



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

## ANDEN AFDELING

### AFGØRELSE

Klage nr. 68739/14  
A.S.  
mod Belgien

Den Europæiske Menneskerettighedsdomstol (anden afdeling), der har behandlet sagen den 19. september 2017 i et udvalg bestående af:

Robert Spano, *formand*,

Julia Laffranque,

Ledi Bianku,

Nebojša Vučinić,

Paul Lemmens,

Valeriu Grițco,

Stéphanie Mourou-Vikström, *dommere*,

og Stanley Naismith, *justitssekretær for afdelingen*,  
afsiger –

under henvisning til klagen, der blev indbragt den 22. oktober 2014,  
under henvisning til den foreløbige foranstaltning, der er oplyst den  
indklagede regering i medfør af regel 39 i Domstolens procesreglement,  
under henvisning til beslutningen om, at behandlingen af klagen skal  
prioriteres i medfør af regel 41 i procesreglementet,  
under henvisning til de bemærkninger, der er fremsat af den indklagede  
regering, og de bemærkninger, der er fremsat af klager som svar herpå,  
og efter at have voteret - følgende afgørelse:

## SAGENS BAGGRUND

[...]

### C. Relevante informationer om Irak

37. Der findes detaljerede informationer om den generelle menneskerettighedssituation i Irak og muligheden for intern genbosættelse i Irak før 2016 i dommen *J.K. m.fl. mod Sverige* (præmis 30-46). Der er efter

denne dom udarbejdet flere rapporter.

### *1. Den generelle sikkerhedsmæssige situation*

38. I dokumentet om den generelle sikkerhedsmæssige situation i Irak ”*Country Information and Guidance. Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)*”), der blev offentliggjort i august 2016 af det britiske indenrigsministerium, oplyses følgende:

”3.1.1 In the CG case of AA [“Country Guidance (CG) case of AA (Article 15 (c)) (Rev 1) Iraq CG UKUT 544 (IAC)”, [afgørelse fra “Upper Tribunal” af 30. september 2015]], the courts 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.

3.1.2 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 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 (thereby engaging Article 15(c) of the Qualification Directive and entitling a person to a grant of Humanitarian Protection).

3.1.3 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.

3.1.4 In general, a person can relocate to the areas which do not meet the threshold of Article 15(c).”

39. I dokumentet fra FN's Højkommissariat for Flygtninge fra november 2016, hvori der redegøres for kommissariatets holdning til tilbagesendelse til Irak, henvises der navnlig til følgende:

#### *”UNHCR Position on Returns*

47. Under the present circumstances, UNHCR urges States to refrain from forcibly returning any Iraqis who originate from areas of Iraq that are affected by military action, remain fragile and insecure after having been retaken from ISIS, or remain under control of ISIS. Such persons, including persons whose claims for international protection have been rejected, should not be returned either to their home areas, or to other parts of the country. Many Iraqis from these areas are likely to meet the criteria of the 1951 Convention for refugee status. When 1951 Refugee Convention criteria are found not to apply, broader refugee criteria as contained in relevant regional instruments or complementary forms of protection are likely to apply. Depending on the profile of the individual case, exclusion considerations may need to be examined.

48. Where decision-makers consider the availability of an internal flight or relocation alternative, the burden is on the decision-maker to identify a particular area of relocation and to show that in respect of this location the requirements for the relevance and reasonableness of the proposed relocation alternative are met. In the current circumstances, with large-scale internal displacement, a serious humanitarian crisis, mounting intercommunal tensions, access/residency restrictions in virtually all parts of the country and increasing pressure exercised on IDPs to prematurely return to their areas of origin following the retaking of these areas from ISIS, UNHCR does not consider it appropriate for States to deny persons from Iraq international protection on the basis of the applicability of an internal flight or relocation alternative. An internal

flight or relocation alternative would only be available in the exceptional circumstances where an individual can legally access and remain in the proposed area of relocation, would not be exposed to a new risk of serious harm there, and has close family links in the proposed area, with the family willing and able to support the individual. In light of the difficult humanitarian conditions in many parts of the country, especially in areas hosting large numbers of IDPs, family members who are themselves in a situation of internal displacement would generally not be considered as being able to provide such support.”

40. I dokumentet om den generelle sikkerhedsmæssige og humanitære situation i Irak ”*Country Policy and Information Note. Iraq: Security and humanitarian situation*”, der blev offentliggjort i marts 2017 af det britiske indenrigsministerium, oplyses følgende:

”2.3.27 For the reasons given above, there are strong grounds to depart from AA’s assessment of Article 15(c). Parts of Anbar that Daesh no longer occupies (including the Fallujah, Heet and Ramadi districts), Diyala, Kirkuk (except Hawija and the surrounding areas) and Salah al-Din no longer meet the threshold of Article 15(c). Ninewah and most of Anbar, however, still meets the threshold of Article 15(c).

2.3.28 In areas where there is no general Article 15(c) risk, decision makers must consider whether the person has any circumstances which might nevertheless place them at such risk.”

### 3.2 Security situation

3.2.1 In the Country Guidance case of AA, which considered evidence up to April 2015, the Upper Tribunal found that in areas of Iraq indiscriminate violence was at such a level that substantial grounds existed 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). These areas were:

- Anbar;
- Diyala;
- Kirkuk (aka Tam’in);
- Ninewah;
- Salah al-Din; and
- the parts of the ‘Baghdad Belts’ (the urban environs around Baghdad City) that border Anbar, Diyala and Salah al-Din

3.2.2 However, the situation has changed since then. Parts of Anbar that Daesh no longer controls or contests (including the Fallujah, Heet and Ramadi districts), Diyala, Kirkuk (except Hawija and the surrounding areas) and Salah al-Din no longer meet the threshold of Article 15(c). Ninewah and most of Anbar, however, still meets the threshold of Article 15(c).

3.2.3 However, decision makers should consider whether there are particular factors relevant to the person’s individual circumstances which might nevertheless place them at enhanced risk.

3.2.4 In general, a person can relocate to the areas which do not meet the threshold of Article 15(c).

3.2.5 Where a claim is refused, it is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002. ”

## 2. Intern genbosættelse i Irak

41. I dokumentet om tilbagesendelse og intern genbosættelse i Irak

(*"Country Information and Guidance on Iraq: Return/Internal relocation"*), der blev offentliggjort i august 2016 af det britiske indenrigsministerium, oplyses følgende:

*"3.1 Internal relocation*

3.1.1 A person cannot be returned or relocated to the areas of Iraq which meet the threshold of Article 15(c) (Anbar, Ninewah, the parts of Kirkuk in and around Hawija, and the north, west and east parts of the 'Baghdad Belts').

3.1.2 In general, a person can relocate to Baghdad (except the north, west and east parts of the 'Baghdad Belts'), the central governorates of Diyala, Kirkuk (except the areas in an around Hawija) and Salah al-Din, and the southern governorates (Babil, Basra, Kerbala, Najaf, Muthana, Thi-Qar, Missan, Qadissiya and Wassit). A person who does not originate from the Kurdistan Region of Iraq (KRI) will be returned to Baghdad in the first instance. There is no real risk of harm to ordinary civilians travelling from Baghdad to the southern governorates.

3.1.3 In general, a Kurd or a person who originates from the KRI can relocate to (or within) the KRI. Non-Kurds cannot.

3.1.4 Decision makers need to assess each case on its merits.

*3.2 Feasibility of return*

3.2.1 A person can only be returned (to Baghdad) if they have an Iraqi passport (current or expired), or a laissez-passer. If they do not have one of these documents then return is not 'feasible'.

3.2.2 A lack of these travel documents is a technical obstacle to return, and is not a reason itself to grant protection.

3.2.3 Only when return is feasible can the issue of documentation (or lack of it) be considered in any assessment of protection.

3.2.4 People who originate from the KRI who have been pre-cleared by the KRI authorities are returned to Erbil Airport and do not require a passport or a laissez-passer. "

42. I en rapport fra FN's Højkommissariat for Flygtninge af 12. april 2017 (*"Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA): Ability of Persons Originating from (Previously or Currently) ISIS-Held or Conflict Areas to Legally Access and Remain in Proposed Areas of Relocation"*) oplyses der følgende med hensyn til genbosættelse i det irakiske Kurdistan, og nærmere Erbil:

*"5) Kurdistan Region of Iraq*

Residency conditions vary considerably among the three governorates of the KR-I and depend on the individual's ethnic/religious background, place of origin and pre-existing links in the KR-I.

*a) Erbil Governorate*

Iraqis can generally access Erbil via Erbil International Airport without a sponsor or other requirements (but see below on exceptions for those from Ninewa Governorate). Following a security check, Arabs are issued an entry pass valid for 72 hours, while Christians are issued an entry pass valid for three to seven days. Turkmen, Yazidis, Shabaks and Kaka'is are generally not required to obtain entry permits when entering

via Erbil Airport.

Specific entry instructions have been issued by the Kurdish security agency (Asayish) after the launch of the Mosul offensive on 17 October 2016: persons from Ninewa Governorate seeking to enter Erbil via Erbil Airport (or via a road checkpoint) have to provide a local Kurdish sponsor, who must be present at the point of arrival and accompany the individual or family to the Asayish office in Ankawa (Erbil) to obtain a letter for the individual/family to remain in Erbil. This letter should be presented to the Asayish branch in the area in which the IDP chooses to reside within 48 hours from the date of issuance.

Conditions for obtaining a residency permit (“tourist pass”) vary depending on the person’s profile and family. Kurds, Turkmen (not from Tal Afar), Yazidis, Shabaks and Kaka’is generally do not require a residency permit in order to legally reside in Erbil Governorate. Arabs, Turkmen (from Tal Afar) as well as Christians not originating from the KR-I must obtain a short-term, renewable residency permit (“tourist pass”) in order to legally reside in Erbil Governorate. The “tourist pass” is needed in order to pass checkpoints, rent an apartment or stay in hotels, and to access the labour market. IDPs residing in non-camp situations also require the “tourist pass” in order to register with the MoMD.”

### *3. Den væbnede gruppe Naqshbandiyya*

43. En offentliggørelse fra Stanford University om den væbnede gruppe *Naqshbandiyya* (der kan læses på adressen <http://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/75>) indeholder følgende passage om organisationens geografiske udbredelse:

”Although there are scattered cells of JRTN fighters across Iraq, the JRTN is concentrated in Salah al-Din, Ninawa, Tikrit and Kirkuk. It has been particularly active in and around Mosul, Hawija, and the “occupied territories” in the north of the country where Kurdish forces have seized control and asserted their autonomy.”

[...]

## RETLIGE BETRAGTNINGER

[...]

### **A. Om den påståede overtrædelse af artikel 3 i Konventionen**

#### *2. Domstolens bemærkninger*

[...]

57. Domstolen henviser til sin retspraksis, hvorefter eksistensen af en risiko for mishandling primært skal vurderes med henvisning til de forhold, som den pågældende stat havde eller burde have haft kendskab til på udvisningstidspunktet (*J.K. m.fl. mod Sverige*, [Storkammeret], nr. 59166/12, præmis 106, ECHR 2016; ligeledes jf. *F.G. mod Sverige* [Storkammeret], nr. 43611/11, præmis 115, ECHR 2016). Når der forefindes

en national procedure, falder det endvidere ikke under Domstolens beføjelser at anvende egen bedømmelse af forholdene i stedet for de nationale myndigheders bedømmelse, da det i princippet er op til de nationale myndigheder at vurdere de af dem indhentede informationer (*F.G. mod Sverige*, præmis 118). Dette gælder navnlig for vurderingen af en asylansøgers troværdighed, idet det er de nationale myndigheder, der har haft mulighed for at møde den pågældende person, udspørge ham eller hende og vurdere hans eller hendes adfærd (*R.C. mod Sverige*, nr. 41827/07, præmis 52, 9. marts 2010, og *F.G. mod Sverige*, præmis 118).

58. Hvis klager imidlertid ikke er udvist på tidspunktet, hvor Domstolen behandler sagen, er den dato, der skal lægges til grund, datoen for Domstolens behandling af sagen (*J.K. m.fl. mod Sverige*, præmis 106; ligeledes jf. *F.G. mod Sverige*, præmis 115). Spørgsmålet om, hvorvidt klager reelt risikerer forfølgelse efter tilbagesendelse til Irak, skal dermed behandles i lyset af den aktuelle situation. Domstolen vil vurdere klagers situation, således som den fremstår i dag, under hensyntagen til tidligere hændelser, såfremt de belyser den aktuelle situation (*J.K. m.fl. mod Sverige*, præmis 107).

59. Klager påberåber sig i den foreliggende sag frygt, der er forbundet med såvel den generelle sikkerhedsmæssige situation i Irak, navnlig i Kirkuk, som han påstår at stamme fra, som en individuel risiko for at blive forfulgt af medlemmer af den væbnede sunnigruppe *Naqshbandiyya* som gengæld for den klage, han havde indgivet mod dem, og de informationer, som han havde givet til de irakiske myndigheder efter hvervningsforsøget (jf. ovenstående præmis 7 og 13).

60. Domstolen henviser med hensyn til det første punkt til, at den i sagen *J.K. m.fl. mod Sverige* (præmis 110-111) på grundlag af tilgængelige rapporter på tidspunktet om Irak konkluderede, at den generelle sikkerhedsmæssige situation ikke var så alvorlig, at den i sig selv indebar en tilsidesættelse af artikel 3 i Konventionen i tilfælde af tilbagesendelse af en person til dette land. Gennemgang af internationale og nationale rapporter, der var tilgængelige på tidspunktet, bekræfter denne konklusion (jf. ovenstående præmis 38-42).

61. Med hensyn til situationen i Kirkuk konstaterer Domstolen, at det belgiske generaldirektorat for flygtninge og statsløse, CGRA, og det belgiske råd vedrørende udlændingeretlige sager, CCE, på tidspunktet for behandling af den første asylansøgning havde vurderet, at der ikke kunne fæstnes lid til påstanden om, at klager skulle stamme fra Kirkuk (jf. ovenstående præmis 8 og 10). Denne konklusion var baseret på en detaljeret og grundig undersøgelse af asylansøgningen. Domstolen ser ingen omstændigheder, der giver anledning til at formode, at konklusionen skulle være vilkårlig eller åbenbart urimelig (jf., *mutatis mutandis*, *Sow mod Belgien*, nr. 27081/13, præmis 66, 19. januar 2016). Den konstaterer endvidere, at der ikke findes en international lufthavn i Kirkuk, og at klager ikke kan føres direkte tilbage dertil. Han vil kun kunne komme dertil på eget initiativ. Selv om det antages, at han reelt skulle stamme fra Kirkuk, og hvis han skulle vende tilbage dertil, vil det dermed være på eget initiativ.

62. Med hensyn til klagers særlige forhold er den påståede risiko forbundet med trusler fra den væbnede gruppe *Naqshbandiyya*, der ifølge de konsulterede kilder navnlig er koncentreret i Salah al-Din, Ninawa, Tikrit og Kirkuk (jf. præmis 43). Asylmyndighederne har, som der er henvist til ovenfor, vurderet, at der ikke kunne fæstnes lid til påstanden om, at klager skulle stamme fra Kirkuk (jf. præmis 60). Disse myndigheder har efterfølgende konkluderet, at frygten for en aktiv gruppe i dette område ikke er dokumenteret (jf. præmis 8 og 10). Domstolen ser ingen grund til at nå frem til en anden konklusion.

63. Domstolen vurderer i øvrigt, at klager ikke beviser, at han stadig i dag stadig skulle være et mål for den væbnede gruppe *Naqshbandiyya*. Domstolen bemærker, at klager over for de nationale myndigheder har bekræftet, at han stadig er i kontakt med sin mor, der bor i Irak, og at han på ingen måde har gjort gældende, at hun skulle være truet på grund af ham. Domstolen bemærker ligeledes, at klager under samtalen med CGRA i forbindelse med sin tredje asylansøgning ikke længere gjorde den påståede risiko i forhold til den væbnede gruppe *Naqshbandiyya* gældende, men begrænsede sig til at omtale en risiko i forhold til den sikkerhedsmæssige situation i Al-Nasr (jf. præmis 30).

64. Disse forhold foranlediger Domstolen til at konkludere, at der ikke er en reel og konkret grund til at formode, at klager skulle være udsat for en reel risiko for mishandling i tilfælde af tilbagesendelse. Denne del af klagen skal dermed afvises som åbenbart ugrundet i henhold til artikel 35, stk. 3 a) og 4 i Konventionen.