

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, Afdeling bestuursrechtspraak (Council of State, Administrative Jurisdiction Division)	
Date of the decision: 10 Feb 2014	Case number:² 201208875/1/V1
Parties to the case: Dutch Minister for Immigration and Asylum and his successor the 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://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=77824 (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): Sierra Leone	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): the Netherlands	
Any third country of relevance to the case:³ No	
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 1F (b)
(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):

Exclusion Clauses, 1951 Refugee Convention, FGM

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

The applicant, a Sierra Leonean national, had stated that she and her mother were members of the secret Bundu society in Sierra Leone. The mother of the applicant was a so-called Soweh, or excisor. Up until the death of her mother in 2010, the applicant had assisted her mother for 25 years with the circumcision of girls. As is customary within the Bundu society, the applicant was expected to take over the task of her mother after her death. Not willing to do so, the applicant subsequently fled her country in 2010.

Based on her own credible statements, the applicant was considered to be complicit in female genital mutilation (FGM) by the Minister for Immigration and Asylum.

Because of this fact the Minister for Immigration and Asylum had decided on 20 May 2011 that in the case of the applicant, Article 1F(b) of the Refugee Convention applied, as in the Dutch Penal Code FGM falls within the general definition of 'ill-treatment' which constitutes a criminal offence. In addition, the nature of the act and the scope of the consequences should be included when considering the question whether FGM in this case is a serious, non-political crime as described in Article 1F(b) of the Refugee Convention. The fact that FGM is not considered a criminal offence, and hence not punishable, in the country of origin of the applicant, Sierra Leone, is in itself, according to the State Secretary, not a reason not to qualify the act as a serious, non-political crime as it concerns a human rights violation. With regard to the latter, the State Secretary referred to The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the European Convention on Human Rights (ECHR), the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo-Protocol) and UN Resolution 67/146.

On appeal before the The Hague District Court, the applicant argued that FGM is not punishable in Sierra Leone and that she comes from a culture in which FGM is not considered a crime.

On 14 August 2012 the Court decided that the Secretary of State insufficiently motivated the statements he made regarding the applicant's participation in acts of which she knew or should have known that these acts concern crimes as meant in Article 1F(b) of the Refugee Convention. The reference to CEDAW and ECHR was not sufficient. Furthermore, it cannot be deducted from Article 24 CRC, the Maputo Protocol and UN resolution 67/146 that FGM is to be considered by the international community as a serious non-political crime as meant in Article 1F(b) of the Refugee Convention. Therefore, the Court annulled the previous negative decision on the applicant's asylum application.

The State Secretary for Security and Justice appealed the District Court's decision at the Dutch Council of State, where he argued that the Court had been erroneous when it concluded that the State Secretary had insufficiently motivated his decision that the applicant had taken part in acts of which she knew or should have known that they were crimes as meant in Article 1F(b) of the Refugee Convention. In this respect he argued that the Court had not disputed the motivation of his statement in his decision of 20 May 2011 that the applicant had been guilty of FGM and must have been aware of the criminal nature of her acts.

The Council of State upheld the decision of the District Court of the Hague, stating that the Secretary of State had failed to motivate properly that FGM as such should be considered a serious, non-political crime as meant in Article 1F(b) of the Refugee Convention.

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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Para. 2.4: In line with inter alia UNHCR's Background Note on the Application of the Exclusion Clauses, to qualify an act as a serious, non-political crime as meant in Article 1F(b) of the Refugee Convention a connection needs to be established with the relevant international standards. The fact that FGM is not considered a crime in Sierra Leone does not in itself exclude the possibility that this act should, according to international standards, be qualified as a serious, non-political crime. The State Secretary had justly considered of importance the fact that FGM is considered a crime in the Netherlands. However, he had not properly motivated why, according to these international standards, FGM should be considered a serious, non-political crime as meant in Article 1F(b) of the Refugee Convention. The reference of the State Secretary to the CEDAW and the ECHR is insufficient in this respect. Although these Conventions do in fact contain provisions which can be invoked by victims of FGM, they do not specifically relate to a prohibition of or to combat FGM. Insofar as it can be derived from Article 24 (3) of the CRC, Article 5, preamble and under b, of the Maputo Protocol and the resolution, that there is international agreement that female circumcision should be banned and that it is called upon to take measures against it, this does not justify the conclusion that female circumcision is considered by the international community as a serious non-political crime as referred to in Article 1 (F), preamble and under b, of the Refugee Convention, under which the foreign national would fall outside the scope of the Convention on Refugees. It is also important to note that the conclusion of any international treaty on combating female circumcision has not yet emerged. Furthermore, it should also be taken into consideration that, according to the information provided by the State Secretary during the hearing, FGM is at present not considered a crime as meant in Article 1F(b) in the countries surrounding the Netherlands. Finally, it is of importance that, as was brought up during the hearing, a distinction can be made between the different forms of FGM. The decision of 20 May 2011 does not contain a motivation focused on this distinction.

Para. 2.5: It follows from the above-mentioned considerations that the State Secretary did not properly motivate his decision that FGM as such can be considered a serious, non-political crime as meant in Article 1F(b) of the Refugee Convention. On this basis the The Hague District Court should have decided that the State Secretary not sufficiently had motivated that FGM is a serious non-political crime. The lower Court was right in considering the applicant's appeal grounded and was right in consequently having annulled the decision of the State Secretary of 20 May 2011.

Para. 3: The appeal of the State Secretary is ill-founded. The decision under appeal should be upheld, while noting the correct reasons for that decision.

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.

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