

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court <sup>1</sup> (English name in brackets if the court's language is not English):</b> Raad van State (Afdeling Bestuursrechtspraak) (Council of State (Administrative Jurisdiction Division))	
<b>Date of the decision:</b> 31 July 2013 <b>Case number:<sup>2</sup></b> 201211436/1	
<b>Parties to the case: X v. Secretary of State for Security and Justice</b>	
<b>Decision available on the internet?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: <a href="http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2013:621&amp;keyword=Istanbul+Protocol">http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RVS:2013:621&amp;keyword=Istanbul+Protocol</a> (If no, please attach the decision as a Word or PDF file):	
<b>Language(s) in which the decision is written:</b> Dutch	
<b>Official court translation available in any other languages?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
<b>Countr(y)(ies) of origin of the applicant(s):</b> Iran	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> Netherlands	
<b>Any third country of relevance to the case:<sup>3</sup></b>	
<b>Is the country of asylum or habitual residence party to:</b>	
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:
<b>(Only for cases with statelessness aspects)</b> 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:
<b>(Only for cases with statelessness aspects)</b> 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:
<b>(For AU member states):</b> 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:
<b>For EU member states:</b> 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):**

**Evidence (including age and language assessments; medico-legal reports)**

**Freedom from torture, inhuman and degrading treatment**

**Torture**

**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]**

**Disclaimer: This is an unofficial translation, prepared by UNHCR. UNHCR shall not be held responsible or liable for any misuse of the unofficial translation. Users are advised to consult the original language version or obtain an official translation when formally referencing the case or quoting from it in a language other than the original.**

[medical aspects, medical examination; iMMO; Istanbul Protocol]

The Council of State states that after an iMMO (Institute for Human Rights and Medical Research) report has been introduced, which concludes based on the Istanbul Protocol that the psychological symptoms detected and the psychiatric examination lead to a diagnosis which is “typical” for the asylum seeker’s statements about her experiences in detention in Iran, the State Secretary should have performed further research.

This judgment concerns the appeal by an Iranian foreigner against the District Court of Zwolle’s decision dated 5<sup>th</sup> December 2012 (12/14239). The Court stated that the Secretary of State could reasonably judge the statement on the detention and rape not to be credible. The Court further stated that the iMMO report, since it cannot offer any definite conclusions on the psychological complaints of the foreigner, cannot lead to a different evaluation of the credibility.

The foreigner claimed in appeal that she has given medical proof of an essential part of her asylum application, i.e. that she was subjected to sexual torture during her time of detention in Iran. The foreigner has taken the standpoint that the iMMO report clearly indicates that her psychological complaints were caused by sexual abuse in detention in Iran, as the doctor who conducted the examination has stated with regard to these complaints that they are typical for the alleged events.

The Council of State points at par. 53 from the ECtHR judgment (*R.C. v. Sweden*). The Council of State determines that the iMMO report concludes that the detected psychological symptoms and the psychiatric examination lead to a diagnosis which is “typical” for the asylum seeker’s statements about her experiences in detention in Iran.

According to point 187d of the Istanbul Protocol such a conclusion by the iMMO (“typical of”) means that the symptoms that were observed are usually found in the relevant trauma type, but that other causes are possible. The Council of State concludes that the conclusion “typical of” is less strong than “Diagnostic of” which means that the symptoms observed could not have been caused in any way other than the one described, but this does not change the fact that the conclusion “typical of” is a strong indication that the trauma diagnosed in the foreigner was caused by the alleged mistreatment or torture.

The Council of State concludes that, taking into account the afore-mentioned ECtHR judgment and the conclusions of the iMMO report, the Secretary of State should have done further research into the question of whether the alleged trauma was caused by the alleged torture or mistreatment. The Court did not acknowledge this.

The foreigner’s appeal is granted.

**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.

### **Please submit this form to:**

Protection Information Unit  
Division of International Protection  
UNHCR  
Case Postale 2500  
1211 Genève 2 Dépôt  
Switzerland  
Fax: +41-22-739-7396  
Email: [refworld@unhcr.org](mailto:refworld@unhcr.org)