

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Afdeling Bestuursrechtspraak van de Raad van State (Dutch Council of State, Administrative Jurisdiction Division)	
Date of the decision:	16/6/2014
Case number: ²	201302787/1/V1
Parties to the case: applicant, 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=79611 (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): Turkey	
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	
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: 1F
(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: ECHR Article 6.

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

1951 Refugee Convention

Exclusion Clauses 1F

Evidence

Torture

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

On 9 October 2012, the Minister for Immigration, Integration and Asylum rejected the applicant’s asylum request and issued an entry ban against him. On 22 February 2013, the applicant’s appeal against this decision was considered to be not founded by the District Court of The Hague.

The applicant subsequently commenced proceedings before the Council of State, arguing inter alia that the District Court had found incorrectly that the State Secretary (and his predecessor) had determined that there are serious grounds to believe that the applicant had engaged in crimes as enumerated in Article 1(F) of the Refugee Convention.

The applicant argued that the District Court had neglected the fact that the State Secretary had not evaluated the decision of the Turkish court on which the Article 1(F) determination had been based. The Turkish court had convicted the applicant to life imprisonment for membership of an illegal organisation and involvement in a number of murders. Torture had preceded the applicant’s confession.

The District Court had agreed with the State Secretary’s position that the Article 1(F) determination had been made validly on the basis of the evidence before the Turkish court that had not been collected through torture, notably confiscated documents.

The Council of State drew another conclusion. From the judgment of the European Court of Human Rights in *Othman (Abu Qatada) v. The United Kingdom*, Application no. 8139/09, 17 January 2012, (<http://www.refworld.org/docid/4f169dc62.html>), it follows that the judgment by the Turkish court is contrary to the right to a fair trial as meant under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms as well as the fundamental international principles of a fair trial. Since the judgment of the Turkish court, in light of paragraph 267 of the judgment in *Othman*, is untrustworthy in its entirety, the State Secretary has incorrectly founded the Article 1(F) determination on it.

The applicant’s appeal was considered grounded.

[Note that in this case Article 1(F) was applied without any specification as to the applicability of 1(F)(a), 1(F)(b) or 1(F)(c).]

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 The District Court has failed to recognise that, given that according to the decision of 9 October 2012 and the intended course of action attached thereto there is no disagreement between the parties about the fact that the judgment of the Turkish court is based in part on the applicant's confession which was obtained through torture, the State Secretary incorrectly attached significance to that judgment. From the judgment of the European Court of Human Rights in *Othman (Abu Qatada) v. The United Kingdom*, Application no. 8139/09, 17 January 2012, (<http://www.refworld.org/docid/4f169dc62.html>), it follows that the judgment by the Turkish court is contrary to the right to a fair trial as meant under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms as well as the fundamental international principles of a fair trial. Since the judgment of the Turkish court, in light of paragraph 267 of the judgment in *Othman*, is untrustworthy in its entirety, the State Secretary has incorrectly founded the Article 1(F) determination on it.

Further, the State Secretary cannot be followed in his position that he has already shown, through the documents that were confiscated by the Turkish authorities and the applicant's confession in the context of his statement of regret [which he made to the Turkish court with a view to regain his liberty on the basis of the scheme for persons who repent for past crimes] – in and of itself and separately from the judgment of the Turkish court – that there exist serious reasons to believe that the applicant was involved in said crimes. The confiscated documents are absent from the present dossier and, outside of the judgment of the Turkish court, are only mentioned in the indictment of [date] and [date] of the Public Prosecutor in [location], which does not state which precise documents are involved or what their content is. Additionally, the State Secretary has not conducted investigations into the confiscated documents. The individual report prepared by the Dutch Foreign Ministry only verifies whether the applicant has been convicted in Turkey for said crimes.

Since the State Secretary has not contested either in the decision or during the session of the Council of State that the applicant forcibly signed a declaration stating that he relies on the scheme for persons who repent for past crimes, no meaning can be attached to the applicant's confession before the Turkish court regarding his membership of [organization]. In this regard it should be taken into account that the Article 1(F) decision was not based solely on the applicant's membership of [organization], but also on his active participation in that organization, as the State Secretary confirmed when asked during the session.

In light of the foregoing, the District Court failed to recognize that the State Secretary was not justified in incorrectly taking the position without further investigation that Article 1(F) applies to the applicant.

Grievances 1 and 2 succeed because of this reason alone.

3. The appeal is grounded. The contested decision must be annulled.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

This decision replaces the decision of 22 February 2013 of the District Court of The Hague in case nr. 12/32990 as well as the decision of the Minister for Immigration, Integration and Asylum of 9 October 2012, nr. 275.289.6131.

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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