

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, in session in court 's-Hertogenbosch, sitting with one judge)</i>	
Date of the decision: 4 May 2016	Case number:² AWB 16/5765 and AWB 16/5768
Parties to the case: <i>Applicant vs. Dutch State Secretary for Security and Justice</i>	
Decision available on the internet <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, please provide the link: (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>Afghanistan</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:
(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: Asylum Procedures Directive	Relevant articles of the EU instruments referred to in the decision: preamble 29 and Article 24

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

1951 Refugee Convention, Asylum seeker, Afghanistan, Tajik, Post-traumatic stress disorder (PTSD)

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

The applicants, N.A. Akbari and his wife Z. Abdollahi, are both Afghan nationals coming from the Afghan province of Herat and belonging to the population of Tajiks. Both applicants are Shiite. Mr. Akbari worked in Afghanistan as a money exchanger. When he was at work mid-2015, their eldest daughter was kidnapped at home by an unknown masked man. His wife, Mrs. Abdollahi, immediately phoned her husband about what happened. Mr. Akbari went home and reported it to the police. After his report, Mr. Akbari received several threatening phone calls of unknown people who urged him to pay 50,000 dollars, otherwise his daughter would be killed. Mr. Akbari indicated that he could not pay this amount of money. After some time, Mr. Akbari again received a phone call that said his eldest daughter was killed and left behind in an alley. Both Mr. Akbari and Mrs. Abdollahi went to this place and found their daughter. They brought her to the hospital, but she was already dead. Somewhere in October 2015, Mr. Akbari again received a phone call from the same people. He was told that his family would be killed if he did not give them money. The applicants therefore decided to leave Afghanistan. With the decision of March 16, 2016, the State secretary (defendant) rejected the asylum request of the applicants.

The question in this case is whether the defendant rightly concluded that the kidnapping and killing of the daughter, what has been their direct cause to leave their country of origin, can be considered as credible. The defendant especially argues that the applicants' accounts about the incident and the events thereafter lack detail. The Court stated that first and for all a medical examination has to be performed to establish whether the mother is traumatized and if so what effect this has on the possibility to coherently and consistently relate about the kidnapping and death of her daughter.

In this case two medical advises of FMMU (Forensic Medical Institute working for INS) have been handed over and one more extensive report by iMMO (consulted by the applicants).

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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Paragraph 5.4: The position of the defendant that more information should be expected from the applicants as regards to such an impressive incident, cannot be taken into consideration without further (medical) support from an expert or further reasoning. The first detailed interviews in any case show that talking about the eldest daughter evokes a lot of emotion in the applicant (Mrs. Abdollahi). This does not directly mean that the applicant (Mrs. Abdollahi) cannot tell her story and/or cannot explain her story consistently and in detail. It does not eliminate that the statement of the applicants' attorney put forward in his view in which he brought forward additional information and corrections of March 13th, 2016, that applicant (Mrs. Abdollahi) seems very traumatized. According to the attorney, Mrs. Abdollahi seems to have experienced everything in a haze because of her emotions and she is therefore not always to the point in terms of details. The fact that this comment is not supported by a medical statement does not mean that this conclusion can be ignored with the sole reaction that it is not made clear which details the applicant cannot mention. In the first place, because the impression that the applicant is traumatized is not entirely implausible given her emotions. Whether the situation was present or arose that the applicant was not or less able to relate coherently, consistently and in a detailed way, assuming that possibility at the time of the detailed interview, requires an assessment by an expert. In the second place [it cannot be ignored] because the Immigration and Naturalisation Service's Work Instruction 2010/13 among other things concerns cases in which an attorney has indicated that there may be physical problems that can influence the interviews and the consistent declarations by the asylum seeker. The Work Instruction mentions that for the answer to the question whether a hearing can take place thoroughly, medical statements are not required. The fact that the attorney made this comment about the applicant after the detailed interview, does not affect the duty resting on the defendant to carefully prepare and properly motivate a decision.

Paragraph 5.5: Based on the above, the defendant had the duty to do further investigation into the statement that the complainant appears traumatised and to justify why such an investigation would not have led to a different conclusion, regardless of the outcome of such an investigation. The applicants' appeals are grounded. The defendant is ordered to involve the examination results from the iMMO in new decisions of the complete credibility assessment.

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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