

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Rechtbank Den Haag (District court of The Hague)	
Date of the decision:	16 Oct 2015
Case number: ²	Awb 15/2751
Parties to the case: Applicant of Afghan nationality, State Secretary of Security and Justice	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBDHA:2015:11941 (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):	
Any third country of relevance to the case: ³ Hungary	
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: Dublin regulation	Relevant articles of the EU instruments referred to in the decision:

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

Safe third country

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

The Applicant, and Afghan national, travelled via Iran, Turkey and Greece to Hungary, by foot and by car. He claimed asylum in Hungary but travelled further without awaiting the outcome of the procedure. He claimed asylum in the Netherlands, received a negative decision and appealed. The court in a summary hearing on 20 March 2015 issued an interim measure. The Court in a hearing on 11 May 2015 raised some issues that had to be answered by the State Secretary. The questions related to the legal position of the applicant in Hungary, should he be returned there. According to the Hungarian Immigration Service (OIN) *his asylum procedure was ceased by the asylum authority on 25.08.2014. This decision took legal effect on 08.09.2014. According to the Hungarian OIN no decision on the merits was made in his case. (...), no judicial procedure was carried out.*

The Court in its decision of 16 October 2015 held that it could not be excluded that Hungary would apply the safe third country concept and would transfer the applicant to Serbia.

The Court referred to paragraph 51 of the new Act LXXX of 2007 on Asylum, in force as of 1 August 2015. According to the *Government Decree 191/2015 (VII.21) on national designation of safe countries of origin and safe third countries*, Hungary declared Serbia to be a safe third country.

The Court stated that the applicant would not have an effective remedy to rebut the presumption that Serbia is a safe third country. The Court considered the appeal grounded.

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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Par 12: From the Note of the Hungarian Helsinki Committee ([Building a legal fence - Changes to Hungarian asylum law jeopardise access to protection in Hungary](#)) dated 7 August 2015, it can be deduced that Serbia is not considered to be a safe third country by UNHCR, the HHC and Amnesty International. Even the Hungarian Supreme Court does not consider Serbia to be a safe third country; the same goes for other Member States of the European Union.

Par. 20: The Court considers that the Hungarian asylum procedure, insofar as the possibility of returns to Serbia as a safe third country are concerned, does not fulfil the requirements as set by the ECtHR because it does not offer an effective remedy against a negative decision; because there is no access to professional legal aid; because interpreters are not available; and because the Hungarian asylum procedure is subject to strict time limits. The Hungarian procedure therefore does not comply with the requirements as set out in Article 47(7) of the Asylum Procedures Directive 2013/32/EU.

Par. 22: The Court concludes that a transfer to Hungary results in a real risk of a violation of Article 3 of the ECHR, because of the existence of systemic flaws in the procedure leading to the conclusion that the minimum guarantees as set out in [M.M.S vs Belgium and Greece](#) are not met.

Appeal upheld.

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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