

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court</b> <sup>1</sup> (English name in brackets if the court's language is not English):			
Afdeling Bestuursrechtspraak van de Raad van State (Council of State)			
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<b>Date of the decision:</b>	20 June 2014	<b>Case number:</b> <sup>2</sup>	201400058/1/V2
<b>Parties to the case:</b> - State Secretary of Security and Justice - Asylum seeker (Attorney: R.S. Nandoe)			
<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://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=79677">http://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=79677</a>			
<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> Sri Lanka			
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> The Netherlands			
<b>Any third country of relevance to the case:</b> <sup>3</sup> No			
<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):**

Safe country of origin, Resistance movements, Tamil, Non-refoulement

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

- By a decision taken on the 19<sup>th</sup> of June 2012, the asylum-seeker’s application for a temporary residence permit on the grounds of asylum was rejected.
- On the 24<sup>th</sup> of December 2013, the court upheld an appeal against the refusal.
- Before the Council of State, the State Secretary complained that the court erred in finding that the documents submitted and the overall country report on Sri Lanka by the Minister of Foreign Affairs showed that the security situation for Tamils returning to Sri Lanka has become worse. The State Secretary referred to the decision by the United Kingdom Upper Tribunal (Immigration and Asylum Chamber) in *GJ and Others (post-civil war: returnees) Sri Lanka CG v. Secretary of State for the Home Department*, [2013] UKUT 00319 (IAC), 3 July 2013, <http://www.refworld.org/docid/51da951c4.html>.

The State Secretary stated that only a certain group of organized separatists who want an independent Tamil-State are exposed to a real risk of treatment contrary to article 3 of the ECHR. The asylum seeker has not demonstrated to belong to this group. He has only taken part in demonstrations outside of Sri Lanka. The Council of State considered the appeal of the State Secretary grounded. The situation for Tamils is not worse than at the time the ECtHR made the judgment in *NA. v. The United Kingdom*, Appl. No. 25904/07, 17 July 2008, <http://www.refworld.org/docid/487f578b2.html>.

**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.**

1.4. On the basis of the jurisprudence of the ECtHR, the decision of the United Kingdom's Upper Tribunal, the data on which the decision is based, and the court hearings, the Council concludes that the security situation for Tamils returning to Sri Lanka has not become worse compared to the situation at the time of the *NA v. UK* judgment (ECtHR, 17 July 2008, *NA. v. United Kingdom*, Case No. 25904/07, <http://www.refworld.org/docid/487f578b2.html>). Nowadays, the Sri Lankan authorities are capable of distinguishing ordinary Sri Lankan returnees, including former asylum seekers, from activists who pose a risk to the unity of Sri Lanka, because they play a significant role in an organized separatist group who want an independent Tamil State or revive the armed conflict in Sri Lanka.

Moreover, the Upper Tribunal has, as the State Secretary has rightly argued, used and reviewed a lot of the documents – listed in the attached annex – submitted by the asylum seeker. The information provided by the other documents that were submitted corresponds largely with the documents assessed by the Upper Tribunal. Although some of the documents do indeed refer to Tamils who returned to Sri Lanka from the Netherlands and who were subsequently subjected to mistreatment, this does not mean that every returned Tamil faces a real risk of treatment contrary to Article 3 of the ECHR. The fact that the LTTE has been active in the Netherlands does not mean that the Sri Lankan authorities will consider every Tamil who returns from the Netherlands as an activist who poses a risk to the unity of Sri Lanka and will expose him or her to a treatment contrary to Article 3 of the ECHR. Thus, neither the documents submitted by the asylum seeker, nor the official report of 2013 by the Minister of Foreign Affairs, which is based on and consistent with the aforementioned documents, suggests that the risk factors mentioned in the *NA v. UK* judgment must be assessed differently or that the security situation for Tamils returning to Sri Lanka otherwise has become worse compared to the situation at the time of the *NA v. UK* judgment.

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

- *NA. v. The United Kingdom*, Appl. No. 25904/07, Council of Europe: European Court of Human Rights, 17 July 2008, <http://www.refworld.org/docid/487f578b2.html>

- *GJ and Others (post-civil war: returnees) Sri Lanka CG v. Secretary of State for the Home Department*, [2013] UKUT 00319 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 3 July 2013, <http://www.refworld.org/docid/51da951c4.html>

## **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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