

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: 27 September 2013	Case number:² 201202758/1/V2
Parties to the case: Applicants (two Lebanese nationals and their minor children) vs. Minister for Immigration, Integration and Asylum	
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=75970 (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): Lebanon	
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) Refugee Convention
(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: X
(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: X
(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: X
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: Article 3 and 8 European Convention on Human Rights (ECHR)

Topics / Key terms: (see attached ‘Topics’ annex):

1951 Refugee Convention, exclusion clauses, drug trafficking, non-refoulement, right to family life

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

In the present decision of the Dutch Council of State, two separate cases are considered, concerning a husband and his wife. They will be referred to as respectively applicant 1 and applicant 2. Both are Lebanese nationals. The case of applicant 2 also concerns their minor children. Their appeal deals with Article 8 ECHR and will not be described here.

Regarding the criminal history of Applicant 1, the following is stated in the individual Official Report of the Dutch Ministry of Foreign Affairs. On 15 July 1999 applicant 1 was sentenced in absentia to 5 years in jail because of drug trafficking; on 9 December 2003 he was sentenced to life imprisonment and payment of a fine of 25 million Lebanese pounds for drug trafficking. On 18 September 2002 he was sentenced to life imprisonment for attempted murder and assault of an officer on duty. On 21 March 2002 Applicant 1 was sentenced to one year imprisonment and a fine of 100.000 Lebanese pounds for the possession of firearms and assault of an officer on duty. In the individual Official Report it is furthermore stated that there are 5 arrest warrants and two military arrest warrants issued against Applicant 1. The Report also mentions that Applicant 1 and his family are known in their region because of their leading role in drug trafficking. It is mentioned that there were witnesses who saw Applicant 1 commit the murder of three family members of the rivaling Zeaiter-clan and that the Jaafar-clan had tried to end the feud by publicly referring to Applicant 1 as the perpetrator of the murder attack.

On 17 March 2011 the Minister for Immigration and Asylum rejected the request for asylum of both Applicants 1 and 2.

Upon the appeal lodged by Applicants 1 and 2 at the District Court of The Hague, the District Court decided to annul the previous decisions. It held that the State Secretary of Security and Justice (the successor of the Minister for Immigration and Asylum) had insufficiently motivated his argument that Applicant 1 had committed serious, non-political crimes as meant in Article 1F(b) of the 1951 Refugee Convention. The District Court considered that Applicant 1 did not put forward concrete material to question the correctness and completeness of the Official Report. But the District Court also considered that the nature, the seriousness, and the scope of the activities employed by Applicant 1 were not clear.

The State Secretary of Security and Justice appealed the District Court’s decision at the Dutch Council of State, where he argued that the District Court had erroneously concluded that the State Secretary had insufficiently motivated his decision that Applicant 1 had committed serious, non-political crimes as meant in Article 1F(b) of the 1951 Refugee Convention. In this respect the State Secretary stated that the Court had failed to recognize that he had duly motivated his decision by referring to the Official Individual Report of the Dutch Ministry of Foreign Affairs.

According to the State Secretary, the Court insufficiently acknowledged that his decision was also based upon the conviction of Applicant 1 for the attempted murder.

The Council of State upheld the State Secretary’s appeal.

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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Regarding Applicant 1

2.4 When assessing whether the drug offences for which Applicant 1, based on the Official Report, had been convicted are sufficiently serious in order to fall within the scope of Article 1F(b) of the 1951 Refugee convention, the State Secretary rightly considered of importance that these offences were committed over a longer period of time, meaning that there is also recidivist behaviour. Furthermore, the State Secretary rightly considered of importance, as he stated in his letter of 10 November 2011, that the impact of the consequences of the trade in narcotics for the government and citizens is serious, and that drug trafficking is considered a serious crime not only in the Netherlands but also internationally. In this respect the State Secretary rightly referred to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, which demonstrates that the trade in narcotics is internationally considered to be a threat to society.

Considering the before mentioned, the State Secretary, using what was stated in the Official Report and in additional information that formed the basis of his decision, inter alia the conviction for attempted murder, rightly argued that there are serious reasons to presume that Applicant 1 committed crimes as meant in Article 1F, and the State Secretary therewith fulfilled his obligation to motivate his decision. The District Court has therefore erroneously considered that the State Secretary insufficiently motivated the said decision.

Appeal of State Secretary 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.

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