

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 (Council of State)	
Date of the decision: (2012/07/31)	Case number: ² 201200969/1/V2
Parties to the case:	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: www.raadvanstate.nl (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): Somalia	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):	
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):

Repeated asylum application, Ill-treatment , Article 3 ECHR, westernized woman

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

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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2.1.1. The applicant has previously, on 11 September 2009, applied for a temporary asylum residence permit. The decision of 17 September 2009, which denied this application, has become legally final by the decision of the department Administrative Law of 9 November 2010 in case no. 201007008/1/V2.

2.1.2. In response to the court case of the European Court for Human Rights (ECHR) of 28 June 2011, case numbers: 8319/07 and 11449/07, Sufi and Elmi versus the United Kingdom (www.echr.coe.int/echr) the Minister has by the decree of 22 September 2011, number WBV 2011/13, concerning the changing of the Aliens Circular 2000, changed the country specific asylum policy for Somalia.

2.3.1. During the hearing with the Council of State, the Minister has explained that the question whether an applicant has experience with living under Al-Shabaab, is answered by considering her statements in this regard. This experience is assumed, however, when the area of origin of the applicant has been controlled by Al-Shabaab at the relevant time according to public information. Therefore, in practice, the Minister assumes that an applicant who has at least three months of experience of living under Al-Shabaab, is in principle capable of maintaining herself in that area. This term is considered as an indicator, according to the Minister. The question if a person should be able to maintain him/herself under the control of Al-Shabaab should be assessed on the basis of individual facts and circumstances. During this assessment it is important to take into account whether or not it can be considered plausible that the applicant has previously experienced problems on the side of Al-Shabaab. The Minister has emphasized that neither the amount of time following the departure of the applicant from Somalia nor the potential 'westernisation' of the applicant because of her residence in a western country influences the assessment.

(...)

2.3.3. (...)

Concerning the question if the applicant would be able to maintain herself under the control of Al-Shabaab upon return to Somalia, the following is considered. As the Council of State has previously considered (decision of 24 January 2012, case no. 201103379/1/V2), the mere statement of the applicant that he/she upon return will attract the negative attention of Al-Shabaab due to long term absence, is not sufficient to assume a real risk of treatment as mentioned in Article 3, European Convention on Human Rights and Fundamental Freedoms. In this case, the applicant has argued that she has 'westernised' during her stay in the Netherlands and that, because of this reason, she cannot be expected to maintain herself under the control of Al-Shabaab. The ECHR has in paragraph 275 of the court case of 28 June 2011 considered that Somalis who will have to travel through Al-Shabaab controlled area, are at a greater risk of attracting the negative attention of Al-Shabaab when they have been absent from the country for long period of time and have been 'westernised'. Even though the mere residence of an applicant in the Netherlands does not necessarily entail such a 'westernisation' that it cannot be expected from the applicant to maintain herself under Al-Shabaab, the Council of State – contrary to the Minister-judges that, on the basis of the previously mentioned legal consideration, it can be concluded that this aspect should be taken into account during the assessment. By only considering the fact that the applicant has been able to maintain herself under Al-Shabaab from January till May 2009, the Minister has not taken the previously mentioned aspect sufficiently into consideration.

The Council of State declares the appeal founded.

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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