

CASE LAW ON RETURN OF ASYLUM SEEKERS TO AFGHANISTAN, 2017-2018

I. INTRODUCTION

This document compiles information from selected European countries, specifically, Austria, Belgium, Finland, France, Germany, The Netherlands, Norway, Sweden, Switzerland and United Kingdom. It covers cases from 2017 and 2018 that relate to the return of Afghan nationals, assessed in light of their personal circumstances and the security situation in the country. Whilst every effort has been put into finding relevant case law, the cases cited are, by no means, exhaustive. Where court decisions were not available in English ECRE has supplied a translation.¹

The structure and titles used mirror the structure and terminology that has been used in the [UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan](#) from 30 August 2018.

II. OVERVIEW OF THE SITUATION IN AFGHANISTAN

Main Developments in Afghanistan

Germany - Federal Constitutional Court - 2 BvR 2435/17, 25/04/2018: Afghanistan is characterized by a “very volatile and also regionally very different security situation”. Therefore, the courts are obliged to carry out a “daily updated” collection and evaluation of the facts relevant to the decision. This applies even if there is settled case law by the Higher Administrative Courts on the situation in Afghanistan (referring to previous decisions: 2 BvR 681, 27/03/2017 and 2 BvR 273/16, 21/04/2016).

France - Lyon Administrative Tribunal - 1702564, 03/04/2017 (and subsequent case law) finds certain provinces of Afghanistan to reach the level of an internal armed conflict.

The Security and Humanitarian Situation: Impact of the Conflict on Civilians

France - Lyon Administrative Court of Appeal - 17LY02181-17LY02184, 13/03/2018: The armed clashes prevalent across the whole of the Afghan territory constitute an internal armed conflict. The annual report of the United Nations (UN) Commissioner for Human Rights states that the security and humanitarian situation throughout the country has got worse during the last few years and both insurgent groups and governmental forces have been responsible for carrying out deliberate attacks on the civil population.

Switzerland - Federal Administrative Court - D-5800/2016, 13/10/2017: The security and humanitarian situation in most parts of Afghanistan amount to an existential threat within national law so that return is unreasonable.

Austria - Supreme Administrative Court - Ra 2017/19/0095, 19/06/2017: In line with previous Judgments, it found that the tense security and economic situation in Afghanistan did not reach the threshold of Article 3 European Convention on Human Rights (ECHR) in case of return, which required exceptional circumstances arising to an existential threat.

Human Rights Situation

Switzerland - Federal Administrative Court - E-1775/2016, 03/12/2018: Concerning a possible Internal Flight Alternative (IFA), the Court held that the Afghan security forces were not able to guarantee efficient protection for individuals at an elevated risk, including in Kabul, as the Taliban were operating in the whole territory of Afghanistan and have developed into a well-organised organisation, gaining influence and power.

UK - Upper Tribunal (Immigration and Asylum Chamber) - [2018] UKUT 386 (IAC), 22/10/2018: Decision concerning standard of proof in Article 3 ECHR considerations.

Belgium - Aliens Litigation Council - 201 200, 16/06/2018: The Council held that the only reference to a

1. Provided translations are unofficial. ECRE has tried to make sure that the translation of specific legal terms are as close to the term used by the respective Court. However, and whilst it is not always mentioned in the text of some judgments, the use of the term ‘Internal Flight Alternative’ (IFA) by Courts in Austria, Germany and Switzerland is often used in judgments inter-changeably with the term ‘Internal Protection Alternative’ (IPA).

NGO report (i.e. Amnesty International) does not suffice in order to establish a risk of ill-treatment in case of return of the applicant to Afghanistan (para 3.3.2.3.). / N° 200 464, 28/02/2018: The Council considers that the applicant alleges general grounds of persecution that may be applicable for nationals of other countries (paragraph 4.3.2.1.4). The Court does not find a risk of breach of Article 3 ECHR.

Germany -

- » **Administrative Court Saarland** - 5K 1339/16, 12/07/2018: Men of fighting age need to be granted protection status. There is no effective state protection.
- » **Administrative Court of Magdeburg** - 5A 61/17 MD, 03/07/2017: With regard to state protection, the Court ruled that Afghanistan has shown to be unable to provide protection against the persecution of non-state actors. The Court dismissed any IFA, mostly based on Taliban's extensive information network, its increased interest in the applicant (as shown by the threatening letters) and the recent increase in Taliban attacks against persons who have cooperated with international organisations. Finally, the fact that the organisation Hezbi Islami had, in the meantime, concluded a peace treaty with the Afghan government is not enough proof that persons who have been persecuted in the past will no longer be in danger.

Finland - Supreme Administrative Court - KHO: 2017: 74, 05/05/2017: Reasonable to reside in Kabul for healthy and capable young people with children with a relative in Kabul. It is not justified that appellants are in fear of persecution or serious harm in Kabul given that (i) generally difficult for the Taliban to reach people in Kabul; (ii) Kabul is under government control, and (iii) availability of State protection in Kabul (EASO COI, January 2016).

Refugees and Returnees

Germany - Administrative Court Aachen - 7 K 894/18.A, 23/11/2018: Court observed that the UN Refugee Agency (UNHCR) eligibility guidelines do not contain any new information that would lead to a different assessment of the security situation in Afghanistan and whether there was a serious and individual threat to returnees as they also only refer to the recent numbers of casualties given by the UN Assistance Mission in Afghanistan (UNAMA); Likewise: **Administrative Court Munich**, M 24 E 18.33442, 11/09/2018, para. 29.

III. ELIGIBILITY FOR INTERNATIONAL PROTECTION

RISK PROFILES

Individuals Associated with, or Perceived as Supportive of, the Government and the International Community, Including the International Military Forces

Civilians Associated with or Perceived as Supportive of the International Military Forces

Switzerland - Federal Administrative Court - E-1775/2016, 03/12/2018: Appeal granted in case of an applicant who had previously worked as a soldier, driver and bodyguard for the Afghan as well as the US military. The Court found that the applicant was part of the group of individuals at elevated risk of persecution, comprising persons close to the Afghan government as well as the international community, including the military of both, western oriented people and people who for any other reason did not fit in the Afghan society. Concerning a possible IFA, the Court held that the Afghan security forces were not able to guarantee efficient protection for individuals at elevated risk, including in Kabul, as the Taliban were operating in the whole territory of Afghanistan and have developed into a well-organised organisation, gaining influence and power. In particular, the Taliban managed to carry out several complex attacks in Kabul.

UK - Upper Tribunal (Immigration and Asylum Chamber) - PA/02596/2018, 28/11/2018: There is a material error if making a bold statement that there was "no evidence" to suggest that interpreters for international forces are not perceived by the Taliban to be spies. There was evidence before the Judge which could arguably point to the opposite view. / PA/13383/2017, 20/11/2018: The Tribunal gave credibility to the appellant's allegation to have worked for the Afghanistan Nawin Security Organisation (ANSO) escorting American supply convoys around Kabul and Kandahar by rejecting the first-tier Tribunal's and the Secretary of State's arguments.

Austria -

- » **Supreme Administrative Court - Ra 2017/19/0425**, 01/03/2018: Where the applicant previously worked with the U.S. military, it is not sufficient for the assessment of his asylum application to just take into account the general security and supply situation in Kabul. The court must rather take into consideration whether the previous involvement with the U.S. armed forces constitute special distinguishing features.
- » **Constitutional Court - E2292/2017**, 26/02/2018: Country of Origin Information (COI) suggests that conflict-related attacks and hostilities against current and former Afghan employees of the U.S. military are a common occurrence. It found that the Federal Administrative Court had to take this aspect into account when assessing the asylum application. In this case, it is not sufficient if the court simply refers to the general risks posed to the general population who have not worked/are not working for the U.S. military.

Individuals Perceived as “Westernized”

Austria -

- » **Federal Administrative Court - W186 2162786-1**, 25/10/2018: Asylum granted to women due to her western oriented lifestyle.
- » **Supreme Administrative Court - Ra 2017/18/0357**, 22/02/2018: The western lifestyle of female asylum seekers can lead to asylum being granted, also where the life style has been adopted while living in Austria.

The Netherlands - Court of The Hague, AWB 16/733, AWB 16/735, AWB 16/732, 18/01/2017: Western lifestyle of a woman from Herat falls under the persecution grounds of religion and political opinion within the meaning of the Refugee Convention. The adult daughter cannot be required to adapt to the standards applicable to women in Afghanistan.

Other Civilians Perceived as Supporting the Government or the International Community

Germany - Administrative Court of Magdeburg - 5A 61/17 MD, 03/07/2017: The Court dismissed any IFA, mostly based on Taliban’s extensive network information, its increased interest in the applicant (as shown by the threatening letters) and the recent increase in Taliban attacks against persons who have cooperated with international organisations.

Men of Fighting Age, and Children in the Context of Underage and Forced Recruitment

Forced Recruitment by Age

UK -

- » **Upper Tribunal (Immigration and Asylum Chamber) - [2018] UKUT 386 (IAC)**, 22/10/2018: Decision related to standard of proof in Article 3 ECHR considerations for appellant who claimed that his father had been forcibly recruited and killed by the Taliban, who then tried to forcibly recruit him.
- » **Court of Appeal - [2014] UKAITUR AA048112013**, 27/07/2017: Courts need to take into consideration medical evidence when considering overall credibility of a 15-year-old Afghan applicant who fled persecution from the Taliban, who had sought to recruit and train him. He suffered from moderate to severe learning difficulties. Additionally, the Court found the need to consider applicant’s age, vulnerability and learning difficulties when looking at alleged inconsistencies.

Germany -

- » **Administrative Court Augsburg - Au 5 K 17.30441**, 13/08/2018: Forced recruitment by the Taliban is a criminal phenomenon, as it is not based on one of the characteristics relevant for refugee status. The person concerned has to seek state protection.
- » **Administrative Court Saarland - 5K 1339/16**, 12/07/2018: Men of fighting age need to be granted protection status. There is no effective state protection.

Austria -

- » **Constitutional Court - E2497/2016 and others**, 13/12/2017: The risk of forced recruitment by the Taliban has to be taken into account when assessing an asylum claim and can result in the granting of a protection status if the refusal to obey the recruiters might lead to the individual being accused of having adopted a religiously or politically oppositional stand.

Women with Certain Profiles or in Specific Circumstances

Austria - Federal Administrative Court - W186 2162786-1, 25/10/2018: Women in Afghanistan are generally at risk of violation of their fundamental rights. / **W158 2195419-1**, 17/07/2018: Subsidiary protection granted based on the “exceptional circumstances of the individual case” which concerns a widowed woman with no male support as required in Afghanistan for freedom of movement. She is a Hazara, with no school education, illiterate and left Afghanistan at the age of 18, then stayed in Iran, professional experience as a carpet weaver and dress tailor, no family members in Afghanistan, could not exercise previous professional activities anymore because of eye problems. / **W264 2167935-1**, 14/06/2018: Subsidiary protection granted based on the “exceptional circumstances of the individual case” which concerns single woman with eight minor children, no education and no professional experience.

Women and Men Who Are Perceived as Contravening Social Mores

Austria - Federal Administrative Court - W177 2129444-1, 06/07/2017: Persons engaging in extramarital affairs or sexual intercourse are at risk of persecution for political or religious reasons.

Individuals with Disabilities, Including in Particular Mental Disabilities, and Individuals Suffering from Mental Illnesses

UK - Upper Tribunal (Immigration and Asylum Chamber) - PA/06274/2017, 26/06/2018: Found that in Kabul there is better access to healthcare than in the provinces of Afghanistan but that there is clearly a shortage of equipment and demand which outstrips supply.

Austria - Federal Administrative Court - W158 2172011-1, 12/06/2018: Subsidiary protection granted to a married man, illiterate, never has been to Kabul, only professional experience as farmer/day-labourer, maintenance obligation for two sons, one of them disabled and in need of additional support, mental and physical issues, access to treatment in Kabul unclear.

Children with Certain Profiles or in Specific Circumstances

Austria -

- » **Supreme Administrative Court - Ra 2018/18/0315**, 06/09/2018: When assessing the situation upon return of a family with minor children, the particular vulnerability of the children had to be taken into account in a sufficient manner. In particular, regarding the supply conditions in Kabul concrete findings on whether the family will be able to find appropriate accommodation are required in light of the particular vulnerability of the children. A general reference to existing family support cannot replace these necessary findings. / **Ra 2018/20/0289**, 12/06/2018: An appeal based on the particular vulnerability of the children required the appeal to be substantiated referring to the individual case and not only generally to the specific vulnerability of children.
- » **Constitutional Court - E941/2018 and others**, 11/06/2018: It found that an IFA for a family with three minor children could only be assumed to exist if they had a family or social network. / **E3507/2017**, 27/02/2018: Courts have an obligation to consider and discuss the COI on the general situation of children in Afghanistan. / **E2497/2016 and others**, 13/12/2017: Courts have a corresponding obligation to gather sufficient information and evidence on the specific situation of children in Afghanistan. / **E2130/2017 and others**, 21/09/2017: It is required to take into account the particularly dangerous situation in Afghanistan for children, namely the high number of casualties of minors as well as cases of abuse, that may amount to the necessity to grant them subsidiary protection.

Sweden - Migration Court of Appeal - MIG 2018:6, 10/04/2018: Circumstances that in practice are deemed to entail the need for international protection for a child have not been considered as a basis for protection for a person who has reached the age of 18. / **MIG 2017:6**, 17/03/2017: The overall situation for Unaccompanied asylum seeking children (UASCs) lacking local knowledge about Afghanistan (i.e. having grown up in Iran) and not having parents, extended family members or otherwise a male network in Afghanistan, is so dangerous that they cannot be returned.

UK - Court of Appeal - [2014] UKAITUR AA048112013, 27/07/2017: Courts need to take into consideration medical evidence when considering overall credibility of a 15-year-old Afghan applicant who fled persecution from the Taliban who had sought to recruit and train him. He suffered from moderate to severe learning

difficulties. Additionally, found the need to consider applicant's age, vulnerability and learning difficulties when looking at alleged inconsistencies. It also recognised the principle that "a child is foremost a child before he or she is a refugee" and that "a decision taken without regard to the need to safeguard and promote the welfare of any children involved will not be 'in accordance with the law' for the purposes of Article 8 ECHR".

Systematic Denial of Access to Education

Austria - Constitutional Court - E2528/2017 and others, 30/11/2017: The systematic denial of education for girls has to be taken into account when assessing an asylum claim, even where the parents do not necessarily refer to it when substantiating the claim of the children.

Members of (Minority) Ethnic Groups

Hazaras

Austria -

- » **Federal Administrative Court - W156 2180977-1**, 21/11/2018: UNHCR's finding that Kabul cannot be considered as Internal Flight Alternative (IFA)/Internal Relocation Alternative (IRA) anymore does not apply to the present case as the applicant as a Hazara could expect support from the big Hazaran community in Kabul. / **W246 2172546-1**, 20/07/2018: Subsidiary protection granted to a young man who, among others, was visibly part of the Hazara minority, which were exposed to further disadvantages and discrimination compared to the ethnic groups of Pashtuns and Tajiks; similar judgments in **W177 2174923-1**, 18/05/2018; **W191 2151097-1** and **W191 2166274-1**, 23/07/2018. / **W259 2153684-1**, 27/07/2018: Subsidiary protection granted to family (father, his sister, mother, and two minor children) with no professional education of the adult family members, no family members in Afghanistan, belonging to Hazara minority, which are discriminated against, taking into account that the two minor children also had to be provided for.
- » **Supreme Administrative Court - Ra 2016/18/0171**, 21/02/2017: Generally finds that Hazara are not an ethnic group that is persecuted.

Sweden - Migration Court of Appeal - MIG 2018:16, 20/09/2018: The general situation of Shi'ite Hazaras in Afghanistan is not such that an affiliation to the group poses a risk of being subjected to systematic persecution.

France - National Court of Asylum - n° 18003724, 03/07/2018: Refugee status is granted to an Afghan national of Hazara origin who converted to Christianity after arriving in Europe, a situation of apostasy that makes him fear persecution if he returns to his country. Arguments based on the "UNHCR Eligibility Guidelines For Assessing the international Protection Needs of Asylum-Seekers From Afghanistan", published on 19 April 2016. / **n° 17043168**, 05/04/2018: Generally Hazaras no longer exposed to persecution by Taliban armed groups.

The Netherlands - Court of The Hague - 18.2323, 19/06/2018: The general situation in Afghanistan is not such that Hazara foreign nationals can easily be regarded as refugees.

Finland - Supreme Administrative Court - HFD: 2017:73, 05/05/2017: For a family of Hazaras, who lived in Iran for a long period, the Court rejected Kabul as an IFA as there was no support network in the capital nor any family elsewhere in Afghanistan. / **HFD 2017:71**, 05/05/2017: Despite the absence of generalised violence in the applicants' place of origin, their individual circumstances had to be taken into consideration when assessing the need for subsidiary protection. / **HFD: 2017:72**, 05/05/2017: The applicant (young male of Hazara ethnicity) expected to travel to his place of origin (Ghazni, Jaghor) and was not in need of subsidiary protection, when considering both COI and the applicant's personal circumstances.

REFUGEE STATUS UNDER UNHCR'S BROADER MANDATE CRITERIA OR REGIONAL INSTRUMENTS, OR ELIGIBILITY FOR COMPLEMENTARY FORMS OF PROTECTION

Eligibility for Subsidiary Protection under the EU Qualification Directive

The Netherlands - Court of Amsterdam (Administrative Chamber) - AWB-17_4844, 07/09/2018: The situation in Kunduz is very precarious for a 20-year-old Uzbek Afghan asylum seeker vulnerable to be recruited by the Taliban. The Court considered that when denying the temporary residence permit to the applicant, the

respondent did not specifically refer to the security situation in the province of Kunduz -where the applicant comes from. It noted that since the decision came out there have been new COI reports that must be taken into account by the respondent. The Court concluded that the situation in Kunduz is very precarious and considered important the fact that the European Asylum Support Office (EASO) has noted that the violence in Kunduz reaches a violence as the one within the meaning of Article 15(c) of the Qualification Directive in its report from 21 June 2018. For this purpose, the Court took into consideration the personal characteristics of the applicant and held that the respondent had to make a decision again by also consulting the UNHCR on the situation in Kunduz and the possibility to return the applicant.

Austria -

- » **Federal Administrative Court - W244 2112270-2**, 14/08/2018: Subsidiary protection granted to an elderly applicant. This characteristic increases difficulties regarding the reintegration into the Afghan society due to decades of residence abroad, maintenance obligations towards his wife and sons, sons only basic knowledge of a language spoken in Afghanistan and, thus, not able to contribute to family income, wife Christian belonging to a religious minority, applicant himself Hazara and, thus, belonging to religious and ethnic minority, limited ability to work. / **W259 2153684-1**, 27/07/2018: Subsidiary protection granted to family (father, his sister, mother, and two minor children) with no professional education of the adult family members, no family members in Afghanistan, belonging to Hazara, which are discriminated against, taking into account that the two minor children also had to be provided for. / **W246 2172546-1**, 20/07/2018: Subsidiary protection granted to a young man fit to work due to the fact that he had no family or social network in Afghanistan, lived most of his life in Pakistan and Iran and never has been to Afghanistan and had no knowledge of the place and only little knowledge of the local customs and, thus, faced a risk of being discriminated as “a foreigner in his own country”, could not expect any financial or other support from his family living in Iran, and visibly was part of the Hazara minority, which were exposed to further disadvantages and discrimination compared to the ethnic groups of Pashtuns and Tajiks; similar judgments: **W177 2174923-1**, 18/05/2018; **W191 2151097-1 and W191 2166274-1**, 23/07/2018 / **W158 2195337-1**, 17/07/2018: Subsidiary protection granted to a 71-year-old male, with no school education, no vocational training, work experience only in the area of the vegetable trade, back pain and stomach problems requiring medication, no longer able to work, has not been living in Afghanistan for 20 - 30 years, no social security and family network in Afghanistan: not comparable to the situation of young, healthy, single men fit to work. / **W264 2167935**, 14/06/2018: Subsidiary protection granted based on the “exceptional circumstances of the individual case” which concerns single woman with eight minor children, no education and no professional experience. / **W158 2172011-1**, 12/06/2018: Subsidiary protection granted to a married man, illiterate, never has been to Kabul, only professional experience as farmer/day-labourer, maintenance obligation for two sons, one of them disabled and in need of additional support, mental and physical issues, access to treatment in Kabul unclear.
- » **Constitutional Court - E2130/2017 and others**, 21/09/2017: It is required to take into account the particularly dangerous situation in Afghanistan for children, namely the high number of casualties of minors as well as cases of abuse that may amount to the need to grant them subsidiary protection.

UK - Upper Tribunal (Immigration and Asylum Chamber) - PA/06274/2017, 26/06/2018: No risk in case of removal to Afghanistan shown. No evidence found that the applicant’s mother would not be able to be accompanied by a male to Kabul in order to provide proper support to the applicant. The level of indiscriminate violence in Kabul is not at such a high level as to amount to the one of Article 15(c) of the Qualification Directive. Found that in Kabul there is better access to healthcare than in the provinces of Afghanistan but that there is clearly a shortage of equipment and demand which outstrips supply. In any case, proposed removal might interfere with Article 8 ECHR rights of the appellant. / **[2018] UKUT 386 (IAC)**, 21/06/2018: No indiscriminate violence reaching the threshold of Article 15 (c) of the Qualification Directive in Afghanistan.

France -

- » **National Court of Asylum - n° 17045561**, 09/03/2018: Subsidiary protection was granted to an applicant that risked suffering serious harm if returned to Kabul and merely because of his presence in that city.
- » **Council of State - n° 401585**, 16/10/2017: Subsidiary protection must be granted not only to those coming from a region with a generalised level of violence resulting in a serious threat to one’s life but also to those who would have to go through such an area in order to reach their region of origin. In the case in question, it found that, since the applicant would have to go through Kabul, which is exposed to violence, in order to reach his region of origin, he ought to be entitled to subsidiary protection.

Finland - Supreme Administrative Court - HFD 2017:71, 05/05/2017: Despite the absence of generalised

violence in the applicants' place of origin, their individual circumstances had to be taken into consideration when assessing the need for subsidiary protection.

INTERNAL FLIGHT, RELOCATION OR PROTECTION ALTERNATIVE

Internal Flight or Relocation Alternative in Afghanistan's Cities

Germany -

- » **Administrative Court Trier** - 9 K 11867/17.TR, 12/12/2018: Herat constitutes an IFA for young male Afghans without health impairments taking into account security situation and the possibility to provide for their own needs. It considered the UNHCR eligibility criteria
- » **Administrative Court Augsburg** - Au 5 K 17.31133, 27/11/2018: IFA in Kabul and Herat for young male of age; Use of UNHCR eligibility guidelines: the Court held that even if one would want to assume - taking into account UNHCR's 2018 eligibility guidelines - that Kabul was not an adequate IFA anymore, Herat would still need to be considered one.
- » **Administrative Court Munich** - M 26 K 17.35228, 08/10/2018: According to the Higher Administrative Court of Bavaria's case law, single, able-bodied men are generally capable of providing for themselves without support when they live in urban or sub-urban areas. EASO country guidance June 2018 and UNHCR's 2018 eligibility guidelines are considered to some extent.

Austria - Federal Administrative Court - W263 2170307-1, 27/11/2018: According to the UNHCR's 2018 eligibility guidelines, Kabul city cannot be considered as IFA but Herat and Mazar-e Sharif are reasonable IFAs for young men fit to work. The security situation in both cities is tense but still sufficiently safe, taking into account that they are controlled by the Afghan government and that most terrorist attacks are targeting government facilities, International Originations and areas with foreigners, so that residential areas are still quite safe. / W156 2180977-1, 21/11/2018: Kabul, Herat and Mazar-e Sharif are to be considered IFAs in case of a healthy male of working age with a good education, who is familiar with the customs of his country of origin, in light of the security situation as well as the general living conditions in these cities. Also applies to returnee with no support from family as he can be expected to provide for himself considering his education and ability to work. Moreover, UNHCR's finding that Kabul cannot be considered as IFA/IRA anymore, does not apply to the present case as the applicant as a Hazara could expect support from the big Hazaran community in Kabul. Furthermore, even if one would want to follow the eligibility guidelines in assuming that Kabul was not an IFA/IRA anymore, that would still leave Mazar-e Sharif and Herat.

The Netherlands - Court of Amsterdam (Administrative Chamber) - AWB-17_4844, 07/09/2018: The situation in Kunduz is very precarious for a 20-year-old Afghan asylum seeker vulnerable to be recruited by the Taliban. The Court considered important the fact that EASO has noted that the violence in Kunduz is a violence as the one within the meaning of Article 15(c) of the Qualification Directive in its report from 21 June 2018.

Sweden - Migration Court of Appeal - MIG 2018:14, 19/06/2018: The question of whether there is an IFA is first raised if an asylum seeker is considered to have protection reasons against any part of the home country. The asylum seeker can therefore not be referred to internal displacement without first having an individual examination of the relied upon security reasons.

UK - Upper Tribunal (Immigration and Asylum Chamber) - AA/08331/2014, 11/06/2018: Applicant belonging to the Sikh community that had stayed in the UK for five years. No IFA in Jalalabad nor in Kabul found: Unable to find employment because he cannot speak Dari or Pashtun, the Muslim community fear reprisals and the number of Sikh run businesses is in serious decline. He has no financial means in the UK and therefore would be unable to set himself up in business or in accommodation such that he would be able to support himself and his wife on return. Evidence in the country guidance that the Gurdwara is facing increasing difficulties in supporting members of the Sikh community. Appeal granted on ECHR Article 8 grounds.

Switzerland - Federal Administrative Court - D-5800/2016, 13/10/2017: irrelevant to assess the general possibility of return to Herat or Mazar-e Sharif as the applicant had no connection to any of the cities; Referring to previous leading decision on Afghanistan regarding Herat (D-2312/2009, 28/10/2011) and Mazar-e Sharif (D-7950/2009, 30/12/2011), in which the Court had found that return to both cities was reasonable provided that there were 'enabling factors', such as a reliable social network, possibility to provide for oneself, secured accommodation and a good state of health.

Finland - Supreme Administrative Court - HFD: 2017:72, 05/05/2017: The applicant (young male of Hazara

ethnicity) expected to travel to his place of origin (Ghazni, Jaghor) and not in need of subsidiary protection, when considering both COI and the applicant's personal circumstances.

Internal Flight or Relocation Alternative in Kabul

Austria -

- » **Supreme Administrative Court, Ra 2018/18/0533**, 13/12/2018: By reiterating the criteria from previous case law for determining whether there was an IFA in Kabul, the Court held that the necessary case-by-case-assessment required an adequate examination of all individual circumstances put forward by the applicant as well as of any conclusions drawn to have a sufficient basis of proven or non-contested facts. In particular, it observed the need to take into consideration the UNHCR eligibility guidelines, in the sense that they have an indicative effect. This does not mean that the asylum authorities and courts had to necessarily follow the UNHCR's recommendations. However, they are required to take them into consideration and, in case they did not wish to follow them, establish in a well-argued fashion why and based on which diverging COI they arrived at a different assessment of the situation in the country of origin.
- » **Federal Administrative Court - W263 2170307-1**, 27/11/2018: According to the UNHCR eligibility guidelines, Kabul city cannot be considered as IFA anymore. However, Herat and Mazar-e Sharif are reasonable IFAs/IPAs for young men fit to work. / **W230 2160786-1**, 22/05/2018: Cessation of subsidiary protection after becoming of age due to IFA. The complainant was now older; more experienced, had undertaken additional educational steps and made contacts, not only with his Austrian girlfriend, but also with his flatmates, i.e. friends from his country of origin. According to the Court, this meant that the assumptions, on which the decision granting subsidiary protection (and the decision extending the residence permit) was based, no longer applied in the same way; The decision was upheld by the **Supreme Administrative Court (Ra 2018/18/0343**, 21/06/2018) arguing, in particular, that there are no reservations regarding the Federal Administrative Court's assessment that Kabul could be considered a reasonable IFA for the applicant, on the basis of the circumstances of the individual case.

Switzerland - Federal Administrative Court - E-1775/2016, 03/12/2018: The Afghan security forces are not able to guarantee efficient protection for individuals at elevated risk, including in Kabul, as the Taliban are operating in the whole territory of Afghanistan and have developed into a well organised organisation, gaining influence and power. In particular, the Taliban managed to carry out several complex attacks in Kabul. / **E-536/2018**, 14/03/2018: Kabul cannot be considered reasonable IFA for young man who had spent only a short time (days) in Kabul and where it wasn't certain that he could provide for himself due to professional experience outside Kabul (in a mine) or with the support of his uncle (worked as a carpenter and already taking care of his mother and sister). / **E-1675/2017**, 18/01/2018: The existence of a sustainable network of relationships was denied in the case of a young man who only stayed with family members (in a broader sense) during the working week. / **D-5800/2016**, 13/10/2017: In light of the security and humanitarian situation, people returned to Afghanistan, including Kabul city, generally face an existential threat. Return to Kabul, and Kabul city only, can be reasonable where there are "particularly enabling factors". This is the case when the returnee is a young, healthy male with a reliable social network regarding reception and re-integration required, supplying adequate accommodation, basic care and support regarding social and economic reintegration. No such network on the basis of loose contacts with acquaintances, relatives or even members of the nuclear family, if accommodation and the economic situation are not secured.

Germany -

- » **Administrative Court Augsburg - Au 5 K 17.31133**, 27/11/2018: IFA in Kabul and Herat for young male of age; Use of UNHCR eligibility guidelines: the Court held that even if one would want to assume - taking into account UNHCR's 2018 eligibility criteria - that Kabul was not an adequate IFA anymore, Herat would still need to be considered one.
- » **Higher Administrative Court Baden-Wuerttemberg - A 11 S 316/17**, 12/10/2018: A single, young and able-bodied man without maintenance obligation and without a family and social network would not face a real risk of inhuman or degrading treatment within the meaning of Article 3 ECHR upon return to Kabul. In line with UNHCR eligibility guidelines and EASO country guidance; Similar findings in **Higher Administrative Court Saxony-Anhalt - 3 L 393/18**, 24/10/2018.
- » **Higher Administrative Court Hesse - 7 A 109/18.Z.A.**, 26/03/2018: Whether Kabul can be considered an Internal Protection Alternative (IPA) cannot be answered in general but depends on the specific circumstances of the individual asylum seeker; Similar vein in **Higher Administrative Court North**

Rhine-Westphalia - 13 A 2385/18.A, 11/09/2018, para. 7 et seqq. / 13 A 2808/17.A, 05/12/2017. para. 7 et seqq: whether family with children can be returned to Kabul depends on the specific circumstances of the individual family.

- » **Higher Administrative Court Baden-Wuerttemberg** - A 11 S 512/17, 16/10/2017: No IFA available in Kabul for family with two minor children due to the highly difficult economical, supply, humanitarian and security situation in Kabul and danger for returnees from Western countries. The applicant cannot be expected to provide for himself, his wife and children. The family had to be taken into account as a whole and could not be expected to have “long-distance relationship”.

UK - Upper Tribunal (Immigration and Asylum Chamber) - PA/09051/2018, 27/11/2018: Not taking into account the provided medical evidence is a material error if assessing the appropriateness of relocation to Kabul. / PA/06274/2017, 26/06/2018: No risk if removal to Afghanistan shown: No evidence found that the applicant’s mother would not be able to be accompanied by a male to Kabul in order to provide proper support to the applicant. The level of indiscriminate violence in Kabul is not at such a high level as to amount to the one of Article 15(c) of the Qualification Directive. However, proposed removal might interfere with Article 8 ECHR rights of the appellant. / CG [2018] UKUT 00118, 16/04/2018: IFA in Kabul, in general, reasonable for single adult male in good health (even without support network) but particular circumstances to be considered.

The Netherlands - Council of State - 201800403/1/V/2, 22/06/2018: It found that IFA in Kabul can be invoked in the case of a young man from Kunduz. Social and humanitarian problems in Kabul are in themselves insufficient to lead to violation of Article 3 ECHR and that given the applicant’s individual circumstances he could stay in Kabul without a family or social network.

France - Lyon Administrative Court of Appeal - 17LY02181-17LY02184, 13/03/2018: The situation in Kabul is one of indiscriminate violence resulting from an internal armed conflict.

Finland - Supreme Administrative Court - KHO: 2017: 74, 05/05/2017: Reasonable to reside in Kabul for healthy and capable young people with children with a relative in Kabul. It is not justified that appellants are in fear of persecution or serious harm in Kabul given that (i) generally difficult for the Taliban to reach people in Kabul; (ii) Kabul is under government control, and (iii) availability of State protection in Kabul (EASO COI, January 2016) / HFD:2017:73, 05/05/2017: Regarding a family of Hazaras who lived in Iran for a long period, the Court rejected IFA in Kabul, as no support network in the capital nor any family elsewhere in Afghanistan.