

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Raad van State, Afdeling bestuursrechtspraak (Council of State, Administrative Jurisdiction Division)			
Date of the decision:	19/02/2014	Case number:²	201208171/1/V1
Parties to the case: The (Dutch) Minister for Immigration and Asylum			
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=77956 (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):			
Countr(y)(ies) of origin of the applicant(s): Afghanistan			
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 <input checked="" 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 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	Relevant articles of the EU instruments referred to in the decision:		

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

Evidence

Medical reports

Medical examination

Torture

Istanbul Protocol

Amnesty International: Medical Examination Group

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

The applicant, an Afghan national, transported goods for the American troops. He was captured and detained by the Taliban. During his detention period of a month he claims to be tortured. The applicant was undocumented when he arrived in the Netherlands. For that reason, his claim may, according to Dutch policy and jurisprudence, not show any inconsistencies. His claim was rejected by State Secretary of Security and Justice because of inconsistencies.

The Council of State has previously held (Council of State, 18 August 2011 (nr. 201005185/1/V2, JV 2011/412, RV 2010, nr. 68, m.nt. Strik) that medical reports that show a connection between the medical complaints and the alleged events in the country of origin and are prepared in accordance with the Istanbul Protocol have a high evidential value. The Istanbul Protocol consists of guidelines for impartial and objective documentation of torture.

In paragraph 187 of the Istanbul Protocol different gradations of causality are enumerated. The Istanbul Protocol uses the following terms: Not consistent (the lesion could not have been caused by the trauma described); Consistent with (the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes); Highly consistent (the lesion could have been caused by the trauma described, and there are few other possible causes); Typical of (this is an appearance that is usually found by this type of trauma, but there are other possible causes); Diagnostic of (this appearance could not have been caused in any way other than that described).

The Medical Examination Group of Amnesty International comes to the conclusion – referring to paragraph 187 of the Istanbul Protocol – that the mentioned scars, physical and psychological complaints are consistent with the relevant statements of the applicant.

The Council of State considers that the State Secretary should have involved a medical expert. The fact that Amnesty did not conclude that the scars etc. are highly consistent, typical or diagnostic does not mean the State Secretary was absolved from his obligation to involve a medical expert.

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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5.8.

The fact that the conclusions in paragraph 8 of the medical report of the Medical Examination Group of Amnesty International state that the scars mentioned in paragraph 6.1 and 6.2, and the applicant's physical and psychological complaints are "consistent" with the relevant statements of the applicant (and that the Medical examination group did not use the more far-reaching typology "typical of" or "diagnostic of"), does not imply that the State Secretary – in light of the ranking used in paragraph 187 of the Istanbul Protocol – is not held to consult a specialist on the basis of this medical report. The State Secretary could involve for instance the Medical Advisory Bureau, Ministry of Security and Justice (Bureau Medische Advisering, Ministerie van Veiligheid en Justitie).

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

Council of State, 31 July 2013, nr. 201211436/1/V4, JV2013/355,
<http://www.refworld.org/docid/5252bb664.html>

Council of State, 18 August 2011 (nr. 201005185/1/V2, JV 2011/412, RV 2010, nr. 68, m.nt. Strik

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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