral hearing, the Migration Court rejected the appeal. It first considered that it had not been shown that X, on account of his previous political activities, would be of interest to any resistance groups in Afghanistan. It then observed that quite some time had passed since the applicant had taught women in her home country. Moreover, the court noted that the previous Taliban ban on education for women had been replaced by affirmative action for women and that the constitution stated that the State should actively support women's education. Therefore, the court found that the applicant had not demonstrated that she had a well-founded fear of persecution because of her previous work as a women's teacher. As concerned the applicant's personal life, the court observed that she had not formally divorced X although they had separated. In its view, nothing had appeared in the case which showed that the applicant faced a concrete and individual risk of persecution for having broken with Afghan traditions. It further noted that the applicant had stated

that she had not had an extramarital affair, for which reason there was no risk that she would be convicted of adultery and sentenced to death. In this respect, the court considered that the applicant had not shown that the alleged rumours about her had come to the knowledge of the Afghan authorities. Turning to her claim that she would lack a social network in Afghanistan, the court found that the applicant had not demonstrated that her family in Afghanistan had rejected her and, hence, she had a social network there. It further took into account that she was well-educated and thus concluded that she had failed to show that she would face a real risk of being persecuted or subjected to inhuman or degrading treatment or punishment. Therefore, and since the court did not find that any of the other reasons submitted by the applicant were sufficient to grant her exceptional leave to remain, the appeal was rejected.

13. The minority of the court wanted to grant the applicant leave to remain in Sweden on the ground that, since she did not have any children and had separated from her husband, she had shown that she would risk degrading treatment upon return to her home country.

14. The applicant appealed against the judgment to the Migration Court of Appeal (*Migrationsöverdomstolen*) which, on 4 September 2007, refused leave to appeal. This decision was final and the applicant's deportation order thus became enforceable.

15. On 27 October 2007 invoking new circumstances, the applicant lodged an application for a residence permit under Chapter 12, Section 18, of the Aliens Act, which was refused by the Migration Board.

16. On 28 January 2008 the applicant lodged a new application for a residence permit under Chapter 12, Section 18, of the Aliens Act, which was refused by the Migration Board.

17. In February 2008 the applicant petitioned the District Court (*tingsrätten*) of Västmanland for a divorce from X. The latter informed the District Court on 17 July 2008 that he opposed a divorce. The applicant submitted that she had separated from her husband in 2005 and only seen him once since then. Moreover, she intended to invoke the divorce as one of the grounds to stop her deportation.

18. In a decision of 19 November 2008, the court dismissed her petition on the ground that it was not competent to dissolve her marriage since she did not have a legal right to reside in Sweden.

19. In the meantime, on 17 October 2008, the applicant requested the Migration Board to re-evaluate her case and stop her deportation. As grounds for her request, she claimed that the situation in Kabul had worsened considerably since the Migration Board's previous decision. She further alleged that she now had a well-founded fear of persecution upon return to Afghanistan since she had started a relationship with a Swedish man. Thus, she had committed adultery and risked the death penalty in

Afghanistan. She had not been in touch with her family since the summer of 2005.

20. She also submitted a letter from the UNHCR Regional Office for the Baltic and Nordic Countries, dated 2 October 2008, which stated, *inter alia,* the following:

> "UNHCR's views on the protection needs of Afghan female asylum-seekers are fully set forth in the UNHCR's *Eligibility Guidelines for Assessing the International Protection needs of Afghan Asylum-seekers*. ... In the context of Afghanistan, UNHCR would like to draw to your attention to the fact that an assessment of a refugee claim of an Afghan female asylum-seeker, should take into account the specifically vulnerable situation in which Afghan women are found, including pressure from within families, communities, and by the public to conform [to] behaviour in accordance with particular codes of behaviour. In this regard, a separation and/or divorce effected in the country of asylum, may indicate adoption of a Westernised way of life and be perceived as, or actually transgressing, prevailing social mores and thereby indicates a heightened risk of *sur place* persecution linked to the grounds of religion and/or political opinion under the scope of Article 1 A (2) of the 1951 Refugee Convention. ... UNHCR notes that Afghan female asylum-seekers' reliance for relative social, cultural and economic freedom is exclusively dependent on the existence of male protection (husband, father, brother or extended family member) and that lack of such networks may seriously undermine a returnee's personal physical, economic and emotional security."

21. On 24 October 2008 the Migration Board refused to reconsider the applicant's case as she had failed to invoke any new circumstances of importance. It considered that the applicant had only developed and clarified those grounds which had already been examined by it and the migration courts. The Board also found that there were no impediments to the enforcement of the deportation order.

22. The applicant appealed against the decision to the Migration Court, maintaining the grounds invoked before the Board and insisting that these were new circumstances of importance. On 4 December 2008 the court rejected the appeal, upholding the Board's decision and reasoning in full.

23. On 21 January 2009 the Migration Court of Appeal refused leave to Appeal and, on 17 February 2009, the case was transferred to the Police Authority to enforce the deportation order.

24. Finally, on 17 April 2009 the applicant lodged a third application for a residence permit under Chapter 12, Section 18, of the Aliens Act, which was refused by the Migration Board.

B. Proceedings and new submissions before the Court

25. On 28 April 2009 the applicant lodged the case with the Court and on 11 May 2009 the President of the Chamber decided to apply Rule 39 of the Rules of Court, indicating to the Government that it was desirable in the interests of the parties and the proper conduct of the proceedings not to deport the applicant until further notice

26. In her observations of 4 November 2009 the applicant submitted that already before leaving Afghanistan, she had told her mother about her problems with her husband. In October 2005 the applicant had called home and told her mother that she and her husband had separated. The mother had become very upset and said that it was totally wrong and that the applicant should go back to her husband. She had then talked to her father who became furious and shouted that she brought dishonour to the family. The conversation had ended because the applicant ran out of money on her telephone card. The father had called her back the following day to try to persuade her to change her mind and talked about honour, shame and her disgracing the family. In the end he had shouted that she was go back to her husband or the family would not have anything more to do with her. She was no longer his daughter. After the conversation, the applicant had called her uncles in Kabul and Mazar-e Sharif to have their support but they had both repeated the words of her father. That had been the last conversation between the applicant and her relatives.

27. With the applicant's observations of 4 November 2009 she also enclosed a letter of 31 October 2009 “to whom it may concern” by a named Swedish man who confirmed having a relationship with the applicant. He stated, *inter alia,* that they had met for the first time in the autumn of 2007, that their relationship had started in February 2008 and that they had been living together in his apartment since April 2009.

28. In reply the Government observed on 15 January 2010 that the facts now presented by the applicant in her observations were never submitted to the Swedish authorities in spite of the fact that these could be considered relevant to her claim for asylum. Notably, regarding the claim that the applicant and the said Swedish man have been living together since April 2009, the Government noted that the applicant has still not changed her registered mail address in Fagersta although her new residence is apparently far away.

II. RELEVANT DOMESTIC LAW

29. The basic provisions mainly applicable in the present case, concerning the right of aliens to enter and to remain in Sweden, are laid down in the 2005 Aliens Act (*Utlänningslagen*, 2005:716 – hereafter referred to as “the 2005 Act”) which replaced, on 31 March 2006, the old Aliens Act (*Utlänningslagen*, 1989:529). Both the old Aliens Act and the 2005 Act define the conditions under which an alien can be deported or expelled from the country, as well as the procedures relating to the enforcement of such decisions.

30. Chapter 5, Section 1, of the 2005 Act stipulates that an alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden. According to

Chapter 4, Section 1, of the 2005 Act, the term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. This applies irrespective of whether the persecution is at the hands of the authorities of the country or if those authorities cannot be expected to offer protection against persecution by private individuals. By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, Section 2, of the 2005 Act).

31. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, Section 1, of the 2005 Act). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, Section 2, of the 2005 Act).

32. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has gained legal force. This applies, under Chapter 12, Section 18, of the 2005 Act, where new circumstances have emerged that mean there are reasonable grounds for believing, *inter alia*, that an enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment or there are medical or other special reasons why the order should not be enforced. If a residence permit cannot be granted under this provision, the Migration Board may instead decide to re-examine the matter. Such a re-examination shall be carried out where it may be assumed, on the basis of new circumstances invoked by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, Sections 1 and 2, of the 2005 Act, and these circumstances could not have been invoked previously or the alien shows that he or she has a valid excuse for not doing so. Should the applicable conditions not have been met, the Migration Board shall decide not to grant a re-examination (Chapter 12, Section 19, of the 2005 Act).

33. Under the 2005 Act, matters concerning the right of aliens to enter and remain in Sweden are dealt with by three instances; the Migration Board, the Migration Court and the Migration Court of Appeal (Chapter 14,

Section 3, and Chapter 16, Section 9, of the 2005 Act). Hence, upon entry into force on 31 March 2006 of the 2005 Act, the Aliens Appeals Board ceased to exist.

III. RELEVANT INFORMATION ON AFGHANISTAN

34. In so far as relevant, the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Afghan Asylum-Seekers of July 2009, which replaced the previous Guidelines from December 2007, set out the following:

> In view of the serious and widespread human rights violations and ongoing armed conflict in many parts of the country, UNHCR considers that a significant number of Afghan asylum seekers are in need of international protection. Applications by Afghan asylum-seekers should be determined on an individual basis, according to fair and efficient refugee status determination procedures, including the right of appeal. Favourable consideration should be given to the specific groups identified in these Guidelines, including, but not limited to (i) persons perceived as contravening Sharia law and members of minority religious groups; (ii) ethnic minority groups; (iii) persons associated with or perceived as supporting the Government, including civil society members; (iv) actual or perceived supporters of armed anti-Government groups; (v) journalists; (vi) persons associated with the People's Democratic Party of Afghanistan or other left-aligned political parties; (vii) women; (viii) children; and (ix) persons at risk of becoming victims of blood feuds.
>
> UNHCR further considers that an internal flight or relocation alternative (IFA/IRA) is not available within certain parts of Afghanistan due to a number of factors. If, however, the availability of an IFA/IRA must be assessed as a requirement in a national eligibility procedure, it should be examined carefully and on a case-by-case basis, in light of the requisite relevance and reasonableness analyses, taking into account the individual circumstance of the case, and bearing in mind the cautions in these Guidelines. Even in those exceptional cases where relocation to an accessible area might be considered as viable to eliminate the existing threat, such area can only be a reasonable alternative in cases where the claimant has strong family, social or tribal links in the area of displacement, permitting relocation without undue economic and social hardship. ...
>
> (g) Women
>
> Women are at particular risk of ill-treatment if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. Ill-treatment occurs in a variety of forms and may be inflicted by several actors, including family members. Such treatment includes domestic violence, excessive custodial sentences and degrading and inhuman treatment. While there is a limited number of women holding public office, women's rights continue to be curtailed, restricted and systematically violated. In April 2009, for instance, a Shiite Personal Status Law was passed by Parliament and signed by President Karzai. The law requires, *inter alia*, women to comply with their husbands' sexual requests, and to

obtain permission to leave the home, except in emergencies. The code has yet to be implemented and is currently under review as a result of international pressure.

Cases of physical violence perpetrated against women and girls in Afghanistan have increased by about 40% in the period from March 2007 to March 2008. Existing figures indicate that currently up to 80% of Afghan women are affected by domestic violence. Human rights organizations report an overall increase of cases of self-immolation and other forms of suicide. The phenomenon of female self-immolation is commonly linked to the pervasive societal discrimination against women. Survivors of sexual violence generally lack basic support mechanisms such as trauma counselling and medical treatment, as well as judicial capacity for forensics analysis. The social stigma attached to the reporting of gender-based violence in Afghanistan often prevents victims from seeking physical or psychological treatment.

Afghan women, who have adopted a less culturally conservative lifestyle, such as those returning from exile in Iran or Europe, continue to be perceived as transgressing entrenched social and religious norms and may, as a result, be subjected to domestic violence and other forms of punishment ranging from isolation and stigmatization to honour crimes for those accused of bringing shame to their families, communities or tribes. Actual or perceived transgressions of the social behavioural code include not only social behaviour in the context of a family or a community, but also sexual orientation, the pursuit of a professional career, and mere disagreements as to the way family life is conducted.

Unaccompanied women or women lacking a male “tutor” (mahram) continued to face limitations on conducting a normal social life. They include divorced women, unmarried women who are not virgins, and women whose engagements to be married have been broken. Unless they marry, which is very difficult given the social stigma associated with these women, social rejection and discrimination continue to be the norm. Many Afghan women are prevented from leaving the family compound without a burqa and a male companion, who has to be a husband or a close relative. Women without male support and protection generally lack the means of survival, given the social restrictions on women living alone, including the limitations on their freedom of movement. This is reflected in the absence of solutions available to the few women able to access domestic violence shelters. Unable to live independently, they face years of quasi-detention, prompting many to return to abusive family situations. The results of such “reconciliation” are generally not monitored and abuse or honour crimes committed upon return are often done with impunity.

Forced and child marriages continue to be widely practiced in Afghanistan, and can occur in a variety of forms. Statistics show that nearly 60% of girls in Afghanistan are married before they reach 16 years old. Most marriages continued to be arranged by families. However, more coerced forms include 'sale' marriage, that is, girls sold for a fixed quantity of goods, cash or simply to settle a family debt; bad dadan, a tribal form of dispute-settling in which the offending family offers one girl for marriage into the wronged family, for instance to settle a blood debt; and badal, when two families exchange their daughters in an attempt to minimize marriage costs.

Furthermore, women's rights activists face threats and intimidation, particularly if outspoken about women's rights, the role of Islam or the behaviour of commanders. In areas under the control of armed anti-Government groups, there are growing indications that women face systematic societal discrimination. For example, a significant number of female medical graduates is systematically refusing to work in

rural areas, due to the fear of being targeted by insurgents. These developments affect women's access to health in a disproportionate way.

Access to education for girls is also severely curtailed. According to the Ministry of Education and aid agencies over five million school-age children (three million of them girls) have been deprived of education as a consequence of conservative customs, poverty, lack of education facilities and a culture of gender discrimination.

The deterioration of the security situation has also had a detrimental effect on education. Armed anti-Government groups have continued their systematic attacks on schools, teachers, pupils (particularly schoolgirls) and parents. According to the Afghan Ministry of Education (MoE), more than 600 primary, secondary and high schools closed due to such attacks. Up to 80% of schools are closed in the four southern provinces of Helmand, Kandahar, Zabul and Urozgan, with Helmand Province having only 54 schools, primarily for boys, functioning, compared to 223 schools open in 2002. Consequently, between 230,000 to 300,000 students have been deprived of an education in 12 provinces, according to MoE officials. Girls' schools are increasingly a target of attacks. Some 50% of security incidents at schools across the country were specifically directed against girls' schools despite the fact that they represent only 14.8% of the total number of primary, secondary and high schools in the country. Furthermore, female teachers are specifically targeted and higher bounties are offered for killing them. In November 2008, in a widely reported attack in Kandahar, 12 students and four teachers, all female, were sprayed with acid and suffered severe injuries.

Given the pervasive societal discrimination and the widespread sexual and gender based violence, Afghan women and girls, particularly those living in areas affected by the armed conflict or under the de facto control of armed anti-Government groups, may be at risk of persecution depending on their individual profile and circumstances. Failure to conform to conventional roles or transgression of social and religious norms may expose women and girls to violence, harassment or discrimination in Afghanistan. As such, women with particular profiles, including, but not limited to victims of domestic violence or other serious forms of violence, unaccompanied women or single heads of household, women with visible social or professional roles, such as journalists, human rights activists and community workers, may be at risk of persecution on the ground of membership of a particular social group. Where non-conformity with traditional roles is perceived as opposing traditional power structures, the risk of persecution may be linked to the ground of religion and/or political opinion. Furthermore, measures which restrict one's ability to earn a living so that survival is threatened, or severe limitations to accessing education or health services, may also amount to persecution.

35. The US State Department Human Rights Report on Afghanistan for 2008, published on 25 February 2009 stated, *inter alia*:

Women

The law criminalizes rape, which is punishable by death, but under Shari'a, which the country's laws draw from and cannot conflict, the criminalization did not extend to spousal rape. Under Shari'a, a rape case requires a woman to produce multiple witnesses to the incident, while the man need simply claim it was consensual sex, often leading to an adultery conviction of the victim. Adultery is defined in the Penal

Code and designated a crime; premarital sex is not designated a crime, but local officials often considered it a "moral" offense. While the MOI reported 226 cases of rape during the year; however, the actual number of cases generally was believed to be much higher. Of the reported cases, 28 were charges of rape against females and 198 were of rape against males. The MOI reported 172 arrests in connection with rape cases. Statistics on convictions were unavailable. Rapes were difficult to document due to social stigma. Female victims faced stringent societal reprisal from being deemed unfit for marriage to being imprisoned. According to NGOs jail authorities frequently raped women imprisoned overnight in jail.

The Afghan penal code criminalizes assault, and courts entered judgments against domestic abusers under this provision. According to NGO reports, hundreds of thousands of women continued to suffer abuse at the hands of their husbands, fathers, brothers, armed individuals, parallel legal systems, and institutions of state such as the police and justice system. Many elements of society tolerated and practiced violence against women. A Kabul women's shelter reported receiving 50 new cases of domestic violence victims a month from MOWA referrals. According to the shelter's report the weak economy and poor security contributed to the incidence of domestic violence. Authorities rarely prosecuted abusers and only occasionally investigated complaints of violent attacks, rape, or killings, or suicides of women. If cases came to court, the accused were often exonerated or punished lightly. The director of a women's shelter in Kabul noted domestic violence occurred in most homes but went largely unreported due to societal acceptance of the practice. Domestic violence usually consisted of beating women and children and, less often, burning women. During the year, the AIHRC initiated additional efforts to collect statistics on violence against women.

There were at least 19 women's shelters across the country. The five shelters in Kabul were home to more than 100 women and girls. The Ministry of Women's Affairs (MOWA) and other agencies referred women to the centers, which were designed to give protection, accommodation, food, training, and healthcare to women escaping violence in the home or seeking legal support due to family feuds. According to the MOWA, as many as 20 women and girls were referred to the MOWA's legal department every day; however, space at the specialized shelters was limited. Women in need of shelter who could not find a place in the Kabul shelters often ended up in prison.

The concept of women's shelters was not widely accepted in society, as many persons treated them with distrust and did not understand their utility. The director of one shelter stated she always referred to the location as a mediation centre, as "shelter" was considered a negative word. Policewomen trained to help victims of domestic violence complained they were instructed not to do outreach to victims but simply to wait for victims to show up at police stations. This significantly hindered their work, as reporting domestic violence was not socially accepted. UNAMA reported police leadership often did not provide female officers with equipment or vehicles necessary to do outside investigations. A Herat-based NGO, however, reported recently graduated women police officers there were active in crime investigation including investigating cases of domestic violence. During the year, a local NGO conducted four domestic violence trainings for 240 ANP officers in Kabul, including those working in ANP Family Response Units. The Family Response Units are staffed primarily by female police officers and address violence and crimes against women, children, and families. They offer mediation and resources to prevent future instances of domestic violence.

Women continued to face pervasive human rights violations and remained largely uninformed about their rights under the law. Discrimination was more acute in rural areas and small villages. Women in urban areas continued to make strides toward greater access to public life, education, health care, and employment; however, the denial of educational opportunities during the continuing insurgency, as well as limited employment possibilities and the threat of violence, continued to impede the ability of many women to improve their situation.

Societal discrimination against women persisted, including domestic abuse, rape, forced marriages, exchange of girls to settle disputes, kidnappings, and honour killings. In some rural areas, particularly in the south, women were forbidden to leave the home except in the company of a male relative ...

According to a report released during the year by Womankind, 87% of women complained they were victims of violence, half of it sexual. According to the report, more than 60% of marriages were forced and, despite laws banning the practice, 57% of brides were under the legal marriage age of 16. The report stated many of these girls were offered as restitution for a crime or as debt settlement.

Local officials occasionally imprisoned women at the request of family members for opposing the family's choice of a marriage partner or being charged with adultery or bigamy. Women also faced bigamy charges from husbands who had deserted them and then reappeared after the woman had remarried. Local officials imprisoned women in place of a family member who had committed a crime but could not be located. Some women resided in detention facilities because they had run away from home due to domestic violence or the prospect of forced marriage. Several girls between the ages of 17 and 21 remained detained in Pol-e-Charkhi prison having been captured after fleeing abusive forced marriages.

The AIHRC documented a total of 76 honour killings throughout the year; however, the unreported number was believed to be much higher. In September, according to a local NGO, an 18 year-old woman in Kapisa Province was killed by her brother because she had run away from a forced marriage. Reportedly, after the woman ran away to a Kabul women's shelter the Governor of Kapisa intervened in the case, sheltered her, and forced the woman's mother to return her to Kapisa, resulting in her death.

Women occasionally resorted to self-immolation when they felt there was no escape from their situations. During the year the AIHRC documented 72 cases of self-immolation, in contrast to 110 cases in 2007. Other organizations reported an overall increase during the past two years. According to the AIHRC, almost all the women had doused themselves with gasoline and set themselves alight. In Herat Province, during the first six months of the year, the Herat city hospital alone recorded 47 cases of self-immolation, of whom 40 died. There have also been reports of relatives setting women on fire to create the appearance of self-immolation ...

There is no law specifically prohibiting sexual harassment.

Women who reported cases of abuse or who sought legal redress for other matters reported pervasive discrimination within the judicial system. Local family and property law were not explicitly discriminatory toward women, but in parts of the country where courts were not functional or knowledge of the law was minimal, elders relied on Shari'a and tribal custom, which generally were discriminatory toward

women. Most women reported limited access to justice in tribal shuras, where all presiding elders were men; women in some villages were not allowed any access for dispute resolution. Women's advocacy groups reported informal intervention from the government through letters to local courts encouraging interpretations of the law more favourable to women ...

36. The UK Home Office, Country of Origin Information Report on Afghanistan of 18 February 2009, states in paragraphs 23.27- 23.30 about divorce:

Islamic Sharia and Constitution of the country have provided suitable rights for women and men, but practically and in some rules and practices of equality between men and women these rights are not ensured. Current legislation leaves women largely unprotected. A man can divorce his wife without due process. In the absence of officially enforced marriage and divorce registration women remain particularly open to abusive practices. A woman can remarry three months after divorce period (Edat). However, if challenged, she will have to provide witnesses to prove her divorce in court. The woman can initiate the divorce process if she has enough reasons to do so; accepted reasons among others include: her husband must be sick and it endangers her; her husband must fail to provide for the family; her husband must be absent for more than four years in the house or be sentenced for imprisonment of 10 years or more. In this case, the court will assign her mahr – divorce maintenance – and custody of girls until they reach their ninth birthday and boys until their seventh birthday." (The Afghanistan Human Rights Commission report, December 2008).

The Womankind report of February 2008 noted "Afghan civil law contains numerous provisions that protect women's human rights in the family, such as their right to divorce if they are being maltreated. While seldom enforced, existing law provides a basis from which to advocate for enforcement and education about women's human rights." Further, "Women's choices regarding marriage and divorce remain circumscribed by custom and discriminatory laws..." (Freedom House, 2008) UNHCR's December 2007 paper concurred "Women remain deprived of basic civil rights, including in cases of divorce, custody and with regard to inheritance rights."

Womankind also recorded that "Stigma and shame surround divorced women...rendering them unmarriageable and subsequently, financially destitute. Polygamy is one of the few options available to divorced women, who have low social status but require a husband for financial dependence." Also, "Women's economic dependence on male family members prevents them from seeking divorce or leaving abusive marriages."

An IRIN News article dated 16 July 2008 reported that "In Afghanistan sexual relations between a man and a woman outside marriage are considered a serious crime and offenders can face death penalty and/or a lengthy prison sentence, depending on their marital status and other circumstances...Every year hundreds of female sex workers are sent to prison for allegedly having 'unlawful sexual relationships', according to women's rights activists..." However, high food prices, drought, unemployment and lack of socio-economic opportunities are pushing some women and young girls in northern Afghanistan into commercial sex work, women's rights activists and several affected women told IRIN...

37. The Human Rights Watch, in its report "We Have the Promises of the World" of 6 December 2009, on women's rights in Afghanistan, details emblematic cases of ongoing rights violations in five areas: attacks on women in public life; violence against women; child and forced marriage; access to justice; and girls' access to secondary education. The summary set out, *inter alia*:

> Eight years after the fall of the Taliban, and the establishment of the Karzai government, Afghan women continue to be among the worst off in the world. Their situation is dismal in every area, including in health, education, employment, freedom from violence, equality before the law, and political participation ... The diminishing status of women's rights in Afghanistan came back into focus in March 2009 when the Shia Personal Status law, which was riddled with Taliban style misogyny, was passed by parliament and signed by President Hamid Karzai. The law regulates the personal affairs of Shia Muslims, including divorce, inheritance, and minimum age of marriage, but, as detailed below, severely restricts women's basic freedoms. ... the final outcome fell far short of expectations, apparently because President Karzai was intent on maintaining the electoral support of Shia fundamentalists. A month before the presidential election he issued by decree an amended version of the law which still includes articles that impose drastic restrictions upon Shia women, including the requirement that wives seek their husbands' permission before leaving home except for unspecified "reasonable legal reasons." The law also gives child custody rights to fathers and grandfathers, not mothers or grandmothers, and allows a husband to cease maintenance to his wife if she does not meet her marital duties, including sexual duties. The furor over the Shia law highlighted the fragility of the gains made by Afghan women, human rights activists, and reform-minded politicians. The dominant political factions of Afghanistan remain ideologically hostile to many of the rights that many women have started to enjoy since the fall of the Taliban, such as freedom of movement, freedom to work, and the right to education. Many of the women interviewed for this report observed that the space for them to work as activists for change has diminished over the past few years, as the government has come to increasingly rely on conservative factions to maintain political control.
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> Violence against Women: Violence against women in Afghanistan is endemic. A nationwide survey of 4,700 women, published in 2008, found that 87.2% had experienced at least one form of physical, sexual, or psychological violence or forced marriage in their lifetimes. The forms of violence include rape, physical violence, forced marriage, and "honour killings." Too often the attitudes of those in government and the police reflect the misogynous views, rooted in cultural traditions - but increasingly rejected by younger generations of Afghans – that underlie some of the violence against women. As Dr. Soraya Sobhrang, Women's Protection and Development Commissioner of the Afghanistan Independent Human Rights Commission (AIHRC), told us, "Police and judges see violence against women as legitimate, so they do not prosecute cases." In the vast majority of cases women will not seek help because of their fears of police abuse or corruption, or their fears of retaliation by perpetrators of violence. Low social status and social stigmas deter women from going against their families to pursue justice, particularly in cases of domestic abuse. For a woman even to approach the police or courts requires her to overcome the public opprobrium that often still attaches to women who leave their houses without a male guardian, let alone women who seek protection from public authorities. In a 2008 study by the Women and Children Legal Research Foundation (WCLRF), only 15% thought that a woman disabled by violence should seek police

help. For those who do seek help, many encounter lack of concern, if not outright hostility or abuse. Rape is not a crime in the Afghan Penal Code. Under the code, rapists can only be charged with "forced" zina, or adultery, which sometimes results in women also being prosecuted for zina. In a major achievement for civil society groups and women's rights activists, the president issued the Elimination of Violence Against Women law, which makes rape a crime. At the time of writing the law is being considered by parliament ...

Access to Justice: An underlying problem is women's access to justice. Police training involves little or no training in gender based violence or women's rights, particularly as training has been increasingly focused on counter-insurgency and security skills rather than crime prevention, crime solving and community policing. Deeply entrenched cultural prejudices prevent many women accessing the police or the courts because of the fear of being stigmatized a "bad woman." Women face discrimination and prejudice in police stations and the courts from officials who often do not know the law but penalize women according to customary law, which places great emphasis on notions of female "honour" and chastity. The majority of women in jail are charged with extramarital sex (zina) or with "running away"- something that is not a crime in Afghan law or Sharia but often reflects a conservative cultural view that sees women as property of fathers or husbands. One widely welcomed policy response to this was the creation of female-staffed "Family Response Units" (FRUs) in police stations. But, as detailed in this report, there are serious problems with the implementation of FRUs, including insufficient numbers of women police officers and inadequate training, mentoring, and facilities...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained that the enforcement of the deportation order to Afghanistan would be in violation of Article 3 of the Convention, which sets out:

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

A. Admissibility

39. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 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

40. The Government noted that international reports confirmed that the general situation for women in Afghanistan was very difficult and that women who lacked a social network and the protection of a male person within the family or the extended family would be particularly exposed to the risk of having their human rights violated, although it appeared that the situation was slightly better in Kabul compared to rural areas.

41. In the present case, however, they maintained that the applicant has failed to substantiate being at a real and concrete risk of being subjected to ill-treatment upon return to Afghanistan, either by Afghan authorities or by private individuals.

42. They also noted that the applicant's identity was unsubstantiated and that her story was vague and lacking in detail and evidence and that her general credibility could be questioned.

43. She had been particularly vague regarding her alleged extramarital relationship and failed to submit information thereon to the Swedish authorities during the domestic proceedings, except for the information that he was Swedish. That seemed especially peculiar since the applicant apparently met her new partner already in the autumn 2007 and information about that relationship could have been considered relevant to her claim for asylum. She has not provided any explanation to the domestic authorities as to why she omitted to furnish concrete information about the man and the relationship, including her alleged move to his address in April 2009. In any event there was nothing to indicate that the alleged extramarital relationship had come to the knowledge of the Afghan authorities, her family or her husband's family.

44. Likewise, it was only in her observations of 4 November 2009 that the applicant explained how her family allegedly had rejected her after several telephone conversations in the autumn of 2005. However, that version of events was inconsistent with her statement to the Migration Board in her application of 13 October 2008 that she had not had any contact with her relatives since the summer of 2005. Moreover, the applicant's claim that her family had rejected her and that she had no social network or male protection in her home country was not supported by any evidence. It thus remained unsubstantiated that the applicant's family had repudiated her as also found by the Migration Court in its judgment of 19 March 2007.

45. As to the submitted letter of 2 October 2008 from the Regional Office for the Baltic and Nordic countries of the UNHCR, the Government contended that it had little value as evidence since apparently the author has no personal knowledge of the applicant and the letter rather gave the

UNHCR's views on the need for protection of Afghan female asylum seekers in general.

46. Finally, in the Government's view the applicant was still married and it did not appear likely that the applicant's divorce attempt had come to the attention of the Afghan authorities. Moreover, it could not be ruled out that the applicant could obtain a divorce in Afghanistan. That was possible in some situations, for example if the husband was ill and that endangered the wife. They noted in this respect that it emerged in the domestic proceedings that the applicant's husband, X, suffered from mental health problems in the form of anxiety, sleeplessness and aggressive behaviour.

47. The applicant maintained that, if returned from Sweden to Afghanistan, she would face a real risk of being persecuted, or even sentenced to death, because she had separated from her husband and was involved with another man. She further claimed that she risks being subjected to inhuman and degrading treatment in Afghanistan since her family has disowned her and she therefore would have no social network or male protection. In this respect, she invoked the poor security situation and the difficult humanitarian conditions for women in Afghanistan.

48. The applicant believed that both her own family and her husband's family in Kabul had been informed about her attempt to dissolve the marriage in Sweden because the District Court had contacted her husband and been told on 17 July 2008 that he could not consent to a divorce.

49. Furthermore she submitted that it was impossible to prove that her family had repudiated her. They did not want to have contact with her and it was difficult to see what submission might reasonably be expected to substantiate her account in this respect.

50. Finally, the applicant refuted that she could be successful in divorcing her husband in Afghanistan because it would be impossible for her to gather two witnesses in her favour. However, even if she returned without her husband, as she intended to, she would still be at risk of treatment contrary to Article 3 of the Convention for the reasons invoked above.

2. The Court's assessment

51. The Court reiterates that Contracting States have the right as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens (*Üner v. the Netherlands* [GC], no. 46410/99, § 54, ECHR 2006-XII). However, expulsion 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 concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to

deport the person in question to that country (*Saadi v. Italy* [GC], no. 37201/06, § 125, ECHR 2008-...).

52. Whilst being aware of the reports of serious human rights violations in Afghanistan, as set out above, the Court does not find them to be of such a nature as to show, on their own, that there would be a violation of the Convention if the applicant were to return to that country. The Court thus has to establish whether the applicant's personal situation is such that her return to Afghanistan would contravene Article 3 of the Convention.

53. 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 Akasiebie v. Sweden* (dec.), no. 23944/05, 8 March 2007, and *Matsiukhina and Matsiukhin v. Sweden* (dec.), no. 31260/04, 21 June 2005). In principle, the applicant has 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 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005 and *NA. v. the United Kingdom*, no. 25904/07, § 111, 17 July 2008). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

54. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to Afghanistan, bearing in mind the general situation there and her personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, judgment of 30 October 1991, Series A no. 215, § 108 *in fine*).

55. The Court firstly observes that women are at particular risk of ill-treatment in Afghanistan if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. The UNHCR thus observed that Afghan women, who have adopted a less culturally conservative lifestyle, such as those returning from exile in Iran or Europe, continue to be perceived as transgressing entrenched social and religious norms and may, as a result, be subjected to domestic violence and other forms of punishment ranging from isolation and stigmatisation to honour crimes for those accused of bringing shame to their families, communities or tribes. Actual or perceived transgressions of the social behavioural code include not only social behaviour in the context of a family or a community, but also sexual orientation, the pursuit of a professional career, and mere disagreements as to the way family life is conducted.

56. The Court notes in this respect that, albeit not legally, the applicant has resided in Sweden since 13 August 2004. The Court notes that already for that reason she may be perceived as not conforming to the gender roles ascribed to her by Afghan society, tradition and legal system. More importantly, however, in Sweden in vain she attempted to divorce her husband in 2008 and she has expressed a clear intention of not resuming the marriage. The Court points out that in cases like the one before it, the expression of an intention to divorce could be motivated by previous refusals by the authorities to grant asylum on the motive originally submitted. Thus, it must be expected that an applicant can demonstrate convincingly that the intention is real and genuine. The demand on the applicant may bear some resemblances with cases in which an asylum seeker in a receiving county has converted to Christianity from Islam and allege that the authorities in the Islamic home country have knowledge thereof and that this may result in serious negative life-threatening repercussions upon return (see, for example, *mutatis mutandis, Reza Mohammasi v. the Netherlands* (dec.), no. 5140/06, 1 June 2006 and *Razaghi v. Sweden* (dec.), no. 64599/01, 11 March 2003). In the present case the applicant separated from her husband X in June 2005, approximately one year after the spouses had entered Sweden, and while the appeal against the Migration Board's first refusal of 29 March 2005 was pending before the Migration Board. It is not in dispute that she only saw her husband once thereafter and it is a proven fact that she tried in vain to divorce him in 2008. In these circumstances the Court finds that the applicant has demonstrated a real and genuine intention of not living with her husband. The case thus differs from, for example, *S.A. v. The Netherlands* (dec.), 3049/06, 12 December 2006 in which the applicant wife did not challenge her marriage, but alleged that her husband was not the father of her child, born only one year after the spouses had entered the Netherlands and requested asylum. The Court found in that case that the allegation was wholly unsubstantiated and noted that it had not resulted in the husband having undertaken any step indicating that he considered a separation, divorce or to challenge the paternity of the child, which could have imposed a risk to the applicant upon return to Afghanistan.

57. The applicant is still formally married to X. He informed the District Court on 17 July 2008 that he opposed her wish to divorce. Thus, if the spouses are deported to Afghanistan, separately or together, X may decide to resume their married life together against the applicant's wish. The Court points out in this connection, for example, the Shiite Personal Status Law that was passed by Parliament and signed by the President in April 2009 which, although yet to be implemented, requires, *inter alia*, women to comply with their husbands' sexual requests and to obtain permission to leave the home, except in emergencies. It also notes the gloomy figures indicating that currently up to 80% of Afghan women are affected by

domestic violence (see paragraph 34). Moreover, according to the Women's Protection and Development Commissioner of the Afghanistan Independent Human Rights Commission (see paragraph 37) the authorities see violence against women as legitimate, so they do not prosecute in such cases. In the vast majority of cases women will not seek help because of their fears of police abuse or corruption, or their fears of retaliation by perpetrators of violence. Low social status and social stigmas deter women from going against their families to pursue justice, particularly in cases of domestic abuse. For a woman even to approach the police or courts requires her to overcome the public opprobrium affecting women who leave their houses without a male guardian, let alone women who seek protection from public authorities.

58. The Court points out that there are no specific circumstances in the present case substantiating that the applicant will be subjected to such treatment by X, but the Court cannot ignore the general risk indicated by statistic and international reports.

59. The applicant maintained that she was also at risk of being persecuted, and even being sentenced to death, because she had an extramarital relationship. The Court observes, however, that the applicant failed to submit any relevant and detailed information thereon to the Swedish authorities during the domestic proceedings and that subsequently she has not even tried to explain why she failed to do so. Nevertheless, should X perceive the applicant's filing for divorce or other actions as an indication of an extramarital relationship, the Court notes that, according to the US State Department Human Rights Report on Afghanistan, (see paragraph 35) “adultery is defined in the Penal Code and designated a crime; premarital sex is not designated a crime, but local officials often considered it a "moral" offense”. Moreover, the “local officials occasionally imprisoned women at the request of family members for opposing the family's choice of a marriage partner or being charged with adultery or bigamy. Women also faced bigamy charges from husbands who had deserted them and then reappeared after the woman had remarried. Local officials imprisoned women in place of a family member who had committed a crime but could not be located. Some women resided in detention facilities because they had run away from home due to domestic violence or the prospect of forced marriage”. Furthermore, an IRIN News article dated 16 July 2008 maintained that “in Afghanistan, sexual relations between a man and a woman outside marriage are considered a serious crime and offenders can face death penalty and/or a lengthy prison sentence, depending on their marital status and other circumstances.”

60. Should the applicant succeed, as she intends, in living separated from her husband in Afghanistan, the Court notes the statement by the UNHCR (see paragraph 34) that “unaccompanied women or women lacking a male “tutor” continued to face limitations on conducting a normal social

life. They include divorced women, unmarried women who are not virgins, and women whose engagements to be married have been broken. Unless they marry, which is very difficult given the social stigma associated with these women, social rejection and discrimination continue to be the norm. Many Afghan women are prevented from leaving the family compound without a burqa and a male companion, who has to be a husband or a close relative. Women without male support and protection generally lack the means of survival, given the social restrictions on women living alone, including the limitations on their freedom of movement. This is reflected in the absence of solutions available to the few women able to access domestic violence shelters. Unable to live independently, they face years of quasi-detention, prompting many to return to abusive family situations. The results of such "reconciliation" are generally not monitored and abuse or honour crimes committed upon return are often done with impunity."

61. The Government contended that the applicant's claim that her family had rejected her and that she had no social network or male protection in her home country was unsubstantiated. The Court notes, however, that although there are divergences as to whether the applicant's last contact with her family was in the summer of 2005 or in October 2005, no information has been presented which gives strong reasons to question the veracity of her submissions that she has had no contact with her family for almost five years, which does support her claim that she no longer has a social network or adequate protection in Afghanistan.

62. Having regard to all of the above, in the special circumstances of the present case, the Court finds that there are substantial grounds for believing that if deported to Afghanistan, the applicant faces various cumulative risks of reprisals which fall under Article 3 of the Convention from her husband X, his family, her own family and from the Afghan society. Accordingly, the Court finds that the implementation of the deportation order against the applicant would give rise to a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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."

64. The applicant claimed compensation for non-pecuniary damage in the amount of 5,000 Euros (EUR).

65. The Government contested that claim.

66. In view of the finding above (see paragraph 62) the Court dismisses the applicant's claim for non-pecuniary damage.

67. The applicant did not claim any reimbursement for costs and expenses incurred before the Court, since the legal work was performed *pro bono*.

III. RULE 39 OF THE RULES OF COURT

68. The Court reiterates 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.

69. It considers that the indication made to the Government under Rule 39 of the Rules of Court must remain in force until the present judgment becomes final or until the Panel of the Grand Chamber of the Court accepts any request by one or both of the parties to refer the case to the Grand Chamber under Article 43 of the Convention (see *F.H. v. Sweden*, no. 32621/06, § 107, 20 January 2009).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that the applicant's deportation to Afghanistan would be in violation of Article 3 of the Convention;

3. *Dismisses* the applicant's claim for non-pecuniary damage.

Done in English, and notified in writing on 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President