

Ad-Hoc Query from the Netherlands

Requested on 19th September 2016
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**The safety situation in
Baghdad-city and the
right to international
protection**



Responses from:

Responses from Austria, Belgium, France, Germany, Netherlands, Sweden,
United Kingdom, Norway (8 in total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

The Dutch National Contact Point received a request for information in order to respond to queries from our Highest Administrative Court. In individual cases, the Netherlands perceives Baghdad-city as a relocation alternative for applicants for international protection from other areas in Iraq. This is being disputed in a number of pending Court cases. In light of these discussions, our Administrative Court would like an overview of the policies in other Western European countries towards Baghdad-city.

Questions:

- 1. Does your Member State consider the safety situation in Baghdad-city to be unsafe to the extent that asylum applicants originating from this city therefore in principle are eligible for international protection without the need to adduce individual circumstances?**
- 2. Are asylum applications from Sunnis from Baghdad-city judged on individual merits and possibly rejected?**
- 3. If your highest Court of Law recently (from end 2015 onwards) has given judgments relating to the safety situation in Baghdad-city in asylum cases, can you please, if available, add these judgments below?**

2. Responses

Austria	Yes	<p>1. There are no guidelines for decisions on Iraqi asylum-seekers. Therefore in principle every case is subject to a case-by-case examination.</p> <p>2. See question</p> <p>3. There are no current decisions by supreme courts.</p> <p style="text-align: right;">Source: Federal Ministry of the Interior.</p>
Belgium	No	
France	Yes	<p>1. In accordance with the National Court for Right of Asylum (CNDA) case law, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) grants the status of beneficiary of subsidiary protection to asylum seekers from Baghdad-city under article 15c) of the Qualification Directive. Indeed, they deem that there is a situation of indiscriminate and widespread violence in Baghdad-city.</p> <p>2. See q1.</p> <p>3. Irak-Bagdad-Situation de violence aveugle (situation of indiscriminate violence) CNDA 11th April 2016, Mme HAMAD, n° 15018700 C http://www.cnda.fr/content/download/67826/619463/version/1/file/CNDA%2011%20avril%202016%20Mme%20H.%20A@pouse%20E.%20n%2015018700%20C.pdf The CNDA states that, in case of return to Irak by aircraft and in order to join Bassorah province, one has to pass through Baghdad-city. But, it deems that the situation in Baghdad-city is affected by violence that can affect persons regardless of their personal situation and which results in an internal armed conflict that justifies the granting of subsidiary protection on the basis of c) of article L. 712-1 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA). In its case law, the CNDA first sets aside the risk of serious harms for refusing a forced marriage invoked by an Iraqi national from Bassorah, because of the imprecise nature of her statements. After that, the CNDA points out that Baghdad is the most affected governorate is marked by the multiplication of serious attempts to human rights such as extra-judicial executions, enforced disappearances and kidnappings, by the worsening of confrontations between Shia militia and Sunni armed groups and by terrorist attacks against civilians. The CNDA deems that the prevailing situation in Baghdad must be qualified as a situation of high-intensity indiscriminate violence, because of the number of victims and attacks, the circumstances of these attacks perpetrated in broad daylight in places and public gatherings and because of the means often used, such as improvised explosive devices, vehicle-borne and suicide-bombings. The CNDA also considers that resettlements in the governorate of Bagdad do not invalidate this appreciation since their scope (â;) must be put in perspective considering, in particular, the high attractiveness of the capital for displaced people, the important concentration of relief agencies and the presence in the city of all ethnic and religious groups likely to accommodate communities newly displaced by violence. Consequently, since the applicant would have to pass through Baghdad-city in order to join her province of origin in case of return to Irak by aircraft, she must be granted the subsidiary protection under c) of article L. 712-1 of the CESEDA.</p>

Germany	Yes	<ol style="list-style-type: none"> 1. Applicants originating from Baghdad have to adduce individual circumstances in order to be eligible for international protection. 2. Yes, applications from Sunnis originating from Baghdad city are assessed on individual merits. 3. There have not yet been any judgments of the highest Court of Law relating to the safety situation in Baghdad city.
Netherlands	Yes	<ol style="list-style-type: none"> 1. In the Netherlands asylum seekers from the governorates of Anbar, Diyala, Kirkuk, Ninewa and Salah al Din and from those parts of the so-called "Baghdad belts" adjacent to the governorates Anbar, Salah al Din and Diyala, are eligible for subsidiary protection according to Article 15(c) of the Qualification Directive. A situation as described in Article 15(c) does not apply to Baghdad city or all other parts of Iraq. For that reason, asylum seekers from Baghdad-city will have to adduce individual circumstances in order to qualify for international protection. 2. Yes. The available information on the position of Sunnis in Baghdad-city does not indicate that they are the victim of systematic persecution. Although they can be (incidentally) targeted by Shia militia, the situation is not so severe that it must be concluded that every Sunni qualifies for international protection 3. The lower/first instance court has concluded in several cases that Article 15(c) is not met in Baghdad-city and that an asylum seeker originating from another region could have a protection alternative in Baghdad-city (see links below). We don't have any jurisprudence yet from our highest court of Law related to assessment for Iraq of the different elements of Article 15(c). However our policy is also soon going to be tested before the highest asylum court (namely in a session on 29 August). http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:3401&keyword=15%2f22446 http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:6014&keyword=16%2f1021
Sweden		<ol style="list-style-type: none"> 1. The Swedish Migration (SMA) will review its legal position concerning the situation in Iraq. This is scheduled for November 2016. Thus, it is the legal position from the end of 2014 that still forms the foundation of the SMA:s policy. Concerning any citizen of Baghdad-city, the application is judged on individual merits; obviously in the light of the current security situation and taken into consideration whether the applicant's e.g. ethnicity or religion make him or her particularly vulnerable upon return.. 2. See question 1 3. The High Court of Migration has not given any judgments recently relating to the safety situation in Baghdad.
United Kingdom	Yes	<ol style="list-style-type: none"> 1. The most recent guidance, from a court judgement by the Upper Tribunal (the CG case of AA), found that in most of Baghdad governorate (including Baghdad City), the southern governorates and the Kurdistan Region of Iraq (KRI), indiscriminate violence is not at such a level that substantial grounds exist for believing that a person, solely by being present there for any length of time, faced a real risk of harm which threatened their life or person. However, AA found that the security situation in the parts of the "Baghdad Belts" (the areas surrounding Baghdad City), which border Anbar, Salah Al-Din and Diyala governorates is at such a level that substantial ground exist for believing that a person, solely by being present there for any length of time, faced a real risk of harm which threatened their life or person (thereby engaging Article 15(c) of the Qualification Directive and entitling a person to a grant of Humanitarian Protection). In areas where there is no general Article 15(c) risk, decision makers should consider whether there are particular factors relevant to the person's individual circumstances which might nevertheless place them at enhanced risk. In general, a person can relocate to the areas which do not meet the threshold of Article 15(c). Please see the country policy information below for more information: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546951/CIG_Iraq_Baghdad_south_KRI_security.pdf

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		<p>2. Yes. All applications are considered on a case by case basis. Particular considerations identified in the Country Policy Guidance include: Sunnis may face a real risk of persecution or serious harm from the Shia militia in Baghdad and the contested governorates. However, there may be circumstances, including tribal, family or political links, which mean a person is not at risk and can return or relocate to Baghdad. In general, Sunnis will not face a real risk of persecution or serious harm in the southern governorates and can reasonably relocate there, if not unduly harsh based on their circumstances. In general, if a Sunni is at real risk of persecution or serious harm from the state and/or Shia militia, they will be unable to avail themselves of the protection of the authorities. Decision makers must assess each case on its merits. An Arab is unlikely to be able to relocate to the Kurdistan Region of Iraq (KRI), although decision makers should explore all a person's circumstances, including tribal, family or political links, which may enable them to do so. For more information please see the Country Policy Guidance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/545942/CIG_Iraq_Sunnis.pdf</p> <p>3. In the Country Guidance (CG) case of AA (Article 15(c)) (Rev 1) Iraq CG [2015] UKUT 544 (IAC) (30 September 2015), the Upper Tribunal (UT) found that the degree of armed conflict in most of Baghdad governorate (including Baghdad City), the southern governorates and the Kurdistan Region of Iraq (KRI) does not engage Article 15(c) of the QD (paragraph 204, A1). The UT, however, also found that the degree of armed conflict in certain parts of the Baghdad Belts (the urban environs around Baghdad City) does give rise to a generalised Article 15(c) risk. The parts of the Baghdad Belts concerned are those forming the border between the Baghdad Governorate and the contested areas [i.e. with the governorates of Anbar, Salah Al-Din and Diyala] (paragraph 204, sub-paragraph 2). Please see the link below for further information: http://www.bailii.org/cgibin/format.cgi?doc=/uk/cases/UKUT/IAC/2015/544.html&query=(AA)+AND+(iraq)</p>
Norway	Yes	<p>1. No. Norway does not grant international protection (refugee status) or subsidiary protection to applicants from Baghdad UNLESS there are extenuating circumstances which qualify the applicant for protection.</p> <p>2. As far as Sunni-Arabs from Baghdad are concerned, we have not considered this group as such, in need of protection; UNLESS there were other extenuating circumstances which called for and qualified for protection. We recently sent out an AHQ on a related issue. Please see attachment. Since June we have not handled any cases on this matter until we have further studied other country's practices. This is still the status quo.</p> <p>3. There have not been any such cases in Norway. Though in June of this year, there was one case from Sweden that was handled by the EMD 23.08.16 (J.K. and Others v. Sweden (no. 59166/12)) which determined that security reasons alone did not give cause to qualify for protection according to EMKs article 3: "Although the security situation in Baghdad City has deteriorated, the intensity of violence has not reached a level which would constitute, as such, a real risk of treatment contrary to Article 3 of the Convention. Nor do any of the recent reports from independent international human rights protection associations referred to in paragraphs 32-34 above contain any information capable of leading to such a conclusion" (s. 42).</p>

