

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): De Hoge Raad der Nederlanden (the Dutch Supreme Court)	
Date of the decision: 3 June 2014	Case number: ² S 13/01304
Parties to the case: Defendant v. Openbaar Ministerie	
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:2014:1304 (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 defendant(s): Unknown	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the defendant(s): the Netherlands	
Any third country of relevance to the case: ³ Germany	
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 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:
(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):

1951 Refugee Convention, false documents, criminal prosecution

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

The defendant had stayed in Germany for a short period of time (he made varying statements to varying officials as to the precise length of his stay, from two weeks to two months), before entering the Netherlands making use of a Canadian passport which belonged to another person. He was criminally prosecuted. On appeal lodged by the defendant at the Amsterdam Court of Appeal against the decision taken by the court of first instance, the defendant argued that the Dutch Public Prosecutor should be declared inadmissible in prosecuting the defendant based on Article 31 of the 1951 Refugee Convention. On 28 February 2013 the Court of Appeal decided that the defendant's appeal based on Article 31 of the 1951 Refugee Convention failed. The Court of Appeal referred in this respect to the fact that the defendant prior to his arrival in the Netherlands had stayed in Germany. The Court of Appeal held that, while the protection of Article 31 can, under specific circumstances, be invoked by defendants who are not directly arriving from an unsafe country, those specific circumstances do not apply in this case. The fact that the defendant had the chance to apply for asylum in Germany, and according to his own statements had in fact contemplated doing so, means that the defendant's decision to refrain from applying for asylum and to travel onwards with a passport which was not on his name, can be invoked against him in a criminal prosecution for seeking to enter the Netherlands with false documents. The Court of Appeal decided that because the defendant had made varying statements regarding his travel plans and destination and because he did not submit any verifiable documents to substantiate his statements, he cannot invoke Article 31 of the 1951 Refugee Convention. The Court of Appeal therefore found the Public Prosecutor admissible in prosecuting the Defendant.

The defendant appealed the Appeal Court's decision at the Dutch Supreme Court. The Supreme Court upheld his 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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2.4. In assessing the grounds for appeal, it must be taken into account that, as the Supreme Court decided on 6 November 2012 in a previous case (case no. NJ 2013/331), it follows from the scope of Article 31 of the 1951 Refugee Convention that the Public Prosecutor, in a prosecution based on Article 231 of the Dutch Penal Code of a defendant who is also a foreigner and who seeks to invoke a defence based on Article 31 of the 1951 Refugee Convention, can only be considered admissible when the judge can establish, without delay and without further investigation, that the statement of the defendant that he is a refugee based on the 1951 Refugee Convention is ill-founded. In this judgment the Supreme Court found that the decision on an asylum application, and hence the judgment on the plausibility of the asylum story, is reserved to the Minister and to the administrative judge following a possible appeal against the Minister's decision. In order to prevent possible contradictions between the decisions of the criminal judge and the administrative judge, the criminal judge should in principle refrain from making an independent judgment on the fact that the defendant invokes his refugee status.

2.5. According to the considerations discussed in paragraph 2.3 of the present decision and the matters dealt with during the hearing at the Supreme Court, it can be held that the defendant has applied for asylum. Where the Court of Appeal has not investigated whether there has been an irrevocable negative decision on the defendant's asylum application, the defendant's statements that he is a refugee cannot be considered evidently ill-founded and the Court of Appeal thus rejected the defendant's defence, which seeks inadmissibility of the Public Prosecutor in the prosecution of the defendant, on grounds which cannot support this rejection. The defendant's grounds for appeal are upheld.

2.6. Attached to the aforementioned written explanation is an irrevocable decision of the Immigration and Naturalization Service of 31 July 2013. This decision implies that the defendant has been granted a "temporary residence permit on asylum grounds on the basis of Article 29, paragraph 1 sub a of the Aliens Act 2000". Considering that the origin and the reliability of this document do not need to be questioned, and considering that a foreigner in possession of such a decision should not be criminally prosecuted for the possession or use of false or falsified documents in the course of his flight, the Dutch Supreme Court will, for reasons of efficiency declare the Public Prosecutor inadmissible in the prosecution based on Article 231 of the Dutch Penal Code.

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 defendant'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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