

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Afdeling Bestuursrechtspraak Raad van State (Dutch Council of State, Administrative Jurisdiction Division)	
Date of the decision: 5 November 2014	Case number:² 201407320/1/V3
Parties to the case: Applicant (Somali national) vs. Dutch State Secretary of Security and Justice	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: http://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=81401 (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Dutch	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Country(y)(ies) of origin of the applicant(s): Somalia	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): The Netherlands	
Any third country of relevance to the case:³	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	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 Yes <input type="checkbox"/> No <input type="checkbox"/>	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 Yes <input type="checkbox"/> No <input type="checkbox"/>	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 Yes <input type="checkbox"/> No <input type="checkbox"/>	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	Relevant articles of the EU instruments referred to in the decision: X

Topics / Key terms: (see attached ‘Topics’ annex):

Changes of circumstances in home country 167

Denial of refugee status 508

Rejected asylum-seekers 453

Deportation / Forcible return 2,679

Immigration Detention 1,094

Somalis 317

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

The applicant complains, among other things, that the court has wrongfully ruled that there is a prospect of deportation to Somalia within a reasonable term. For that reason he requests the detention measure should be lifted. To that end, the applicant contends that the court did not acknowledge that the negotiations between the Dutch and Somali authorities concerning an addendum to the Memorandum of Understanding (MoU) have already been ongoing since December 2013 and still no concrete agreements have been made regarding the resumption of forcible returns to Somalia. The single fact that on 22 May 2014 a Somali citizen was deported does not affect this as it concerned a specific situation with regard to a convicted pirate, according to the applicant.

The State Secretary of Security and Justice pointed at two deportations on 22 May 2014 and 22 July 2014 of two Somali men convicted of piracy. Furthermore, multiple meetings between the Dutch and Somali authorities have taken place on a diplomatic level with regard to the resumption of forcible returns in the foreseeable future. Therefore, no grounds exist for the assessment that the prospect of deportation within a reasonable term is lacking, according to the State Secretary.

The Council of State considers that the State Secretary did not clarify the state of play and the content of the meetings and the term within which the Somali authorities are expected to start cooperation with respect to forcible returns. Neither did he make clear which concrete efforts will be carried out in the near future together with other countries to conclude uniform working arrangements with the Somali authorities.

Thus, under these circumstances it must be determined that the prospect of deportation within a reasonable term to Somalia has ceased to exist with effect from 7 October 2014.

The Council of State however considered the appeal of the State Secretary grounded as at the time the lower court reached its conclusion – 18 August (court hearing) – it was not excluded deportation could be effectuated within a reasonable time.

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]

Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original

1. In his appeal under points 2 and 3, the applicant complains, among other things, that the court has wrongfully ruled that there is a prospect of deportation to Somalia within a reasonable term. To that end, the applicant contends that the court failed to recognize that the negotiations between the Dutch and Somali authorities concerning the Memorandum of Understanding (MoU) have already been ongoing since December 2013 and still no concrete agreements have been made regarding the resumption of forcible returns to Somalia. Bearing this in mind, this constitutes an uncertain factor. The single fact that on 22 May 2014 a Somali citizen was deported does not affect this as it concerned a specific situation with regard to a convicted pirate, according to the applicant

1.1. At the hearing of the Council of State, the State Secretary stated that on 16 September 2013 and 5 November 2013 two Somali aliens were forcefully deported to Somalia. These concerned the first successful deportations since 2010. Furthermore, on 22 May 2014 and 22 July 2014, on the basis of a special arrangement, as concluded between the Dutch embassy in Nairobi and the Head of border surveillance in Mogadishu, two Somali men convicted of piracy were deported.

After the deportation of 5 November 2013, the Somali authorities indicated that they wished to suspend the deportations temporarily in the context of negotiations with respect to concluding an addendum to the MoU of 3 May 2010.

[...]

The State Secretary emphasized that the Somali authorities are politically pressurized to take back their own citizens from the diaspora in, among others, the European Union and the United States. In response to this pressure, the Somali authorities wish to establish uniform working arrangements. This is the reason why the negotiations regarding the addendum to the MoU have not been finalized yet. [...] As the State Secretary is continuously undertaking efforts on a diplomatic level to realize in the foreseeable future the resumption of forcible returns of Somali aliens to Somalia, no grounds exist at this moment for the assessment that the prospect of deportation within a reasonable term is lacking, according to the State Secretary.

1.2. **Council of States considers**[...] Since the deportation of two Somali aliens took place, as the State Secretary mentioned himself, on the basis of a special and sole arrangement with the Somali authorities Aliens, the fact that two Somali aliens have been successfully deported has to be regarded separately from the negotiations that have been conducted since November 2013 regarding an addendum to the MoU of 3 May 2010, in which additional working arrangements are being filed on the resumption of forcible returns of Somali aliens to Somalia.

Although the State Secretary continues his efforts on various levels to move the Somali authorities to resume their cooperation with forcible returns, he did not clarify the position regarding the content of the meetings and the term within which the Somali authorities are expected to provide assistance to forcible returns. Neither has the State Secretary been able to clarify which concrete efforts will be carried out in the near future to, together with other countries, accomplish uniform working arrangements with the Somali authorities. [...] Under these circumstances, it must be determined that the prospect of deportation within a reasonable term to Somalia has ceased to exist with effect from 7 October 2014.

[...] As the court finalized the investigation at the hearing of 18 August 2014, it justifiably considered that on that date the position could not yet be taken that the prospect of deportation within a reasonable time to Somalia was lacking.

The objections are to that extent ill-founded.

3. The appeal is ill-founded. The appealed decision of the District Court of the Hague should be upheld.

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

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.

Please submit this form to:

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