

## CASE LAW COVER PAGE TEMPLATE

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| <b>Name of the court <sup>1</sup> (English name in brackets if the court's language is not English):</b><br>Rechtbank Den Haag, zittingsplaats Amsterdam (Court of first instance The Hague, seat Amsterdam)   |  |
| <b>Date of the decision:</b>   | 05-08-2016   |
| <b>Case number:<sup>2</sup></b>  | AWB 16/15687 & AWB 16/5690   |
| <b>Parties to the case:</b><br>Applicant v. State Secretary of Security and Justice  |  |
| <b>Decision available on the internet?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |  |
| If yes, please provide the link: <a href="https://www.vluchtweb.nl/system/files/Vluchtweb/documents/jurisprudentie/jurisprudentie-nationaal/rechtbanken/2016-08-05%2C%20Rb%20Amsterdam%2C%2016-15687%2C%20Dublin-Zweden.pdf">https://www.vluchtweb.nl/system/files/Vluchtweb/documents/jurisprudentie/jurisprudentie-nationaal/rechtbanken/2016-08-05%2C%20Rb%20Amsterdam%2C%2016-15687%2C%20Dublin-Zweden.pdf</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<br>(If so, which):   |  |
| <b>Countr(y)(ies) of origin of the applicant(s):</b> Eritrean  |  |
| <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:<sup>3</sup></b> Sweden  |  |
| <b>Is the country of asylum or habitual residence party to:</b>  |  |
| The 1951 Convention relating to the Status of Refugees<br><input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No   | Relevant articles of the Convention on which the decision is based:<br><b>X</b>  |
| <b>(Only for cases with statelessness aspects)</b><br>The 1954 Convention relating to the Status of Stateless Persons<br><input type="checkbox"/> Yes<br><b>No</b>   | Relevant articles of the Convention on which the decision is based:<br><b>X</b>  |
| <b>(Only for cases with statelessness aspects)</b><br>The 1961 Convention on the Reduction of Statelessness<br><input type="checkbox"/> Yes<br><b>No</b>   | Relevant articles of the Convention on which the decision is based:<br><b>X</b>  |
| <b>(For AU member states):</b> The 1969 OAU Convention governing the specific aspects of refugee problems in Africa<br><input type="checkbox"/> Yes<br><b>No</b>   | Relevant articles of the Convention on which the decision is based:<br><b>X</b>  |
| <b>For EU member states:</b> please indicate which EU instruments are referred to in the decision  | Relevant articles of the EU instruments referred to in the decision:<br><b>Regulation (EU) 604/2013 (Dublin)</b> , Articles 6(3), 8 & 17(1). |

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

**Dublin claim**  
**Unaccompanied minor**  
**Eritrean**

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

The applicant is a 16 year old boy from Eritrea. IC applied for asylum on 25 November 2015. Following research in Eurodac, the IC had applied for asylum earlier in Sweden. On 15 December 2015 the State Secretary requested Sweden to take back IC on the basis of Article 8 of Regulation (EU) 604/2013. On 29 December 2015, the Swedish authorities denied the request on the basis that the request did not show a sufficient weighing with regards to the needs of the child as well as the personal opinion of the minor. The State Secretary asked Nidos to provide an expert opinion as to whether reunifying the child with his father who has a residence permit in Sweden would benefit the child. Nidos provided a letter on 26 February 2016. On 7 March 2016 the State Secretary requested Sweden for the second time to take back IC. IC was heard once again on 29 March 2016. On 18 May 2016 Sweden accepted the State Secretary's request. IC appealed the decision that he would be sent back to Sweden as he no longer trusted the Swedish authorities and would run away from his father upon return to Sweden. The State Secretary finds support in the expert opinion of Nidos that unaccompanied minors should be reunited with their parents who are lawfully residing in a different Member State. The court of first instance followed this point of view and decided that IC can be transferred back to Sweden.

No appeal was lodged with the Administrative Jurisdiction Division of the Council of State. The judgment is final as of 5 August 2016.

Of importance that the advise of the guardianship organization was considered to be an expert opinion.

**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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5.2. From articles 6 and 8 Dublin Regulation and from a judgment of the Administrative Jurisdiction Division of the Council of State (ECLI:NL:RVS:2013:1220), the court detracts that when a family member legally resides in a European member state, other than where the unaccompanied minor applicant is staying, the unaccompanied minor applicant has to be reunited with that family member. However, only under the condition that this is in the interest of the minor.

5.3. The court considers that the applicant is a minor and that his father has a residence permit in Sweden. The fundamental idea behind the Dublin Regulation is that the applicant has to be reunited with his father in Sweden. The State Secretary has rightly referred to the expert advice of Nidos, who concluded the same, irrespective of the objections made by the applicant, being the risk that he will withdraw from the supervision in Sweden. The court noted that the advice given by Nidos has to be considered as an expert advice. The court sees no grounds for the argument that the State Secretary and the Swedish authorities could not rely on the expert advice of Nidos.

5.4. The court further decides that the fact that IC does not want to go back to Sweden and does not want to stay with his father, does not lead to a different decision. The IC's wishes and objections were taken into consideration in the letter of Nidos and were passed to the Swedish authorities. The court also takes into consideration that the objections of IC do not concern his personal circumstances, but are derived from a lack of trust in the Swedish authorities due to the way they dealt with the application for family reunification regarding the rest of IC's family members. This does not constitute a significant enough deficit to conclude that the IC's interests as a minor were not duly taken into account.

5.7. The court, on the basis of what was stated above, sees no ground to decide that IC cannot be transferred to Sweden. Additionally, the court sees no ground to decide that the State Secretary could not reasonably make use of his discretionary competence as provided for in Article 17(1) of the Dublin Regulation. The appeal is unfounded.

#### Judgment

The court of first instance declares the appeal unfounded. No appeal was made with the Administrative Jurisdiction Division of the Council of State, thus the judgment has become final as of 5 August 2016.

**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.

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