

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ : Raad van State (Council of State)	
Date of the decision:	7 January 2016
Case number: ²	201505169/1/V1
Parties to the case: <i>Alien v. the State Secretary of Security and Justice</i>	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=86379	
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	
Countr(y)(ies) of origin of the applicant(s): Syria	
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 NA	
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 1(F)
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons NA	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 NA	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 NA	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:
Council of Europe: European Convention on Human Rights and Fundamental Freedoms	Article 3

Topics / Key terms:

Exclusion clause

1951 Refugee Convention,

European Convention on Human Rights

Entry ban

Key facts (as reflected in the decision):

On 18 November 2014 the State Secretary rejected the request for asylum based on Article 1(F) of the 1951 Refugee Convention. The State Secretary imposed an entry ban for 10 years. The applicant appealed against this decision and on 2 June 2015 the Court of the Hague declared the appeal grounded. The State Secretary appealed against this decision, arguing that he had provided a well-motivated decision that the applicant was excluded based on “personal participation”.

The Council of State declared the appeal grounded;

The lower Court had taken into account two letters written by the Homs Quarter Union (HQU) and one letter of the Dutch MFA stating HQU to be a reliable NGO. HQU had stated that applicant as a public employee in the Syrian Government, was not able to reject requests of the Syrian security but he kept leaking their requests to our Human Rights and Legal Affairs Committee until he became able to defect and escape out of Syria.’

Council of State does not explicitly refer to these letters.

Key considerations of the court:

6.2. Contrary to the decision of the Court of the Hague, the Council of State considers that the State Secretary rightly motivated that the applicant provided the Syrian intelligence services with information on persons suspected of oppositional activities, that he had a clear effect on the crimes committed in 2011 in Homs, and that these crimes would not have happened the way they did if the alien had not played this part. Aside from the fact that the State Secretary finds it not credible that the applicant also passed on information to the opposition, the applicant could not make credible that by doing this he could prevent crimes from happening. The applicant declared that he did not keep track of the way in which suspects were alarmed, that he could not alert and protect everybody, that the intelligence services arrested all passengers in a car registered to a suspect's name if the suspect himself was not in that car, and that the intelligence services actually have arrested one person on whom the applicant had provided information. The Secretary has justly motivated, while referring to inter alia Council of State decision 2 August 2004, nr. 200401637/1, that, by providing the Syrian intelligence with information and thereby contributing to crimes under Article 1(F), that "personal participation" under Article C.2/6.2.8.4 of the Aliens Circular has for that reason been established, and that there are severe reasons to believe that the alien is guilty of before mentioned crimes.

10.2. The Secretary of State argued that during the 4-5 months that the applicant provided the Syrian intelligence services with information, he did not attempt to find another job and that there is no indication that the applicant could not have fled sooner than he eventually did. The applicant claimed that he continued with his job because this enabled him to warn the persons on whom the intelligence services requested information. Considering this, the applicant did not make credible that he could not have stopped providing information to the intelligence services sooner. The State Secretary rightly held the applicant accountable for his actions.

11.1. The State Secretary believes that sending the applicant back to Syria would violate Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), and therefore will not deport the applicant to Syria. However, considering the severity of the crimes committed under Article 1(F), the fact that the applicant will not be deported does not mean that entry ban should not be imposed. The applicant has not made it plausible that he cannot stay outside the European Union, that he cannot fulfil the obligation to leave.

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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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