

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Hoge Raad der Nederlanden (Supreme Court)	
Date of the decision: 3 Dec 2013	Case number: ² 12/01278
Parties to the case: X from Somalia	
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:HR:2013:1561&keyword=vluchtelingenverdrag	
(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 Pakistan, Malaysia	
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: Article 31
(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 Qualification Directive 2004/83/EG	Relevant articles of the EU instruments referred to in the decision:

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

unlawful entry, penalization of illegal entry

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

The case:

The IC, originating from Somalia, arrived in the Netherlands on or around 6 April 2010. He used a British passport that had been issued in a name other than the IC's. The IC had left Somalia years ago, travelling to Pakistan on his own passport. He lived and studied in Pakistan for three years. When his visa expired he feared being forcibly returned to Somalia; he therefore left for Malaysia, making use of his own passport. From there he travelled to the Netherlands, making use of the British passport. He managed to enter the Netherlands, but was stopped at the airport in Amsterdam at a later date, when he tried to travel to the United Kingdom on the British passport.

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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In paragraph 2.5 of its judgment of 3 December 2013 the Supreme Court states, referring to a judgment dated 6 November 2012, ECLI:NL:HR:2012:BW9266, that the Public Prosecutor is only admissible if the criminal judge immediately and without any further research can establish that the claim of the foreigner to be a refugee is ill-founded.

In the judgment of 6 November 2012 the Supreme Court also considered that the decision on an asylum claim, including the assessment of the plausibility of the asylum account, is a competence of the Minister of Security and Justice – and on appeal the administrative court – and that for that reason, to prevent inconsistent decisions of the criminal court and the administrative court, the criminal court in principle should avoid coming to an independent decision with regard to a person's claim to be a refugee.

In this case, the Dutch IND (Immigration and Naturalisation Service) on 4 March 2011 issued a residence permit based on Article 29b Aliens Act, subsidiary protection.

In its judgment of 3 December 2013, the Supreme Court considers that subsidiary protection is additional to the protection offered to refugees. The Supreme Court refers to the EU Qualification Directive in this regard.

The Supreme Court considers that a person who received subsidiary protection benefits too from Article 31 Refugee Convention. Such a person should not be prosecuted on the basis of having used a false or falsified document. According to the Supreme Court, the Court of Appeal should have declared the public prosecutor to be not admissible in prosecuting the IC.

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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