

The Netherlands - District Court The Hague, 5 August 2016, AWB 16/12222

Country of Decision:

Netherlands

Country of Applicant:

Syria

Date of Decision:

05-08-2016

Citation:

Plaintiff v The State Secretary of Security and Justice, 2016, District Court The Hague, AWB 16/12222

Additional Citation:

ECLI:NL:RBDHA:2016:11593

Court Name:

District Court The Hague

Keywords:

Assessment of facts and circumstances
Burden of proof
Inadmissible application
Indirect refoulement
Real risk
Right to remain pending a decision (Suspensive effect)
Safe third country
Stateless person

Relevant Legislative Provisions:Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [2]

Headnote:

A decision by the State Secretary for Security and Justice (the **State Secretary**) of the Netherlands will be in violation of: (i) Article 3.37e of the Foreigners Regulation 2000 if such decision, regarding whether a country qualifies as a safe third country, is not based on several information sources; and/or, (ii) Articles 3.2 and 3.46 of the Dutch General Administrative Law Act on the basis that all decisions of the State Secretary are required to (a) be carefully prepared and (b) include a decisive motivation.

Facts:

The State Secretary declared, in a decision dated 31 May 2016, that the Applicant's application for asylum was inadmissible pursuant to Article 30a, section 1, subsection c of the Foreigners Decision (2000) on the basis that the Applicant would be granted access to a safe third country (the Russian Federation).

The State Secretary considered that the Applicant would be granted access to the Russian Federation as: (i) the Applicant's wife was a Russian national; (ii) the Applicant's wife's place of residence was in Russia; (iii) the Applicant studied in the Russian Federation; (iv) the Applicant spoke Russian; and, (v) the Applicant had two daughters who were born in the Russian Federation. As such, the State Secretary was of the view that the Applicant had sufficient ties with the Russian Federation such that it could be expected of him to go to that country.

Additionally, the State Secretary considered that the Russian Federation qualified as a safe third country as: (i) it has signed the Universal Declaration of Human Rights 1948; (ii) it is party to several important United Nations treaties regarding human rights such as the Convention relating to the Status of Refugees 1951 and the related Protocol 1967; (iii) the Constitution of the Russian Federation safeguards most human rights; (iv) the European Convention on Human Rights was ratified by the Russian Federation in 1998; (v) it was not plausible that the Applicant had a well-founded fear of persecution in the Russian Federation, according to the Refugee Convention; and, (vi) it was not plausible that there was a real risk of serious harm to the Applicant in the Russian Federation because, according to a country report on the Russian Federation, the Russian Federation immediately grants a residence permit to each Syrian refugee requesting asylum and therefore Syrian refugees receive treatment in accordance with the Refugee Convention.

The Applicant disputed whether the Russian Federation, in his case, could be considered a safe third country. The Applicant argued that:

(a) the State Secretary had violated Article 3.37e of the Foreigners Regulation 2000 (which requires that a decision on whether a country qualifies as a safe third country must be based on several information sources, such as information from other Member States and information from the United Nations High Commissioner For Refugees) when basing his decision solely on an anonymous Dutch country report on the Russian Federation, dated August 2015;

(b) even if, pursuant to such country report, the Russian Federation immediately grants a residence permit to each Syrian refugee requesting asylum, the Applicant would not be eligible for a residence permit in the Russian Federation as the Applicant was a stateless person and his wife was not a Syrian national; and

(c) the sole fact that the Russian Federation ratified the Refugee Convention cannot lead to the conclusion that the Russian Federation is a safe third country. In this respect, the Applicant referred to several sources of information, including passages from the article entitled *'A long road to asylum: Syrian refugees in Russia'* (*Wilson Center*, No. 12, November 2015) by Kennan Cable

and the Country Report on Human Rights Practices for 2015 for Russia (U.S. Department of State), which indicated that asylum applicants in the Russian Federation receive insufficient protection, resulting in a risk of indirect *refoulement*.

Furthermore, the Applicant disputed whether he would be granted access to the Russian Federation on the basis of family reunification, as he did not fulfil the income requirements.

The State Secretary acknowledged that he had not consulted the information sources, pursuant to Article 3.37e of the Foreigners Regulation 2000. However, the State Secretary remained of the opinion that the Russian Federation qualified as a safe third country and that the Applicant would be granted access on the basis of (i) his marriage and (ii) his ties to the country. The State Secretary also disputed whether there was a real risk of serious harm to the Applicant.

Decision & Reasoning:

The Court reasoned that the State Secretary's decision (that the Russian Federation is a safe third country) was not based on the information sources referred to in Article 3.37e Foreigners Regulation 2000, despite the State Secretary's decision referring to that article. Instead, the State Secretary's decision was solely based on an anonymous Dutch country report on the Russian Federation.

Therefore, the Court considered that the State Secretary's decision was in violation of: (i) Article 3.37e of the Foreigners Regulation 2000 as the decision regarding whether a country qualifies as a safe third country was not based on several information sources; and, (ii) Articles 3:2 and 3:46 of the Dutch General Administrative Law Act on the basis that all decisions of the State Secretary are required to (a) be carefully prepared and (b) include a decisive motivation.

The Court did not consider or deliberate upon the Applicant's argument in respect of family reunification.

The State Secretary's decision was annulled and the State Secretary was ordered to provide a new decision in accordance with the considerations of the Court.

Outcome:

Appeal granted, case referred back to the State Secretary for a new decision.

Observations/Comments:

In the case outline it is briefly mentioned that the Applicant, in separate proceedings, filed a request with the court (AWB16/12223) to prohibit the State Secretary from deporting him during the course of the aforementioned proceedings. The request was awarded.

This case summary was written by Linklaters LLP.

Attachment(s):



[NL Hague 05.08.2016 16_12222 Russia STC.docx\[3\]](#)

Other sources cited:

Country Report on Human Rights Practices for 2015, Russia, from the U.S. Department of State

Dutch country report on the Russian Federation dated August 2015

Kennan Cable, 'A long road to asylum: Syrian refugees in Russia?' (*Wilson Center*, No. 12, November 2015)

National / Other Legislative Provisions:

[0a](#) [4]

[Netherlands - Foreigners Decision 2000 \(Article 3.106a\)](#) [5]

[Netherlands - Foreigners Regulations 2000 \(Article 3.37e\)](#) [6]

[Netherlands - 2000 Foreigners Circular \(Para. C2/6.3\)](#) [7]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2] <https://m.asylumlawdatabase.eu/node/3946>

[3]

https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/NL%20Hague%2005.08.2016%2016_12222%2

[4] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/0a>

[5] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/netherlands-foreigners-decision-2000-article-3106a>

[6] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/netherlands-foreigners-regulations-2000-article-337e>

[7] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/netherlands-2000-foreigners-circular-para-c263>