

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): <i>Rechtbank Den Haag, (Court The Hague, in session in court Roermond, sitting with one judge)</i>	
Date of the decision:	29 March 2016
Case number:²	AWB 16/3628
Parties to the case: <i>Applicant vs. Dutch State Secretary for Security and Justice</i>	
Decision available on the internet? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If yes, please provide the link: (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: <i>Dutch</i>	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): <i>Iraq</i>	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): <i>The Netherlands</i>	
Any third country of relevance to the case:³ <i>No</i>	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision: Qualification Directive 2004/83/EG	Relevant articles of the EU instruments referred to in the decision: Article 15c

Topics / Key terms: (see attached 'Topics' annex):

1951 Refugee Convention, Refugees, Iraqi, Sunni, Minorities, Internal flight alternative (IFA)

Key facts (as reflected in the decision): [No more than 200 words]

On October 18, 2015, the applicant, born in 1994 and with Iraqi nationality, submitted an application to obtain an asylum permit. The applicant based his application on the ground that he is hiding from Islamic State (IS), because he is a photographer and he has been asked several times to think about whether he wants to work for them. His studio was subsequently set on fire, his father was abused and then his house was also set on fire. When he and his family fled to Baquba to hide, the Hash al-Shaabi (Hashd) asked the applicant to join them. Together with his brother, he went to the camp in Ali Awa. On August 26, 2015, the applicant left Iraq.

The applicant was denied asylum in the Netherlands. According to the State Secretary of Security and Justice the applicant failed to demonstrate that there are personal facts and circumstances which justify his fear of persecution, his refusal to enlist with Hashd does not lead to another conclusion.

Although the applicant comes from the province Diyala, which has been designated as an area in which there is an exceptional situation referred to in Article 15c of Qualification Directive 2004/83 / EC, the State secretary argues that the applicant can relocate in a Sunni area in Baghdad. The State secretary takes into account that the applicant is a healthy young Sunni man that speaks Arabic and is in possession of identification documents. According to the State secretary there is no reason to believe that the applicant will not be granted access when he travels to Baghdad.

The applicant filed appeal, which was declared grounded by the court and the contested decision was dismissed. The Court decision was inter alia based on information gathered by Dutch refugee Council and expert opinions of Sheri L. Laizer and Rebwar Fatah. The Court and took into account the reports regarding the abductions of Sunnimen in Bagdad and the fact that Sunni refugees entering Bagdad are perceived to have links with ISIS.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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Para. 11.3: The report ‘Frequently asked questions – Baghdad – Security situation’ shows on page 1 that the violence against civilians is no longer limited to areas where Shiites form the majority. “The (suicide) attacks that take place daily in the city are committed in Shiite, Sunni and religiously mixed neighbourhoods.” This same report (page 4) shows that Amnesty International has published a report on the fact that Shiite militias abduct and kill Sunni civilians in Baghdad and that these militias are often supported by the Iraqi government. On page 7 it can be read that almost every month in the reporting period attacks occurred in which a large number of civilians fell victim and from which it can be derived that IS is still capable of carrying out such targeted attacks in the capital. Then, shown on page 9, several abductions and executions of mainly Sunni men take place almost every day and this form of sectarian violence, attributed to Shiite militias, has increased sharply since July 2014. The Shiite militias would have expanded their power in Baghdad further in the reporting period. Whereas the defendant claims that the applicant’s introduced numbers from Iraq Body Count mainly see to the province of Baghdad, page 10 from the report ‘Frequently asked questions’ shows that the province of Baghdad counted the highest number of civilian deaths and wounded and that the violence mainly took place *in the capital* and in the Baghdad belts.

The report from the Dutch Council for Refugees ‘Frequently asked questions – Baghdad – Flight alternative’ shows (page 2) that displaced persons in camps in Baghdad are forced to share overcrowded tents, that the camps are without electricity, water and proper sanitation and that the fear for their own safety is especially true of Sunni refugees from Anbar, who were forced to settle in Baghdad because they are suspected to have ties with IS. The court remarks that although the applicant is not from Anbar, he is a Sunni refugee and can therefore also be suspected to have ties with IS. Furthermore, from the evidence introduced by the applicant, it appears that in the city of Baghdad many bombings, suicide attacks and executions take place, although often not specifically directed against Sunnis but where both Sunnis and Shiites lose their lives or are injured (example: the letter from D. van Vliet from the Dutch Council for Refugees from 1 March 2016: “The (suicide) attacks that take place daily in the city are committed in Shiite, Sunni and religiously mixed areas”). From the same letter from 1 March 2016 it appears that in February 2015 around 100,000 persons were mobilized to protect Baghdad through Shiite militias, supported by Iraqi authorities. They operate outside the legal framework. According to a statement released in December 2014 by Sunni scholars in Baghdad the Sunni population was expelled from several prominent neighbourhoods in Baghdad by government troops and Shiite militias. Human Rights Watch has indicated in this context that killings and abductions by Shiite militias in Baghdad increased during the year 2014. From the report of February 2015 by the Norwegian country info unit it would be “open season” for attacks on Sunnis in Baghdad. From the expert opinion from dr. Fatah (whose expertise is not contested by the defendant) it is clearly shown how risky (abductions, killings, torture and bombings) the lives of Sunni men are in Baghdad (reporting to Human Rights Watch: “Sunnis are a minority in Baghdad, but they’re the majority in our morgue”). Although dr. Farah does not clearly discern between the city and the province of Baghdad, it also goes that dr. Farah does not explicitly mention that the information particularly applies to the Baghdad belts.

Para. 11.4: In view of the court the defendant, considering what has been set out in paragraph 11.3, regarding the question whether it may reasonably be expected from the applicant that he settles in Baghdad, has not sufficed with the given reasoning and the referral to the judgment of the British Upper Tribunal, the MFA-COI report and the personal situation (age, sex, education, documentation) and the proposition that the applicant can be required to settle in a Sunni area. Although, like the examples mentioned in paragraph 11.3, other examples can be cited which show that the situation of the residents of the city of Baghdad, and Sunnis in particular, can live a relatively safe life, the court considers these examples in such a way relevant and weighty that the defendant’s underlying reason for the decision, in so far as it relates to the flight alternative, is not sufficient. According to the court, the defendant has insufficiently taken into account the fact that the applicant is Sunni and that the applicant has no family or friends in the city of Baghdad. Although IFA in case a person stems from an Article 15c situation might be objected more easily than in case a person is personally targeted the Court, given the provided reasoning, considers the objection with a flight alternative therefore unreasonable.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

The Court in Amsterdam, with a single judge, decision dated 29 April 2016, reference number 16/7178, referred the case it was dealing with to the court sitting with three judges, because the investigation whether IFA can be applied with respect to Bagdad warrants a court session with three judges.

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

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Protection Information Unit
Division of International Protection
UNHCR
Case Postale 2500
1211 Genève 2 Dépôt
Switzerland
Fax: +41-22-739-7396
Email: refworld@unhcr.org