

## CASE LAW COVER PAGE

<b>Name of the court</b> <sup>1</sup> <b>(English name in brackets if the court's language is not English):</b> Raad van State, Afdeling bestuursrechtspraak (Council of State, Administrative Jurisdiction Division)	
<b>Date of the decision:</b>	16/06/2015
<b>Case number:</b> <sup>2</sup>	201401560/1/V2
<b>Parties to the case:</b> State Secretary of Security and Justice v. X	
<b>Decision available on the internet?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: <a href="http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2015:2008">http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2015:2008</a> (If no, please attach the decision as a Word or PDF file):	
<b>Language(s) in which the decision is written:</b> Dutch	
<b>Official court translation available in any other languages?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
<b>Countr(y)(ies) of origin of the applicant(s):</b> Afghanistan	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> The Netherlands	
<b>Any third country of relevance to the case:</b> <sup>3</sup>	
<b>Is the country of asylum or habitual residence party to:</b>	
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:
<b>(Only for cases with statelessness aspects)</b> 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:
<b>(Only for cases with statelessness aspects)</b> 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:
<b>(For AU member states):</b> 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:
<b>For EU member states:</b> please indicate which EU instruments are referred to in the decision: <b>Charter of Human Rights of the EU; Qualifications Directive; Directive 2004/38 (freedom of movement for EU citizens and their family members).</b> Also ECHR.	Relevant articles of the EU instruments referred to in the decision:

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

**Exclusion clauses**

**Regional instruments (Article 27 Directive 2004/38 EC)**

**Declaration as an undesirable foreigner**

**National security**

**Public order**

**EU-citizen**

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

The case concerned an Afghan national whose application for international protection in the Netherlands had been rejected on the grounds of Article 1F of the 1951 Refugee Convention. He was declared an undesirable alien by State Secretary of Security and Justice. He and his wife, who has Dutch nationality, left the Netherlands and moved to Belgium, where he obtained lawful residence as the family member of a European Union citizen. In 2011 the appellant requested the Dutch State Secretary to lift the declaration of undesirability so as to allow him to visit his children who live in the Netherlands and to make it possible for him to live in the Netherlands with his wife. This decision concerns Directive 2004/38 EC. According to Article 27 of the Directive the authorities are allowed to refuse a foreigner entry to the country on the grounds of public order or public security if the personal conduct of the individual concerned represents a genuine, present and serious threat to one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention are not allowed.

The Council of State held that the fact that the foreigner had been excluded from international protection on the grounds of Article 1F of the 1951 Refugee Convention was sufficient reason to consider that the foreigner posed an genuine, present and serious threat to the public order or public security in the Netherlands, and that the Secretary of State had therefore been justified in declaring the foreigner undesirable and denying him access to the Netherlands.

**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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**7.1.**

The State Secretary rightly argues that the district court has wrongly taken into consideration that the individual participation of the applicant in torture, i.e. acts within the scope of Article 1F of the 1951 Refugee Convention, has not been established. After all, the purpose of Article 1F of the Refugee Convention is also to exclude an applicant from refugee status if the alleged crimes would in all probability not have occurred or not in the same way if no one else had fulfilled the role of the applicant (see judgment of 2 December 2014 in case nr. 201404725/1/V1 and in that sense also the judgment of the European Court of Justice (CJEU) of 26 February 2015, C-472/13, Shepherd, paras. 36-38, ECLI:EU:C:2015:117). Therefore, in cases such as this considerations such as those taken into account by the district court regarding the extent to which a foreigner has in fact participated in the commission of these crimes are not relevant; the only relevant consideration [for determining whether a person poses a present danger in the sense of Article 27 EC Directive 2004/38] is whether the applicability of Article 1F of the Refugee Convention is a fact. The fact of such applicability entails in and of itself that a foreigner is held to be personally responsible for the commission of the serious crimes as mentioned in [Article 1F of the Refugee Convention].

**7.6.**

Due to the exceptional seriousness of the crimes to which Article 1F of the Refugee Convention applies, the presence of a foreigner in the Netherlands in relation to whom it has been established by law that there are serious grounds to believe that he has committed one of these very serious crimes, constitutes a direct threat to the Dutch legal order and the peace of mind of the Dutch people (see the judgments of the European Court of Justice of 23 November 2010, C-145/09, Tsakouridis, paras. 40 to 56, ECLI:EU:C:2010:708 and the aforementioned judgment P.I [CJEU, 22 May 2012, C-348/09, P.I., ECLI:EU:C:2012:300). The refusal to grant permission for the stay in the Netherlands of a person to whom Article 1F of the 1951 Refugee Convention applies therefore serves to protect a fundamental interest of the society as referred to in Article 27(2) of Directive 2004/83/EC.

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

Council of State 12 December 2003, nr. 200305099/1:

<https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=36670>.

Council of State 9 December 2010, nr. 201004725/1/V1:

[https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=51196&summary\\_only=&q=201004725%2F1%2FV1](https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=51196&summary_only=&q=201004725%2F1%2FV1)

Council of State 2 December 2014, nr. 201404725/1/V1:

<https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=81809>.

Council of State 31 October 2008, nr. 200801101/1:

[https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=31947&summary\\_only=&q=200801101%2F1](https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=31947&summary_only=&q=200801101%2F1)

## **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.

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