

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court <sup>1</sup> (English name in brackets if the court's language is not English):</b> <b>Afdeling Bestuursrechtspraak van de Raad van State (Dutch Council of State, Administrative Jurisdiction Division)</b>	
<b>Date of the decision:</b> 18/7/2014	<b>Case number:<sup>2</sup></b> 201404877/1/V2
<b>Parties to the case:</b>	
<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://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=80141">http://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=80141</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> North Korea	
<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> South Korea	
<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>Article 1 (A)</b>
<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	Relevant articles of the EU instruments referred to in the decision:

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

**1951 Refugee Convention 105**  
**Citizenship / Nationality law 689**  
**Multiple nationality 122**  
**Proof of nationality 75**  
**Koreans 57**  
**Safe third country 307**

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

The applicant is a man from North Korea. His asylum application was rejected by the State Secretary of Security and Justice on 16 April 2013. The appeal lodged by the applicant at the District Court of The Hague was by decision of 6 June 2014 considered grounded. The District Court annulled the decision, but left the legal consequences unchanged, because in court session the State Secretary elaborated on the facts disputed and provided a thorough motivation.

The applicant appealed the District Court’s decision at the Administrative Jurisdiction Division of the Council of State. The applicant argued in this respect that the State Secretary of Security and Justice had not properly explained why he considered that the applicant had the South Korean nationality at the time of the decision. The premise being wrong, the applicant stated that for that reason the State Secretary wrongly went on and considered there was a protection alternative in South Korea.

In this case the determination of the conditions for having the South Korean nationality are crucial, because if the applicant has the South Korean nationality, he could fall within the scope of Article 3.35 (1), chapeau and (e) of the Dutch Aliens Regulation and a protection alternative may be invoked, if it is reasonable to require the applicant to avail himself of the protection offered by the State of which he has the nationality.

The Council of State held that a protection alternative in a case like this can be invoked only in case the applicant actually has the nationality of another state. The fact that an applicant could obtain the nationality is not enough. The burden of proof rests with the State Secretary to show that the conditions have been met. For this purpose, all facts and circumstances should be considered; including the potential consequences for the family back home when an applicant leaves North Korea and settles in South Korea.

The Council of State considered that the South Korean Nationality Act makes clear that ex officio North Koreans have South Korean citizenship. But since the State Secretary stated that security checks can lead to the loss of this citizenship the decision is not well motivated. The appeal was deemed grounded. The State Secretary must decide again on the application.

**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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1.8. Considering the text of Article 1(A) of the 1951 Refugee Convention, a protection alternative can be invoked, in the opinion of the Council of State, only if the applicant really has the nationality of the country concerned. The fact that the applicant could obtain the nationality is not enough. Article 3.35 (1) chapeau and (e) of the Dutch Aliens Regulation 2000 should therefore be interpreted in such a way that it is required that the applicant has the nationality of the country concerned and can actually get protection from that country. As the District Court rightly ruled, the burden of proof rests with the State Secretary of Security and Justice to show that these conditions have been met. If the conditions are fulfilled, this can, given the nature of the protection alternative, justify the rejection of an application for a temporary residence permit.

1.9. According to the text of Article 3.35 (1) chapeau and (e) of the Dutch Aliens Regulation 2000 it is required when invoking a protection alternative that the State Secretary can reasonably expect that the applicant avails himself of the protection of the South Korean authorities. For the purposes of this assessment, all facts and circumstances should be taken into account by the State Secretary, including the potential consequences for the family back home when an applicant leaves North Korea and settles in South Korea.

1.14 The complaint succeeds. The question whether the applicant can reasonably be expected to avail himself of the protection of the South Korean authorities can only be dealt with after the State Secretary has made plausible that the applicant has the South Korean nationality and has not lost it due to the outcome of the security investigation. Since the State Secretary has failed to examine this, the Council of State will not deal with this issue at present.

1.15. The Council of State declares the appeal to be grounded. The appealed decision should be annulled as far as the District Court of The Hague has maintained the legal consequences of the decision of 16 April 2013.

**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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