

Ministerie van Buitenlandse Zaken

European Court of Human Rights
Att. Mr. Santiago Quesada
Section Registrar
Council of Europe
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FRANKRIJK

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Via FAX only

Date 29 October 2010
Re Expulsions to Iraq

Dear Sir,

With reference to your letter of 22 October 2010 concerning the above mentioned subject, I have the honour to inform you as follows.

In its judgment in the case of *F.H. v. Sweden*¹, the Court held that only in the most extreme cases of general violence the situation in a country of destination may be such as to entail that any removal to it would breach Article 3 of the Convention. Concerning the case at hand it held that, whilst the general situation in Iraq, and in Baghdad, is insecure and problematic, it is not so serious as to cause, by itself, a violation of Article 3 of the Convention if the applicant were to return to that country. The Government is of the view that the reported recent deterioration in Baghdad and certain other governates of Iraq and the UNHCR's continuing concern as to the safety of returning Iraqi citizens to those areas, to which your letter refers, do not justify a different conclusion.

The Government closely monitors the security situation in Iraq. Twice a year, an official report on Iraq is drawn up with a view to a careful assessment of requests for protection by Iraqi citizens. The most recent official report of 27 October 2010, concerning the period of February through September 2010, is enclosed herewith. It is based on information from both public and confidential sources, including information from various sectors of the United Nations and authoritative non-governmental organisations such as *Human Rights Watch* and *Amnesty International*, as well as from expert publications and media reports. A list of sources appears on pages 83 – 87 of the official report. Furthermore, the report is based on fact-finding in Iraq and on confidential reports of the Royal Netherlands embassy in Baghdad and other relevant representations of the Netherlands.

The Government wishes in particular to refer to pages 17 - 27 of the report, concerning the security situation in Iraq in general and in separate areas, from which the following may be concluded.

¹ Judgment of 20 January 2009, Appl. no. 32621/06.

The security situation in the reported period still gave rise to serious concern. The level of violence, however, was strongly variable from one period to another and from one area to another. For instance, the level of violence deteriorated in the first weeks after the elections of 7 March, but was back at its original level by the end of April. Furthermore, according to the United States ministry of defence, in the period of 1 March until 31 May around six attacks per day occurred in the province of Baghdad, less than one in the province of Basra and practically none in the three northern provinces. Even though several sources observe a slightly positive development of the security situation over the years, including in the reported period, there is an interchange of improvements and deteriorations. It can therefore not be concluded that there has been an improvement, nor a deterioration, of the security situation in relation to previous reported periods (pages 17-19).

In this period too there was ethnic, religious and political violence, as well as serious crime, particularly in Central Iraq. Such violence came in the form of bombings, shootings, stabbings, kidnappings, intimidation and other violations of human rights. Sometimes its nature was arbitrary, but it is mainly directed against persons associated with the Iraqi government, including police officers, military personnel, politicians, civil servants and judges, and against persons associated with the shi'ite islam, especially during religious ceremonies and pilgrimages. Like before, there was violence against ethnic and religious minorities, such as christians and yezidi's. Iraqi citizens working for international organisations or for the United States as interpreters or otherwise, as well as gays, lawyers, journalists, doctors, nurses, academics, students, artists and sportsmen ran an increased risk of becoming victims of violence. It is however not always clear whether a persons became victim because of such qualities. Similarly, it is not always clear who was responsible for individual acts of violence (page 19). Especially in southern Iraq, there is violence and intimidation between shi'ites, albeit to a much lesser extent than in previous reporting periods. This violence originates mainly in rivalry between various shi'ite militias, or factions thereof, frequently stemming from the *Mehdi* army of *Moqtada Al-Sadr* – which itself still officially respects a truce – and the *Badr-corps* (SIIC), which have degenerated into criminal organisations (pages 27 and 69).

According to information from the Iraqi government more than two thousand civilians died through acts of violence in the reported period. The non-governmental organisation *Iraq Body Count* (IBC)² estimates the number of casualties among civilians at more than 2.800 in the same period. In comparison: in the period of eight months running from June 2007 to January 2008, IBC estimated a number of over twelve thousand casualties (page 18).

With regard to the five provinces in Central Iraq, which are of particular relevance to the Court's request, the following is reported. In the four northern provinces of Central Iraq, *Nineveh*, *Ta'mim*, *Salah-ad-Din* and *Diyala*, the security situation was unstable during the reporting period. Civilians were still confronted with bombings, shootings, murders, kidnappings, threats and intimidation. Arbitrary violence, aimed at destabilising the region and at undermining the authority of the government notably in the form of severe bombings, occurred less frequent than in previous periods. Most violence was specifically aimed at members of Iraqi

² www.iraqbodycount.org/database.

security organisations, sunni civic guards, sunni political and religious leaders and members of various religious and ethnic minorities (pages 21-22).

The security situation in and around Baghdad was equally unstable during the reporting period. Civilians were confronted with bombings, shootings, murders, kidnappings, threats and intimidation. Regularly, there were serious incidents, including severe bombings of shi'ite targets, public buildings and *Awakening Councils*. Furthermore, there was violence specifically aimed at individual politicians, religious persons and leaders of Iraqi security organisations and of *Awakening Councils*. Other citizens became victims of violence as well. The responsibility for the violence committed in Baghdad is to a large extent attributed to terrorist cells, either operating under the name of *Al-Qa'ida in Iraq* or labeled as such by the Iraqi authorities. In Baghdad too the fight against terrorism continued and many suspects of terrorism were arrested. Furthermore, shi'ite militias were still active in Baghdad, primarily in shi'ite neighbourhoods, but it is unknown to what extent they were responsible for incidents of violence (pages 23-24).

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The official report also discusses voluntary repatriation (pages 74-82). Both the International Organisation for Migration (IOM) and UNHCR assist Iraqi citizens wishing to return to Iraq voluntarily. According to information from UNHCR, more than 18.000 refugees and approximately 71.000 internally displaced persons returned to their homes during the reporting period, as compared to around 35.000 refugees and 165.000 internally displaced persons in all of 2009. Voluntary repatriation takes place to all provinces. The large majority of these persons, however, return to Baghdad, according to UNHCR.³

The IOM facilitates the voluntary repatriation of Iraqi citizens, including former asylum seekers from the Netherlands, Germany, the United Kingdom, Denmark, Norway and Lebanon. From the Netherlands, 421 persons voluntarily returned to Iraq assisted by the IOM between January and September 2010, as compared to 719 in all of 2009.⁴ The Government does not have at its disposal any figures on Iraqi citizens returning to Iraq independently. It should be observed, in this regard, that several European airline carriers are planning flights to Baghdad from European airports, including Amsterdam airport, at short notice, responding to a growing demand.⁵

Finally, the Government points out that the judiciary in several member states of the Council of Europe have recently considered – and answered in the negative – the question of whether the security situation in Iraq in itself justifies the assumption that Iraqi asylum seekers run a real risk of being subjected to treatment in violation of Article 3 of the Convention upon return to Iraq. The Government refers, *inter alia*, to judgments of the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*) of 10 June 2010 and 8 March 2010 respectively, as well as to a judgment of the British Upper Tribunal (Immigration and Asylum Chamber) of 22 September 2010, all of which are enclosed herewith.

³ UNHCR - Iraq operation. Monthly statistical update on return, augustus 2010. See www.iauiraq.org/documents/1072/Return%20Update%20IRAQ%20AUG%202010.pdf

⁴ www.iom-nederland.nl.

⁵ www.luchtvaartnieuws.nl/news/?ID=36703

Yours sincerely,

Roeland Böcker
Agent of the Government of the Netherlands

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29 October 2010