

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): <i>Rechtbank Den Haag (Court The Hague, sitting with three judges)</i>	
Date of the decision: <i>07/02/2014</i>	Case number: ² <i>AWB 13/7809</i>
Parties to the case: <i>Applicant (former Libyan Ambassador to Malta) vs. Dutch State Secretary for Security and Justice</i>	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2014:1860 (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: <i>Dutch</i>	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Countr(y)(ies) of origin of the applicant(s): <i>Libya</i>	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): <i>The Netherlands</i>	
Any third country of relevance to the case: ³ <i>No</i>	
Is the country of asylum or habitual residence party to:	
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: <i>Article 1F(c)</i>
(Only for cases with statelessness aspects) 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:
(Only for cases with statelessness aspects) 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:
(For AU member states): 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:
For EU member states: please indicate which EU instruments are referred to in the decision: <i>EU Directive 2011/95/EU European Convention on Human Rights</i>	Relevant articles of the EU instruments referred to in the decision: <i>Article 12 paragraph 1 sub b and c EU Directive 2011/95/EU Article 3 European Convention on Human Rights</i>

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

Exclusion clauses, sur place refugees, terrorism, 1951 refugee convention.

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

In January 2011 the applicant, a Libyan asylum-seeker and former Libyan Ambassador to Malta, travelled to the Netherlands on a visa. She was pregnant at the time and because she previously had had several miscarriages and because she has family in the Netherlands, she chose to travel to the Netherlands. During her stay in the Netherlands, the protests against the Gaddafi regime started in Libya (in February 2011). The IC feared for her life in case she had to return to Libya, because of her previous functions in Libya, the fact that inquiries had been made about her, and based on the information she had received from her friends and colleagues.

The UN adopted a resolution on 21 January 1992 which calls on Libya to cooperate in the investigation regarding the attack in 1988 on the PanAm airplane above Lockerbie and with regard to the extradition of two Libyan suspects (Resolution 731). Because of the fact that Libya refused cooperation in this investigation, Libya has been subjected to several UN-embargoes amongst which an aviation embargo and a weapon embargo (Resolution 748).

The applicant was denied asylum in the Netherlands because she was found to have committed acts as mentioned in Article 1F(c) of the Refugee Convention. The applicant was found to have violated UN-resolution no. 748 by taking part in illegal weapon transports from the former Yugoslavia through Malta to Libya. She had "knowing participation" in these transports because of the fact that, although she claims to not have heard anything officially about these transports, she stated that she heard about those transports in the media. And she was found to have had "personal participation" in these transports because of the fact that she had a prominent position, being the highest representative of Libya in Malta and because of the fact that as the Ambassador she bore (final) responsibility for the checking and issuing of waybills and the issuing of certificates for goods which were transported from Malta to Libya. She could have been more active in preventing the weapons shipment to Libya from taking place, i.e. more active in preventing a violation of UN Resolution 748.

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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Para. 14: UN Resolution 748 was adopted after Libya failed to respond to UN Resolution 731, which called on Libya to cooperate in the investigation regarding the Lockerbie attack and had refused to distance itself from terrorism. According to Resolution 748, Libya threatened world peace with this negligent behaviour. The Court is of the opinion that from the considerations on which Resolution 748 is based, one can deduce that this Resolution is aimed at the fight against terrorism, based on the objective enshrined in Article 1 of the UN Charter to uphold international peace and security. The applicant's argument that it is not clear which UN objectives have been violated is therefore unfounded. As far as the applicant has sought to argue that Resolution 748 is not based on the objective to uphold international peace and security, given the reasoning above this argument lacks factual ground. The conduct of the applicant was contrary to Resolution 748 and can thus be considered as an act within the meaning of the opening paragraph and paragraph (c) of Article 1 (F) of the Refugee Convention.

Para.16: In order to be able to determine whether a public servant should be held responsible for acts which are directed against the objective and/or principles of the UN, it should be considered whether with respect to this public servant one should assume that his functional or factual responsibilities are on such a level that it may be presumed that he is aware of the position of his State within the international community, or from his personal background it is clear that he has knowledge or should have had knowledge of the objectives or principles of the UN. If this is the case, Article 1(F) of the Refugee Convention can be invoked against the applicant.

Para. 21: (...) the applicant has stated that while she herself did not hear anything about the weapon transports from Malta to Libya via official means, but "a lot of noise" was made about these transports by the media. The defendant has therefore, regarding the illegal weapon transports, rightly assumed "knowing participation" by the applicant. Given the prominent function of applicant as the highest representative of Libya in Malta, the defendant could also hold the applicant individually responsible for the illegal weapon transports ("personal participation"). The Court refers in this respect to paragraph 98 of the ECJ judgment in the case of *B and D vs. Germany* (9 November 2010, C-57/09 and C-101/09), in which the ECJ held that acts or negligent behaviour should in principle be attributed to prominent officials of organizations who are associated with unacceptable acts. In addition the applicant has declared that she bore (final) responsibility over the checking and issuing of waybills and the issuing of certificates for goods that were transported from Malta to Libya. The fact that the applicant did not issue those documents herself does not mean that she, in her position as Ambassador, and given her undisputed knowledge of the evasion of sanctions, could not have had a more active attitude and (possibly) prevent the evasion of international sanctions, or at least influence the extent to which the sanctions were evaded. The applicant can thus be held individually responsible for the violation of UN Resolution 748.

Para. 25: The Court is of the opinion that (...) the applicant did not adduce convincing evidence that she, upon return to Libya, faces a real risk of being subjected to treatment as referred to in Article 3 of the ECHR. The applicant did not submit any documents which show that she in particular has reason to fear being subjected to treatment in violation of Article 3 of the ECHR. The Court takes in this regard into account that the applicant's husband has returned to Libya and there is no evidence that he is at risk because of the applicant's position. Nor has it been found that he became aware of people currently looking for the applicant in Libya or threatening her.

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:

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