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

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Q & A on D.M. v. Sweden

This document is a tool for the press. It does not bind the Court.

What is the case about?

The case concerns D.M., an Afghan national of Hazara ethnicity who arrived in Sweden in 2015. The Swedish authorities ultimately ordered his deportation in 2023 because they found he was not entitled to a residence permit or to asylum in Sweden. He alleges that, if deported, he would risk being ill-treated in Afghanistan.

What did the Court decide?

The Court found that D.M. would be at real risk of ill-treatment if he were returned to Afghanistan. Therefore, if the Swedish authorities enforced the deportation order against him, there would be a breach of Article 3 of the European Convention on Human Rights - which prohibits inhuman or degrading treatment. The Court took into account all the risks cumulatively facing D.M. in Afghanistan, including his personal circumstances, his Hazara ethnicity and the general human-rights situation there.

Does this mean that all deportations to Afghanistan would breach the Convention?

This judgment does not mean that every deportation to Afghanistan would be in breach of the European Convention. Each application that comes to the Court is assessed on its own merits, taking into account all the relevant circumstances.

The Court found that the applicant in this particular case faced heightened risks because he is a Hazara, because he has adapted to a Western way of life in Sweden over the last ten years and because his behaviour could be perceived as transgressing religious and moral norms in the current repressive regime in Afghanistan.

It considered those personal circumstances, cumulatively, against the backdrop of the general situation in Afghanistan.

Did the Swedish authorities deal with the case properly?

The Swedish authorities assessed D.M.'s asylum applications in two sets of proceedings over seven years during which he was interviewed on a number of occasions and represented by a lawyer. This meant he had ample opportunity to present his case. The authorities, moreover, carried out assessments of the risks he would face if returned.

The Court agreed with the Swedish authorities' conclusions as to certain aspects of the case, but found other aspects of their decision-making problematic. For example, it was not satisfied that the authorities had based their assessment of the general situation in Afghanistan, including for persons of Hazara ethnicity, on adequate material. Furthermore, it found that they had not considered all the relevant factors – the general situation and the applicant's personal circumstances – as a whole.

What did the Court say about the human-rights situation in Afghanistan?

It recognised that the general human-rights situation in Afghanistan was serious. It noted reports of widespread rights abuses since the Taliban takeover in 2021. This included

arbitrary arrests and detention, extrajudicial killings and capital punishment, corporal punishment, torture and other forms of ill-treatment. However, the Court found that this on its own was not sufficient to conclude that a deportation to Afghanistan would breach the Convention.

What did the judgment say about the situation of Hazaras in Afghanistan?

It acknowledged that the Hazara minority in Afghanistan faced widespread discrimination and were sometimes targets of attacks and killings particularly by the armed resistance group, the Islamic State of Khorasan Province. It was not persuaded, on the other hand, that Hazaras were systematically exposed to ill-treatment in breach of Article 3.

What next?

Most applications to the Court do not result in a judgment, nor in a finding of a violation of the Convention; the vast majority are declared clearly inadmissible. For those that do lead to a judgment finding a violation, as is the case in *D.M. v. Sweden*, the Court's rulings are binding.

Note, however, that *D.M. v. Sweden* is not final yet. Either the Swedish Government or D.M. can, within three months from the delivery date (26.03.2026) of the judgment, ask for the case to be referred to the Grand Chamber of the Court. A panel of judges will then decide if the case merits consideration by the Grand Chamber (Rule 73 of the Rules of Court). If the parties in the case make no request for referral within three months, or if the referral request is rejected, the judgment will become final. If a request for referral is made and accepted, the case will be considered by the Grand Chamber.

The European Convention provides a follow up procedure for judgments which are final. The choice of measures to be taken to implement a judgment is for the respondent State, under the supervision of the Committee of Ministers, the executive body of the Council of Europe, supported by the Department for the Execution of Judgments of the European Court of Human Rights. The implementation of the Court's judgments has had a transformative impact on the lives of millions of people across Europe. According to the Committee's statistics, Sweden has enforced all 103 judgments against it since the first one, delivered in 1953.

Is this the first time that the Court has examined a case of this type?

No, although this is the first judgment concerning a deportation to Afghanistan since the Taliban takeover in 2021.

Does the European Court often deal with asylum or migration cases?

No, only 1.5% of the Court's pending applications relate, directly or indirectly, to migration or asylum.

The Court looks into possible human-rights violations when people or States submit a complaint to it, but does not take up cases or issues, such as migration, by itself. Moreover, it does not adjudicate public policies in general or pass judgment on States' general choices, and has emphasised the right of States to establish their own immigration policies (see *N. D. and N.T. v. Spain*, of 2020).

For more information, see Focus On: Immigration.

Does the European Court regularly stop asylum-seekers being deported?

No, it is very exceptional.

Similar to other national and international courts, the European Court may call on a State to take urgent steps to protect a person's right to make a complaint to it through "interim

measures" (under Rule 39 of the Court's Rules of Court). These measures play a vital role in avoiding irreversible situations that would prevent national courts and/or the Court from properly examining Convention complaints. That is why the Court granted an interim measure in D.M.'s case which will remain in force until the judgment becomes final.

The Court's interim measures are only indicated where there is an *imminent risk of irreparable harm* to a Convention right. In the past two years the proportion of pending applications with interim measures in place is 0.3%. This number concerns a range of factual situations, not just deportation cases.

Is there a right to asylum under the European Convention?

The European Convention does not guarantee the right to asylum. Nor does the Court itself examine actual asylum applications. There are other international texts that directly address migration issues – such as the Geneva Convention on the Status of Refugees and the Common European Asylum System in the European Union.

Indeed, the Court has reiterated many times in its judgments that member States have the right to control the entry, residence and removal of foreign nationals. Nevertheless, individuals who consider that a State is responsible for a breach of their human rights may make a complaint under the Convention, including about a State's actions related to migration. Some such complaints concern Article 3, an absolute right under the Convention meaning it is not possible for a State to justify a violation of this right. Examples of cases concerning Article 3 in the context of migration or extradition include those where an individual has demonstrated they will face a real risk of torture and inhuman and degrading treatment in the country where they are to be returned.

Does the Court receive many cases from Sweden in general?

Of the total pending applications before the Court on 1 January 2026, 93 were against Sweden. This means that 0.17 % of the Court's pending applications involve Sweden. Türkiye, Russia, Ukraine, Poland and Italy account for almost 70% of all pending applications.

The Court dealt with 191 applications concerning Sweden in 2025, of which 190 were declared inadmissible or struck out. It delivered one judgment (concerning one application), which did not find any violation of the European Convention on Human Rights.

The last time the Court found a violation against Sweden was in 2021 in a case concerning intelligence gathering (*Centrum för rättvisa v. Sweden*). The Council of Europe's Committee of Ministers closed its supervision of the case in 2024, after Sweden chose in response to the Court's judgment to adopt legislation that increased privacy protections in the context of state surveillance (see country factsheet, Sweden).

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