

# Kafka revisited: the Netherlands government and administrative courts and accusations against asylum seekers of crimes against humanity

## Appendix: How the Council of State dealt with the KhAD-WAD report by the Netherlands Ministry of Foreign Affairs of 29 February 2000, 2004-2013

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(English translation January 2026)

*This document provides a detailed analysis of the case law from 2004 to 2013 by the Council of State relating to the KhAD-WAD report of 29 February 2000, structured as follows. Note that all documents referred to in footnotes are in Dutch, unless it is indicated they are in English. In some cases the location where a particular reference may be found has been updated to make it easier for the interested reader: website abc1f.nl did not yet exist in May 2024.*

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### 1. Introduction

After the downfall of the communist regime in 1992 at the hands of the Mujahideen and after the takeover by the Taliban in 1996, many Afghans fled to the Netherlands to seek asylum. On 29 February 2000, the Ministry of Foreign Affairs (BZ) published an official report on the Afghan secret service KhAD and the overarching ministry WAD during the communist period 1980-1992.<sup>1</sup> In that KhAD-WAD report it was concluded that ALL those who were officers or NCOs at KhAD or WAD during the period in question had personally tortured people. No references to verifiable sources were given for that conclusion. Because of that KhAD-WAD report, Article 1F of the Refugee Convention was invoked against all those former KhAD and WAD officers and NCOs in The Netherlands. According to that Article 1F, persons against whom there are serious suspicions of guilt of war crimes or crimes against humanity, are not entitled to refugee status.<sup>2</sup> Because of the sweeping accusation in the KhAD-WAD report, in order to be eligible for a residence permit former

<sup>1</sup> *Security services in communist Afghanistan (1978-1992)*. AGSA, KAM, KhAD and WAD, The Hague: Ministry of Foreign Affairs, 29 February 2000. Official English translation. abc1f.nl, document 1 (retrieved 26 February 2026).

<sup>2</sup> <https://wetten.overheid.nl/BWBV0001002/1956-08-01> (body text in English, retrieved 26 February 2026).

KhAD and WAD officers and NCOs seeking asylum in the Netherlands had to prove that they had *not* committed such crimes. This is a reversal of the burden of proof, which innocent KhAD and WAD employees are in fact unable to meet. For those former KhAD and WAD employees in the Netherlands who have been wrongfully accused, and for their families, the legal, economic, psychological and medical consequences are still enormous, ranging from families torn apart to suicide attempts.<sup>3</sup>

There is no doubt that a number of KhAD employees committed terrible crimes between 1980 and 1992 that fall under Article 1F of the Refugee Convention. However, the conclusion that ALL officers and NCOs were guilty of torture was highly controversial from the outset. Between 2004 and 2013, many lawyers attempted to have the KhAD-WAD report dismissed, using for instance, statements from dozens of experts who contradicted the sweeping accusations. At least sixteen times, a district court ruled in their favour, but all those rulings were subsequently overturned by the Administrative Law Section of the Council of State, the highest administrative law court in The Netherlands (henceforth: the Council of State).

For at least twenty years, the role of the Council of State in immigration cases in general has been the subject of criticism, not least from legal experts.<sup>4 5 6 7 8</sup> Other legal experts were more specifically

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<sup>3</sup> See e.g. E. Huson and M. Aumaj, 'Het hoofdpijndossier van ons asielbeleid' [The headache file of our asylum policy], *One World*, 5 October 2017. <https://www.oneworld.nl/movement/het-hoofdpijndossier-van-ons-asielbeleid/> (retrieved 30 January 2026); J. Julen, 'Beschuldigd: Afghaanse vluchtelingen in niemandsland' [Accused. Afghan refugees in no man's land], *Trouw*, 16 December 2021, de Verdieping p.1-3.

<sup>4</sup> T.P. Spijkerboer, 'De Afdeling en de rechtsstaat. Het hoger beroep in vreemdelingenzaken' [The Council of State and the rule of law. Appeals in immigration cases], *NJB* 2002, issue 42, pp. 2982-3088.

<sup>5</sup> Prof. C.A. Groenendijk, *Een venijnig proces, resultaten van onderzoek onder 24 actieve en ex-vreemdelingenrechters* [A vicious process, results of research among 24 active and former immigration judges]. Sdu Publishers, 2008. ISBN: 978-90-12-38062-1. See also <https://www.sdn.nl/raad-van-state.htm>, second item (retrieved 26 February 2026).

<sup>6</sup> Prof. T.P. Spijkerboer, *De Nederlandse rechter in het vreemdelingenrecht* [The Dutch judge in immigration law]. Sdu Publishers, 2014. See also <https://www.njb.nl/nieuws/vreemdelingenrechtspraak-raad-van-state-geanalyseerd/> (retrieved 26 February 2026).

<sup>7</sup> K.E. Geertsema, *Rechterlijke toetsing in het asielrecht. Een juridisch onderzoek naar de intensiteit van de rechterlijke toets in de Nederlandse asielprocedure van 2001-2015* [Judicial review in asylum law. A legal study of the intensity of judicial review in the Dutch asylum procedure from 2001 to 2015], doctoral thesis, Vrije Universiteit Amsterdam. Boomjuridisch, 2018. See p. 307 and on. <https://research.vu.nl/ws/portalfiles/portal/69434081/complete+dissertation.pdf> (retrieved 26 February 2026).

<sup>8</sup> K. Geertsema, K. Groenendijk, C. Grütters, P. Minderhoud, E. Nissen. T. Strik, A. Terlouw & K. Zwaan, 'Ongezien onrecht in het vreemdelingenrecht' [Unseen injustice in immigration law], *NJB* 2021/979, issue 14, p.1046-1053. See e.g. sections 3.3 and 2.4.

critical of the Council of State's position in (KhAD-WAD) Article 1F cases.<sup>9 10 11 12 13</sup> In this document, the role of the Council of State in upholding the KhAD-WAD report throughout the period 2004-2013 is for the first time analysed in detail. Where, for convenience, the 'District court of X' is referred to in this review, this should be read as location X of the Aliens Chamber of the District Court of The Hague.

## 2. Questions about the KhAD-WAD report and the underlying memoranda

### 2.1 The KhAD-WAD report itself

A critical reading of the KhAD-WAD report raises the following questions, among others.<sup>14</sup>

- a) - In the accusatory sections 2.4 and 2.7 of the KhAD-WAD report, no sources are cited for the various aspects of the policy that allegedly led to torturing by *all* KhAD and WAD officers and NCOs. Why are there no verifiable sources for this? This concerns an alleged nationwide policy pursued for twelve years (1980-1992) by a large government organisation, not a one-off obscure incident.
- b) - Why were human rights organisations such as the UNHCR, Amnesty International and/or Human Rights Watch apparently not asked for their opinion on the allegations against *all* KhAD-WAD officers and NCOs, as required by, among others, Article 10(3) and Article 45(2) of the EU's Procedures Directive?<sup>15</sup>
- c) - The KhAD-WAD report is said to be an independent and impartial expert report. Why then doesn't it contain any counterarguments nor any evidence of the mandatory hearing of former KhAD and WAD employees? In an impartial report both sides must get their say.
- d) - If every new KhAD and WAD employee first had to interrogate and torture people, as claimed in the KhAD-WAD report, what happened when, for example, a specialised technical or administrative person was needed urgently?
- e) - How is it that the confidential sources for the KhAD-WAD report were apparently unable to provide accurate information about the overall organisation of KhAD and WAD?

These questions indicate that the KhAD-WAD report does not meet the Council of State's own requirements of impartiality, objectivity and transparency, as stated in a much-cited ruling by the Council of State of 2 October 2001.<sup>16</sup> The KhAD-WAD report also fails to comply with Articles 4.12 and 4.10 of the Dutch 'Code of Conduct for Judicial Experts in Civil and Administrative Law Cases'

<sup>9</sup> L. van Wijnbergen, 'Tienjarenbeleid voor 1F-ers een dode letter?' [Is the ten-year policy for 1F persons a dead letter?] in *JNVR* 2014-1.

<sup>10</sup> B. Wallage, L. van Wijnbergen & R. van Binsbergen, 'Het bestuursrechtelijk bewijsvermoeden bij de toepassing van artikel 1F Vluchtelingenverdrag' [The administrative law presumption of evidence in the application of Article 1F of the Refugee Convention], *NJB* 2017-31, pp. 2234-2240.

<sup>11</sup> M. van Eik & A. Cleuters, 'Overzichtartikel 1F Vluchtelingenverdrag' [Review article 1F Refugee Convention), *A&MR* 2020-10, pp. 531-540, e.g. sections 4 and 5.

<sup>12</sup> Kris van der Pas, 'Civiele vordering over 1F-beoordeling afgewezen' [Civil claim regarding 1F assessment rejected], *A&MR* 2021-3, pp. 153-156, in particular section 3.

<sup>13</sup> Pieter van Reenen, 'Bestuurlijke onpartijdigheid in het Nederlandse asielproces onvoldoende gewaarborgd' [Government impartiality in the Dutch asylum process insufficiently guaranteed], *A&MR* 2021-8, pp. 407-419, in particular p. 413, last paragraph and on.

<sup>14</sup> KhAD-WAD report (full reference in note 1). abc1f.nl, under document 1 (retrieved 26 February 2026).

<sup>15</sup> <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A32013L0032> (English version available on same page, retrieved 26 February 2026).

<sup>16</sup> ABRvS 200103977/1, 12 October 2001, section 2.3.4. ECLI:NL:RVS:2001:AD5964. abc1f.nl, document 27 (retrieved 26 February 2026).

and Articles 24, 26 and 19 of the 'Code of Conduct for Judicial Experts of the Administrative Law Section of the Council of State', which refer to the obligations to hear all parties and to mention any information that contradicts the final conclusions.<sup>17 18</sup> Both Codes of Conduct are, incidentally, no more than an elaboration of Article 8:34 of the Netherlands General Administrative Law Act (hereinafter: the Awb): 'the expert is obliged to fulfil his assignment impartially and to the best of his knowledge'.

Given these obvious shortcomings, why, did the Council of State apparently fail to ask even one of these and other critical questions about the content of the KhAD-WAD report? And why did the Council of State also not ask the Ministry of Justice how it had fulfilled its legal duty to ascertain that the KhAD-WAD report had been compiled in an appropriate manner (<sup>19</sup>) before using this report as expert advice in rejecting applications for residence in the Netherlands?

## 2.2 The underlying memoranda

The KhAD-WAD report was based on a number of documents that were already known to district courts and to the Council of State in 2004 (see section 3.2, first paragraph, below). On 15 April 2014, those documents were released following a request under the Open Government Act, similar to the Freedom of Information Act, with parts of the text redacted.<sup>20</sup> The following points in those underlying documents are worth noting.

- a) There are no statements by the confidential sources for the KhAD-WAD report, only an (alleged) summary of those statements.
- b) That summary is considerably less categorical about who did and did not torture than the final KhAD-WAD report.<sup>21</sup>
- c) According to that summary, the reason for the 'general' [*not* 'always'] rotation was to prevent the accumulation of a large power base within a particular department, not to ensure that all employees participated in torture.<sup>22</sup>
- d) In addition, it appears that the Ministry of Justice interfered in advance with the wording of the KhAD-WAD report, about which the required transparency has not been provided.<sup>23</sup>
- e) The underlying documents indicate that 'reliable sources' advised against asking former KhAD-WAD employees for information.<sup>24</sup> Who were these sources and what was their relationship to the confidential sources?
- f) The underlying documents contain no evidence of international support for the conclusions of the KhAD-WAD report, only an unsubstantiated claim that such support exists.<sup>25</sup>
- g) When asked, *after* the KhAD-WAD report had been published [!], about the expertise of the confidential sources with regard to the KhAD<sup>26</sup>, the Embassy in Islamabad only provided a response that could not be verified by third parties and that showed that the confidential

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<sup>17</sup> <https://www.rechtspraak.nl/SiteCollectionDocuments/Gedragscode-voor-gerechtelijk-deskundigen-in-civielrechtelijke-en-bestuursrechtelijke-zaken.pdf> (retrieved 30 January 2026).

<sup>18</sup> <https://www.raadvanstate.nl/publicaties/regelingen/gedragscode/> (retrieved 26 February 2026).

<sup>19</sup> Art. 3:9 Awb (Algemene wet bestuursrecht, the Netherlands General Administrative Law Act).

<sup>20</sup> abc1f.nl, documents 3a and 3b (retrieved 26 February 2026).

<sup>21</sup> Memorandum of 1 September 1999 from the Embassy in Islamabad to the Ministry of Foreign Affairs. abc1f.nl, document 3b (retrieved 26 February 2026).

<sup>22</sup> *Ibid.*, p. 4, paragraph 1.

<sup>23</sup> Memorandum of 21 January 2000 from the Ministry of Foreign Affairs to the Embassy in Islamabad, p.1 point 1 and p.2 point 2. abc1f.nl, document 3b (retrieved 26 February 2026).

<sup>24</sup> Memorandum of 14 April 2000, p. 2, last paragraph. abc1f.nl, document 3b (retrieved 26 February 2026).

<sup>25</sup> *Ibid.*, p. 4, paragraph 1.

<sup>26</sup> Memorandum of 16 March 2000 from the Ministry of Foreign Affairs to the Embassy in Islamabad, p. 2, paragraph 2. abc1f.nl, document 3b (retrieved 30 January 2026).

sources did not have their information about the KhAD from their own experience, as claimed at the end of page 2 of the memorandum of 1 September 1999, but from informants unknown to the Embassy.<sup>27</sup> The basis for the accusations in the KhAD-WAD report is therefore what the Embassy employee wrote that his interpreter had said that the confidential informants had stated about what their informants had allegedly claimed. This is therefore fourth-hand, completely unverified information, via one person (the interpreter).

- h) The Embassy employee added on his own initiative that the statements of the confidential sources were "completely" consistent with each other.<sup>28</sup> Seven years and more after the fact, eight (memorandum of 1 September 1999) or twelve (memorandum of 7 February 2000) or 29 (memorandum of 2 March 2000) statements that are completely consistent with each other. How is that possible if there was no coordination between the persons making the statements?

Why did the Council of State apparently fail to raise even one of these points about the content of the underlying documents of the KhAD-WAD report, in contrast to, for example, the district courts in Arnhem and Rotterdam?<sup>29</sup> <sup>30</sup> Even in the case of marginal review (only checking if the rules have been followed by the government, not weighing arguments against each other), judges and the Council of State are still entitled to ask 'where did you get that from?' and must assess whether evidence *is* indeed evidence, even if they are not allowed to weigh up the various pieces of evidence against each other.

### **3. The Council of State's overturning of district court rulings in which the KhAD-WAD report had been found to be unreliable**

#### **3.1 General**

Between 2004 and 2013, there were at least sixteen rulings by six different courts in which the KhAD-WAD report was deemed insufficiently reliable: Almelo (1), Arnhem (1), Breda (1), Haarlem

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<sup>27</sup> Memorandum of 14 April 2000 from the Embassy in Islamabad to the Ministry of Foreign Affairs, p. 2, paragraph 1. abc1f.nl, document 3b (retrieved 30 January 2026).

<sup>28</sup> *Ibid.*, p.2 paragraph 2.

<sup>29</sup> District Court of Arnhem AWB 02/5292, 23 January 2004, section 12 and 18, ECLI:NL:RBSGR:2004:AO3020. abc1f.nl, under document 12-1 (retrieved 30 January 2026).

<sup>30</sup> District Court of Rotterdam AWB 02/14814, 8 April 2004, section 3.13, ECLI:NL:RBSGR:2004:AP1289. abc1f.nl, under document 12-2 (retrieved 30 January 2026).

(9), Rotterdam (3) and Zwolle (1). All sixteen rulings were overturned by the Council of State.<sup>31</sup> In legal procedures, the rulings of the Council of State that have been and continue to be referred to by the Netherlands immigration service IND, by district courts and by the Council of State itself, are those of 30 November 2004, 24 September 2009 and 13 April 2010, the rulings 2, 3 and 10 in bold print in footnote 31. For this reason, only these three key rulings are discussed here. Due to space constraints, not all points of criticism are addressed. At the end, an overview is provided of all the dozens of experts that, according to the sixteen district court rulings, contradicted the conclusions of the KhAD-WAD report.

### 3.2 Council of State ruling ABRvS 200404008/1, 30 November 2004

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<sup>31</sup> The sixteen district court rulings in which it was concluded that the accusatory conclusions in the KhAD-WAD report were insufficiently reliable, and that were overturned by the Council of State, are as follows. The three key overturnings by the Council of State that are discussed in detail in this review are indicated in **bold**. All these rulings, to the extent that have been published, are available at abc1f.nl, under documents 12-1 to 12-16 (all documents retrieved 26 February 2026).

1. District Court of **Arnhem** AWB 02/5292, 23 January 2004,

ECLI:NL:RBSGR:2004:AO3020; overturned in Council of State ABRvS 200401637/1, 2 August 2004, ECLI:NL:RVS:2004:AQ7417.

2. District Court of **Rotterdam** AWB 02/14814, 8 April 2004, ECLI:NL:RBSGR:2004:AP1289; overturned in Council of State **ABRvS 200404008/1, 30 November 2004, ECLI:NL:RVS:2004:AR736**.

3. District Court of **Haarlem** AWB 07/39347, 18 February 2009 (unpublished but available at abc1f.nl, under document 12-3); overturned in Council of State **ABRvS 200901907/1/V1, 24 September 2009, ECLI:NL:RVS:2009:BJ8654**.

4. District Court of **Haarlem** AWB 07/24799, 18 February 2009, ECLI:NL:RBSGR:2009:BH3701; overturned in Council of State ABRvS 200901921/1/V1, 29 October 2009, ECLI:NL:RVS:2009:BK3024.

5. District Court of **Rotterdam** AWB 08/11368, 25 February 2009, ECLI:NL:RBSGR:2009:BH4068; overturned in Council of State ABRvS 200902119/1/V1, 29 October 2009, ECLI:NL:RVS:2009:BK3028.

6. District Court of **Breda** Awb 08/27194, 08/27196, 08/29596, 08/29598 and 08/29600, 29 April 2009; attached to and overturned in Council of State ABRvS 2009/04028/1/V1, 7 December 2009, ECLI:NL:RVS:2009:385.

7. District Court of **Zwolle** AWB 09/11468 and 09/11470, 24 April 2009; attached to and overturned in Council of State ABRvS 200903220/1/V2, 22 December 2009, ECLI:NL:RVS:2009:168.

8. District Court of **Almelo** AWB 08/39686, 28 April 2009, ECLI:NL:RBSGR:2009:BI8212; overturned in Council of State ABRvS 200904159/1/V1, 22 January 2010, ECLI:NL:RVS:2010:BL1649.

9. District Court of **Haarlem** AWB 08/34931 and 08/34930, 17 April 2009, ECLI:NL:RBSGR:2009:BI2755; overturned in Council of State ABRvS 200903436/1/V2, 23 February 2010, ECLI:NL:RVS:2010:BL7612.

10. District Court of **Haarlem** AWB 10/17614, 27 May 2011, ECLI:NL:RBSGR:2011:BQ6757; overturned in Council of State **ABRvS 201106991/1/V1, 13 April 2012, ECLI:NL:RVS:2012:BW4347**.

11. District Court of **Haarlem** AWB 09/2422, 17 December 2010; attached to and overturned in Council of State ABRvS 201100658/1/V1, 13 April 2012, ECLI:NL:RVS:2012:BW4286.

12. District Court of **Haarlem** AWB 08/45025), 24 June 2011 (unpublished); overturned in Council of State ABRvS 201107836/1/V4, 11 September 2012, ECLI:NL:RVS:2012:373.

13. District Court of **Haarlem** AWB 09/6940, 17 December 2010 (unpublished); overturned in Council of State ABRvS 201100646/1/V1, 2 October 2012, ECLI:NL:RVS:2012:328.

14. District Court of **Haarlem** AWB 10/14431, 22 November 2011 (unpublished); overturned in ABRvS 201112917/1/V1, 27 February 2013, ECLI:NL:RVS:2013:3441 .

In this KhAD-WAD 1F ruling by the Council of State from 2004, the essential points of criticism mentioned in paragraphs 2.1 and 2.2 above, regarding the content of the KhAD-WAD report and the underlying memoranda, are not mentioned at all. In addition, the following should be noted about this ruling by the Division.

- a) On 30 November 2004, the Council of State overturned a ruling by the Rotterdam District Court that the KhAD-WAD report was unreliable. In doing so, the Council of State, like the District Court, had access to the documents on which the KhAD-WAD report was based.<sup>32</sup> Contrary to the District Court, the Council of State stated that the less definitive wording in the memorandum of 1 September 1999 had been superseded by the definitive wording in the memorandum of 7 February 2000 (section 2.1.5 paragraph 1 of its ruling). The Council of State did not mention that the definitive wording of 7 February followed questions and/or requests from the Ministry of Justice to the Ministry of Foreign Affairs, questions and/or requests that were not included in the report and were not made public at a later date, contrary to the codes of conduct and criteria of the Council of State itself mentioned in the penultimate paragraph of section 2.1 above.<sup>33</sup>
- b) Furthermore, in section 2.1.5 paragraph 1 of its ruling, the Council of State stated that the comment in the memorandum of 1 September 1999 that all officers and NCOs were involved in the arrest, interrogation and mistreatment of suspects on an almost daily basis apparently [only] referred to those who were working in the so-called macabre departments at that time. However, this is not what is stated in the memorandum of 1 September 1999, which states (p. 4, paragraph 1) "In concrete terms, this means that virtually all KhAD/WAD NCOs and officers ... were involved on an almost daily basis in the arrest, interrogation, mistreatment and sometimes execution of suspects".<sup>34</sup> A more logical explanation than that offered by the Council of State, is that not only here but also elsewhere in the accusatory sections of the KhAD-WAD report, KhAD and WAD should be taken to mean only the macabre departments of the KhAD and WAD. But the Council of State does not want to accept that. A Council of State that in fact says 'the author of that memorandum wrote that, but in our opinion he did not mean it that way, he actually meant ...', without checking with the author or with the Ministry of Foreign Affairs, that is against the rules of impartiality, as B.K. Olivier also noted in his annotation to this ruling.<sup>35</sup>
- c) The Council of State accepted without comment that no hearing of former officers and NCOs of the KhAD and WAD had taken place because there were serious doubts about the objectivity of their statements (section 2.1.5 paragraph 2 of the same ruling). However, the codes of conduct for experts state that a hearing must take place, with no exceptions.
- d) On the other hand, in that same second paragraph of section 2.1.5 of its ruling, the Council of State assumed the complete reliability of the fourth-hand, unverified information (see paragraph 2.2 above, penultimate indent) from informants who were also unknown to the

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15. District Court of **Haarlem** AWB 11/19418, 17 February 2012, ECLI:NL:RBSGR:2012:2932 (unpublished); overturned in Council of State ABRvS 2012024436/1/V3, 26 July 2013, ECLI:NL:RVS:2013:522.

16. District Court of **Rotterdam** AWB 10/38857, 28 June 2012 (unpublished); overturned in Council of State ABRvS 201207458/1/V4, 29 July 2013, ECLI:NL:RVS:2013:632.

<sup>32</sup> District Court of Rotterdam AWB 02/14814, 8 April 2004, sections 3.13-3.16, ECLI:NL:RBSGR:2004:AP1289; overturned in Council of State ABRvS 200404008/1, 30 November 2004, ECLI:NL:RVS:2004:AR736. abc1f.nl, document 12-2 (retrieved 26 February 2026).

<sup>33</sup> See the memorandum of 21 January 2000 from the Ministry of Foreign Affairs to the Embassy in Islamabad. And the preceding memorandum from the Ministry of Justice to the Ministry of Foreign Affairs dated 7 January 2000, which the Council of State could also have requested. Both memoranda available at abc1f.nl, document 3b (retrieved 26 February 2026).

<sup>34</sup> See abc1f.nl, document 3b (retrieved 26 February 2026).

<sup>35</sup> See the annotation by B.K. Olivier to this Council of State ruling, JV 2005/49, note 4 at the end. abc1f.nl, under document 12-2 (retrieved 26 February 2026).

Embassy in Islamabad. The accusations in the KhAD-WAD report are entirely based on this alleged, unverified fourth-hand information. Moreover, the Council of State apparently feels that victims of abuse are automatically reliable and incapable of being guided by feelings of revenge.<sup>36</sup> Annotator B.K. Olivier also found this double standard unacceptable, i.e. that the Council of State automatically regarded alleged support of the accusations in the KhAD-WAD report as reliable, and counter-evidence as unreliable.<sup>37</sup>

- e) Furthermore, in the same section 2.1.5 paragraph 2 of its ruling, the Council of State uncritically copied from the memorandum of 14 April 2000, stating that "the conclusions drawn by the Embassy from the statements and other sources do not deviate from the findings of the United Nations Special Rapporteur on Human Rights, the US State Department, Amnesty International, Helsinki Watch and Human Rights Watch". Neither the KhAD-WAD report nor the underlying documents contain any evidence whatsoever for this alleged international support for the accusations against all KhAD and WAD officers and NCOs. The Council of State itself did not provide any such evidence either, nor did it request such evidence from the Ministry of Foreign Affairs.

[Note that the Ministry of Foreign Affairs admitted in 2018, in response to Freedom of Information requests, that it had no evidence for international support for the sweeping accusations against all former KhAD and WAD officers and NCOs: Brouwer 2020, NJB 2020/1052, vol. 17, pp. 1232-1238, in the English translation of this article see section 'The statements from confidential sources ...' on p. 6-7, available at abc1f.nl, at top of page (retrieved 26 January 2026).]

- f) It is also striking that, in the same section 2.1.5 paragraph 2 of its ruling, the Council of State apparently quoted approvingly that the statements of the confidential sources were, according to the memorandum of 14 April 2000, "fully" consistent with each other.<sup>38</sup> Any teacher would be concerned about 'completely consistent' answers from several pupils in a test and would immediately look into what relationship might exist between them.
- g) With regard to the reports by Dr A. Giustozzi, the Council of State noted (section 2.1.5 paragraph 4 of its ruling) that Dr. Giustozzi's reports were 'based ... on personal suspicions and assumptions' and therefore did not provide any concrete grounds for doubting the accuracy and completeness of the KhAD-WAD report. No attention seems to have been paid by the Council of State to cultural differences in wording: in the Netherlands the wording is usually direct, while in England, where Giustozzi had been working for years, it is more veiled out of politeness, but no less convincing for that. In contrast, the district court of Haarlem did have that cultural sensitivity
- h) Moreover, the Council of State apparently applied double standards: Giustozzi did not, of course, come up with what he wrote in his reports himself, but according to the Council of State, what *his* sources say is not reliable, while what the obviously biased but otherwise unknown informants of the biased confidential sources say, is reliable.
- i) The letter from Amnesty International dated 2 March 2004, stating that Amnesty could not confirm the torturing etc. by ALL KhAD and WAD officers and NCOs, was dismissed by the Council of State without further argument (section 2.1.5 paragraph 4 of its same ruling). This despite the fact that two paragraphs earlier (section 2.1.5 paragraph 2), the Council of State had, without any reservations, found Amnesty to be reliable as an alleged *supporter* of the conclusions of the KhAD-WAD report.
- j) Moreover, the Council of State apparently did not ask the Foreign Affairs officials present at its hearing, why Amnesty said that it could not support the accusatory conclusions against all KHAD and WAD officers and NCOs, while the memorandum of 14 April 2000 made believe that Amnesty *did* support those sweeping conclusions.

<sup>36</sup> Memorandum of 1 September from the Embassy in Islamabad to the Ministry of Foreign Affairs, p. 2, last paragraph. abc1f.nl, document 3b (retrieved 26 February 2026).

<sup>37</sup> See the annotation by B.K. Olivier to this Council of State ruling, JV 2005/49, end of paragraph 2 at the end of the document. abc1f.nl, under document 12-2 (retrieved 26 February 2026).

<sup>38</sup> Memorandum of 14 April 2000, p. 2, paragraph 2. abc1f.nl, document 3b (retrieved 26 February 2026).

- k) The Council of State dismissed the limited knowledge in the KhAD-WAD report about the organisational structure of KhAD and WAD as irrelevant (section 2.1.5 paragraph 5 of the same ruling). Were the confidential sources of the Netherlands Embassy in Islamabad not questioned about this limited knowledge? If not, why not? The Council of State did not ask the Foreign Affairs official present at the hearing about this.
- l) In his above-mentioned published comments on this ruling by the Council of State, B.K. Olivier also pointed out that asylum policy is government policy, which puts pressure on the impartiality and objectivity of official reports such as the KhAD-WAD report, reports that are drawn up under the responsibility of the Minister of Foreign Affairs and that are often influenced by staff of his colleague at the Ministry of Justice.<sup>39</sup>

[Note that neither the Ministry of Foreign Affairs nor the immigration service IND nor the Council of State ever reacted to the well-argued criticisms by Dr. B.K. Olivier, they all just ignored those criticisms.]

### 3.3 Council of State ruling ABRvS 200901907/1/V1, 24 September 2009

In this key ruling by the Council of State, the fundamental criticisms of the content of the KhAD-WAD official report and the underlying memoranda mentioned, in paragraphs 2.1 and 2.2 above, are also completely ignored. In addition, the following should be noted about this ruling.

- a) In the second key KhAD-WAD ruling by the Council of State, dated 24 September 2009<sup>40</sup>, the underlying ruling by the district court of Haarlem dated 18 February 2009, has not been published. The ruling was therefore requested from the district court of Haarlem, which emailed it on 5 April 2022.<sup>41</sup> The court stated that, for 'technical reasons', it was not possible to publish [the PDF of] the ruling, e.g. on the website with all the published rulings of Dutch courts, [www.rechtspraak.nl](http://www.rechtspraak.nl). Being able to send the PDF of a ruling but not being able to publish it on the internet is remarkable. No response was received to the question of 26 August 2022 asking what those technical reasons were. Not having the underlying district court ruling of course severely limits the options available to anyone wanting to comment on the Council of State ruling.
- b) On 24 September 2009, the Council of State overturned the unpublished ruling of the District Court of Haarlem<sup>42</sup>. In section 2.2.3 of this second key ruling, the Council of State referred to its conclusion in section 2.1.5 of its first key ruling of 30 November 2004, where the alleged accuracy of the KhAD-WAD report was upheld.<sup>43</sup> However, for the shortcomings of that key ruling of 30 November 2004, see section 3.2 above, including the criticism by annotator B.K. Olivier.
- c) Moreover, in section 2.1.5 of its 30 November 2004 ruling, the Council of State had concluded that *all* KhAD and WAD officers and NCOs were involved in human rights violations. However, in 2008, the State Secretary had subsequently allowed for 'significant exceptions' who had not tortured.<sup>44</sup> In 2009, the Council of State should therefore have

<sup>39</sup> See the annotation by B.K. Olivier to this Council of State ruling, JV 2005/49, note 2. [abc1f.nl](http://abc1f.nl), under document 12-2 (retrieved 26 February 2026).

<sup>40</sup> Council of State ABRvS 200901907/1/V1, 24 September 2009, ECLI:NL:RVS:2009:BJ8654. [abc1f.nl](http://abc1f.nl), document 12-3 (retrieved 26 February 2026).

<sup>41</sup> District Court of Haarlem AWB 07/39347, 18 February 2009, unpublished but now available at [abc1f.nl](http://abc1f.nl), under document 12-3 (retrieved 26 February 2026).

<sup>42</sup> ABRvS 200901907/1/V1, 24 September 2009, ECLI:NL:RVS:2009:BJ8654. [abc1f.nl](http://abc1f.nl), document 12-3 (retrieved 26 February 2026).

<sup>43</sup> ABRvS 200404008/1, 30 November 2004, ECLI:NL:RVS:2004:AR736, section 2.1.5. [abc1f.nl](http://abc1f.nl), document 12-2 (retrieved 26 February 2026).

<sup>44</sup>? Appendix dated 6 June 2008 ([Parliamentary Document 31200-VI, no. 160 b1](#)) to a letter from the Minister and Vice-minister for Justice to the Lower House dated 9 June 2008, p. 14.

stated that the accusations against *all* KhAD and WAD officers and NCOs were apparently incorrect. And that this meant that the conclusions of the KhAD-WAD report were not reliable. The Council of State did not do so, but on 24 September 2009, in the same section 2.2.3, it once again emphasised the reliability of the underlying accusations against *all* KhAD and WAD officers and NCOs.

- d) According to the Council of State, the letter submitted by recognised expert Dr B.R. Rubin to Mr M. van Eik dated 26 March 2007 did not constitute new evidence and was therefore dismissed without further discussion (section 2.1.4 of the ruling of 24 September 2009). Rubin had indicated that whether or not someone participated in torture depended on their role and department within the KhAD and WAD, “as is the case with any intelligence service”.<sup>45</sup> The Council of State, which did not quote Rubin directly, argued that this was no different from the statement in the KhAD-WAD report, that whether or not someone had tortured depended only on their rank. Both Dr. Rubin and the KhAD-WAD report said that not everyone had tortured, according to the Council of State, as if there was no substantial difference between the two statements. The Council of State used this 'excuse' to wrongly dismiss Rubin's letter as containing nothing new.
- e) In addition, the Council of State did not ask the Foreign Affairs official present at the hearing how it was possible that in the memorandum of 14 April 2000 it was pretended that Dr. Rubin supported the accusations in the KhAD-WAD report against all officers and NCOs,<sup>46</sup> while Dr. Rubin stated in his letter of 26 March 2007 that he did not.
- f) The letter from the Speaker of the Afghan Parliament dated 5 August 2007, which stated that lower-ranking officers accused [in the Netherlands] of human rights violations were not guilty of those violations,<sup>47</sup> was dismissed by the Council of State on the sections that the sources for that letter were unclear (ruling of 24 September 2009, section 2.1.4). The Council of State did not mention that the sources for the KhAD-WAD report itself were also unclear, nor did it say why the principle of inter-state trust (trust another government until it is shown that it is wrong) was not followed in this case. See also section 2 above on the Council of State's failure to ask critical questions of the Ministry of Foreign Affairs.
- g) Contrary to the district court of Haarlem on 18 February 2009 (sections 2.20-2.30 of its judgment), the Council of State in section 2.2.5 of its ruling of 24 September 2009, stated that the UNHCR report on the structure and organisation of the KhAD-WAD,<sup>48</sup> including the disputed rotation and promotion policy, did not constitute grounds to doubt the accuracy of the conclusions of the KhAD-WAD report. According to the Council of State that was because the sources for UNHCR report, and those of Dr Giustozzi who was consulted for that report, were not transparent. The Council of State thus set the bar for reliability higher for this counter-information than for the fourth-hand information from unknown sources in the KhAD-WAD report itself. In his published comments on this Council of State ruling, former National ombudsman and full professor R. Fernhout described this double standard by the Council of State as 'an outrage'.<sup>49</sup>

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<https://zoek.officielebekendmakingen.nl/kst-31200-VI-160.html> (both documents retrieved 26 February 2026).

<sup>45</sup> Letter from Dr B.R. Rubin dated 26 March 2007 to lawyer M. van Eik. In English. abc1f.nl, document 16 (retrieved 26 February 2026). Dr Rubin was, among other things, director of the Centre for the Study of Central Asia at Columbia University in New York from 1990 to 1996.

<sup>46</sup> Memorandum dated 14 April 2000 from the Embassy in Islamabad to the Ministry of Foreign Affairs, p. 3, paragraph 1. abc1f.nl, document 3b (retrieved 26 February 2026).

<sup>47</sup> Letter from the President of the Afghan Parliament dated 5 August 2007 to the President of the Dutch Parliament. In English. abc1f.nl, document 5a (retrieved 26 February 2026).

<sup>48</sup> UNHCR 2008. Notes on the structure and operation of the KhAD-WAD in Afghanistan 1978-1992. In English. abc1f.nl, document 28 (retrieved 26 February 2026).

<sup>49</sup> *Ars Aequi* RV 2009, 12 with annotation by R. Fernhout, para. 14. abc1f.nl, under document 12-3 (retrieved 26 February 2026)

- h) Moreover, the Council of State ignored the fact that the UNHCR did indeed refer to a reliable and verifiable source regarding promotion within the KhAD and the WAD: by law, [initial] rank depended on level of education, and the number of years of service played a very important role in promotions [as is the case with armed forces everywhere in the world].<sup>50</sup> This is very different from the claim in the KhAD-WAD report that promotion was only possible with unconditional loyalty, which had to be proven by, among other things, participation in torturing. Again, the Council of State apparently did not ask the Foreign Affairs official present for comments on this contradiction between the sweeping statements in the KhAD-WAD report and clear evidence to the contrary.
- i) With regard to the indirect formulation of conclusions by Dr Giustozzi in his submissions of 2003, 2005 and 2006, the Council of State ignored the cultural causes for Dr. Giustozzi's use of phrases like 'I would exclude' rather than 'I exclude'. The Council of State also ignored Dr. Giustozzi's substantiation of his views and his proven expertise in this area (section 2.2.5 of the ruling of 24 September 2009). All his was in complete contrast to the opinion of the district court of Haarlem regarding Dr. Giustozzi (section 2.30 paragraph 2 of its ruling of 18 February 2009).
- j) In addition, according to the district court of Haarlem, Giustozzi raised serious questions about the KhAD-WAD report's claim that all KhAD employees were highly loyal to the communist regime and that they had all tortured. The growth of the KhAD from a few thousand employees in 1980 to approximately 100,000, excluding informants, at its peak, of whom possibly 25,000 were officers, made overall loyalty and widespread torture highly unlikely.<sup>51 52</sup> Footnote 18 of the KhAD-WAD report also mentions 25,000 to 60,000 to 150,000 people working for KhAD and WAD. The Council of State ignored the logistical improbability, if not impossibility, of all the new recruits starting at, or rotating to, the sections of the KhAD involved in interrogation and torture.
- k) The Council of State also ignored the fact that Dr. Giustozzi's report was partly based on publications by V. Mitrokhin and Fred Halliday & Zahir Tanin, as the district court of Haarlem had mentioned.<sup>53</sup> Mitrokhin was a KGB archivist for thirty years until his flight to the West; Halliday was a professor of International Relations at the London School of Economics (LSE); and Zahir Tanin was a journalist in Kabul from 1980 to 1992, then a researcher at the LSE and later Afghanistan's permanent representative to the UN.
- l) Furthermore, the Council of State ignored the fact that, as mentioned by the district court of Haarlem in section 2.30 of its ruling, the UNHCR report was clear and, in some parts, very specific.
- m) The district court of Haarlem also noted that there was no evidence to support the alleged support for the conclusions of the KhAD-WAD report by the United Nations Special Rapporteur on Human Rights, the US State Department, Amnesty International, Helsinki Watch and Human Rights Watch.<sup>54</sup> The Council of State did not address this, and thus did not provide any evidence that these organisations did indeed support the conclusions of the KhAD-WAD report.
- n) The Council of State ignored as well the judgments of the ECtHR cited by the Haarlem court, which stated that findings based solely on the organisation's own informants should

<sup>50</sup> UNHCR 2008, paragraph 20, footnote 26: *Law of Personal Affairs of Military Forces of the Democratic Republic of Afghanistan – 1362 (1983), Law on Remuneration and Rights of Cadre and Experts of Universities, Academies, Faculties and Armed Military Forces of the Democratic Republic of Afghanistan – 1366 (1987)*. In English. abc1f.nl, document 28 (retrieved 26 February 2026).

<sup>51</sup> Letter from Dr A. Giustozzi dated 28 September 2003 to Mr F. Schüler, including paragraph 7. In English. abc1f.nl, document 17 (retrieved 26 February 2026).

<sup>52</sup> District Court of Haarlem AWB 07/39347, 18 February 2009, section 2.26. Unpublished but available at abc1f.nl, under document 12-3 (retrieved 26 February 2026).

<sup>53</sup> *Ibid.*, section 2.23.

<sup>54</sup> *Ibid.*, section. 2.31, second paragraph.

be considered insufficiently reliable.<sup>55</sup> According to the EU Procedures Directive, information from various sources must be obtained when considering the withdrawal of a residence permit, with the EASO, UNHCR and relevant international human rights organisations being specifically mentioned.<sup>56</sup>

- o) The Council of State dismissed the judgments of the ECtHR, in which the importance of information from institutions such as the United Nations is emphasised, with the remark that [also] in the judgment of 17 July 2008, ECHR 25904/07, *NA v. UK*, it is emphasised 'that when assessing the available country information, the sources used in the relevant reports must be taken into account' (Council of State judgement of 24 September 2009, section 2.2.5 at the top of p. 8). Unfortunately, the Council of State, like the district court before it, did not mention in which paragraph of that ECtHR judgment this would be found.

Paragraph 120 of that ECtHR judgment of 17 July 2008 reads as follows: "*In assessing such material [i.e. when assessing information submitted to the Court, see paragraphs 118 and 119 preceding paragraph 120], consideration must be given to the source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they are compiled, the consistency of their conclusions, and their corroboration by other sources are all relevant considerations (see Saadi v. Italy, cited above, § 143).*"

Contrary to what the Council of State seemed to imply, this paragraph 120 clearly concerns the authors who wrote down the information submitted to the Court, not the sources of those authors. In addition, § 119 already indicated that the ECtHR considers states, UN organisations and reputable NGOs to be reliable and objective. In § 121, this is further emphasised for UN organisations. Why was the Council of State so inaccurate in this regard and why did it ignore the assessment criteria for the reliability of sources mentioned by the ECtHR, criteria which the KhAD-WAD report does not meet at all?

- p) Finally, the Council of State (section 2.2.5, paragraphs 5 and 6 of its judgement) agreed with the Minister of Foreign Affairs, who argued that conducting new research would be pointless because the results might [sic] not be reliable, including research into the confidential sources for the KhAD-WAD report. However, what those sources had stated in 1999 remained reliable. The Haarlem court, on the other hand, had understandably concluded from this ministerial letter that the sources for the KhAD-WAD report were therefore also not reliable.<sup>57</sup>

[Note that neither the Ministry of Foreign Affairs nor the immigration service IND nor the Council of State ever reacted to the well-argued criticisms by former National ombudsman Professor R. Fernhout, they all just ignored those criticisms.]

Note as well that this key ruling, like the key ruling of 30 November 2004, was based on the application of double standards by the Council of State where the reliability of the fourth-hand rumours from unknown sources supporting, and the information from expert and public sources contradicting, the sweeping accusations in the KhAD-WAD report was concerned. Thus all subsequent rulings by the Council of State, in which the reliability of the sweeping accusations in the KhAD-WAD report is affirmed, are also based on the application of double standards where the reliability of information is concerned.]

### **3.4 Council of State ruling ABRvS 201106991/1/V1, 13 April 2012**

<sup>55</sup> *Ibid.*, section. 2.31, second paragraph. See ECHR 2345/02, *Said v. Netherlands*, 5 July 2005, page 15; ECHR 1948/04, *Salah Sheekh v. The Netherlands*, 11 January 2007, paragraph 136; ECHR 25904/07 *NA v. UK*, 17 July 2008, paragraph 119. All also available in English.

<sup>56</sup> See in particular Article 45(2) of the Procedures Directive for the granting and withdrawal of international protection, but also Articles 10(3) and 37 and prior considerations 39 and 48. <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A32013L0032> (English version available on same page, retrieved 26 February 2026).

<sup>57</sup> District Court of Haarlem AWB 07/39347, 18 February 2009, sections 2.32 and 2.33. abc1f.nl, under document 12-3 (retrieved 26 February 2026).

For this key ruling by the Council of State the following applies, too: there is no mention whatsoever of the elementary points of criticism of the content of the KhAD-WAD report and of the underlying memoranda, referred to in paragraphs 2.1 and 2.2 above. In addition, the following should be noted about this ruling by the Council of State.

On 27 May 2011, the district court of Haarlem ruled that additional information relating to the UNHCR report of May 2008 and its sources was sufficient to cast doubt on the conclusions of the KhAD-WAD report.<sup>58</sup> Sources for the additional information included a large number of former KHAD/WAD employees of various ranks; a prominent scientist; documents from before February 2000 from the UN Special Rapporteur, Human Rights Watch and Amnesty International; and further information from Afghanistan experts in Australia, the US and Sudan, from a former assistant to the Special Rapporteur, from a former employee of Human Rights Watch and from senior security officials in the Afghan government at that time.

- a) On 13 April 2012, the Council of State overturned this ruling by the district court of Haarlem.<sup>59</sup> In section 2.4.2.3 paragraph 2, the Council of State ruled that, based on the information in the UNHCR letter of 4 October 2010 about the eleven former KhAD/WAD officers consulted, those sources could not be further qualified. The Council of State did so without further explanation and without stating when sources would be qualified.
- b) Furthermore, in the same paragraph, the Council of State did not want to wait for further information about the UNHCR's sources. Previously, unlike the Zwolle District Court, the Council of State had also rejected in advance further information about the highly critical UNHCR report that was not yet available.<sup>60</sup>
- c) The Council of State ended said paragraph with "The qualification of the scientists and United Nations staff consulted by the UNHCR, as well as the value of the information they provided, can only be assessed once further details about these sources have been provided". However, when the authors of the KhAD-WAD report stated without any evidence that those very same sources – including the UN Special Rapporteur, Amnesty International and Human Rights Watch – supported the conclusions of the KhAD-WAD report, the Council of State agreed without question: see, among other things, the Council of State's overturning of a ruling by the district court of Rotterdam, discussed in section 3.2 above.

The Council of State apparently also had a third standard for public sources: unquestionably reliable as long as they appeared to support the conclusions of the KhAD-WAD report, unquestionably unreliable when they appeared to contradict those conclusions.<sup>61</sup>

- d) And again, the Council of State did not ask the Ministry of Foreign Affairs how it was possible that those expert individuals and organisations, which according to the underlying memoranda supported the conclusions of the KhAD-WAD report, apparently did not do so.

#### 4. Summary and conclusions

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<sup>58</sup> District Court of Haarlem AWB 10/17614, 27 May 2011, ECLI:NL:RBSGR:2011:BQ6757. abc1f.nl, under document 12-10 (retrieved 26 February 2026).

<sup>59</sup> ABRvS 201106991/1/V1, 13 April 2012, ECLI:NL:RVS:2012:BW4347. abc1f.nl, document 12-10 (retrieved 26 February 2026).

<sup>60</sup> District Court of Zwolle AWB 09/11468 and 09/11470, 24 April 2009, sections 2.6-2.8; attached to, and overturned in, ABRvS 200903220/1/V2, 22 December 2009, ECLI:NL:RVS:2009:168, see in particular section 2.2.1. abc1f.nl, under document 12-7 (retrieved 26 February 2026).

<sup>61</sup> For double standards applied by the Council of State, see former National ombudsman and university professor Fernhout in section 3.3, paragraph 7 above. See also his published comment discussed in that paragraph via abc1f.nl, under document 12-3 (retrieved 26 February 2026).

## 4.1 Summary

The above shows that both the KhAD-WAD report of 29 February 2000 and the underlying memoranda invite (highly) critical comments and questions to be addressed to the Ministry of Foreign Affairs. A number of district courts have indeed made such comments and asked such questions. The Council of State, which overruled all those courts, was never in any way critical or questioning of the Ministry of Foreign Affairs. The Council of State did not even ask where the evidence was for the alleged [but never proven] international support for the conclusions of the KhAD-WAD report. The Council of State also did not ask how it was possible that apparently only unknown sources had been found for what was claimed to be twelve years of national policy of an organisation with 100,000 employees. Nor did it ask why the information from sources unknown to the Foreign Office had apparently not been verified with the UN, Amnesty International or Human Rights Watch.

In total, in the period 2004-2012, at least six different courts concluded in sixteen rulings that the accusations in the KhAD-WAD report against ALL former KhAD and WAD officers and NCOs were unreliable. All sixteen of these court judgments were overturned by the Council of State. Three of those sixteen rulings should be regarded as key rulings because they are and have been referred to repeatedly by the IND, district courts and the Council of State itself in other KhAD-WAD decisions and rulings.

In its first key ruling on the KhAD-WAD report, dated 30 November 2004, the Council of State stated without any evidence that there was international support for the accusations against all KhAD and WAD officers and NCOs. The Council of State also ignored the prior interference by the Ministry of Justice with the content of what should have been an independent report. In addition, the Council of State added, *on its own initiative and without asking any questions*, that a passage in an underlying memorandum, that could not possibly refer to all officers and NCOs, only referred to those who worked in the macabre department. Just like all the accusations in the KhAD-WAD report only apply to the macabre departments, according to experts. But that the Council of State does not want to accept.

In this same ruling, the Council of State approved the fact that the required hearing of KhAD and WAD employees, the victims of the sweeping accusations in the KhAD-WAD report, had not taken place. Moreover, the Council of State applied double standards in this ruling by preferring fourth-hand, unverified accusations by unknown informants over the counter-information provided by Amnesty International and recognised Afghanistan expert Dr A. Giustozzi. In addition, the Council of State failed to ask the Ministry of Foreign Affairs how it was possible that, according to the Ministry of Foreign Affairs, the conclusions of the KhAD-WAD report were supported by Amnesty International, while Amnesty said that that was not true.

In its subsequent key ruling on KhAD-WAD report, dated 24 September 2009, the Council of State continued along these lines. The underlying ruling of the district court of Haarlem was not published but received upon request. In overturning that Haarlem ruling, the Council of State ignored the fact that in 2004 it had concluded that the KhAD-WAD report left no room for KhAD and WAD officers and NCOs who had *not* tortured. Subsequently, in 2008, the State Secretary had stated that there could be exceptions. The Council of State should therefore have stated in 2009 that the accusations against *all* officers and NCOs were incorrect, but it did not do so.

Moreover, the Council of State misrepresented the content of a letter from recognised expert Dr B. Rubin. According to the Council of State, Dr. Rubin's statement, that it depended on their department and duties whether KhAD and WAD employees had tortured, was no different from the IND's assertion that it depended solely on your rank whether you had tortured or not. Because they both said that not everyone had tortured, Dr. Rubin did not say anything new, according to the Council of State. The Council of State thus dismissed Rubin's letter and, once again, did not ask the Ministry of Foreign Affairs how it was possible that someone who allegedly supported the conclusions of the KhAD-WAD report apparently did not do so.

In addition, the Council of State again applied double standards by preferring the fourth-hand, unverified accusations by unknown informants, on which the general accusations in the KhAD-WAD report are entirely based, over the counter-information provided by the Speaker of the Afghan Parliament and the UNHCR, and additional information from Dr Giustozzi. In doing so, the Council of State ignored the fact that the UNHCR report referred to Afghan legislation on ranks and promotions, a directly verifiable source that was not consulted by the Council of State. The Council of State also ignored the fact that Dr Giustozzi's report was partly based on publications by three experts in the field, as mentioned by the Haarlem court.

The Council of State also ignored the fact that the district court of Haarlem had concluded that there was no evidence for the alleged international support for the conclusions of the KhAD-WAD report, without the Council of State itself providing evidence for that alleged international support. The Council of State also ignored the fact that, as the court had indicated, rulings by the ECtHR show that findings based solely on the government's own informants, such as the allegations in the KhAD-WAD report, must be regarded as insufficiently reliable. In addition, the Council of State misleadingly referred to a ruling by the ECtHR which allegedly shows that certain requirements are imposed on sources for reports: those requirements are imposed by the ECHR on [the authors of] the reports themselves, not on its sources. Furthermore, the Council of State ignored the fact that the accusatory sections in the KhAD-WAD report itself clearly do not meet those ECtHR requirements.

Finally, in its ruling of 24 September 2009 (section 2.2.5, paragraph 5), the Council of State agreed with the Minister of Foreign Affairs, who argued that new research might not be reliable, including new research into the confidential sources for the KhAD-WAD report, but that what those sources had stated in 1999 remained reliable. The Haarlem court, thinking in a straightforward manner, had found this reasoning untenable and concluded that, following this reasoning, the sources for the KhAD-WAD report could also not be reliable..

In its third key KhAD-WAD ruling, dated 13 April 2012, the Council of State rejected information from former KhAD/WAD officers to the UNHCR as unreliable without further investigation. Nor did the Council of State want further information about interviews with sources consulted in Afghanistan. According to the Council of State, the reliability of international sources consulted by the UNHCR required further information, which it did not wish to wait for. But when the authors of the KhAD-WAD report had stated, without any evidence, that those same international sources – including the UN Special Rapporteur, Amnesty International and Human Rights Watch – supported the conclusions of the KhAD-WAD report, the Council of State agreed without question. And this time, too, the Council of State did not ask the Ministry of Foreign Affairs how it was possible that alleged supporters of the conclusions of the KhAD-WAD report now contradicted those conclusions.

As mentioned above, in sixteen district court rulings it was found that the KhAD-WAD report was insufficiently reliable with regard to the accusations against all former KhAD and WAD officers and NCOs. These district court rulings show that the fourth-hand, unverified information on which the allegations in the KhAD-WAD report are entirely based is not supported by anyone else and was contradicted or questioned, sometimes repeatedly, between 2003 and 2013 by the following international sources [with the numbers of the relevant district court rulings in note 31 in brackets]:

Amnesty International 2004 [2,12], 2010 [14];

UNHCR 2007 [3,4,5,8,9,11,12,13,14] 2008 [3,4,5,6,7,8,9,10,11,12,13,14,15,16] 2009 [7,11,13,14] 2010 [10,12,14,15,16] 2011 [16];

internationally recognised Afghanistan experts Dr A. Giustozzi (London School of Economics LSE) 2003 [2,3,4,8,9,11], 2005 [3,4,9] 2006 [3,4,5,8,9,12,13] and Dr B.R. Rubin (Centre on International Cooperation, New York University) 2007 [3,4,8,11,12];

former KGB archivist Vasiliy Mitrokhin 2002 [3,4,5,8];

Professor of International Relations Fred Halliday (LSE)

journalist in Kabul until 1992, researcher at the LSE and Permanent Representative of Afghanistan to the UN Zahir Tanin 1998 [3,4,5,8];

documents from before February 2000 from the UN Special Rapporteur and from Human

Rights Watch and Amnesty International [see UNHCR 2010];  
Afghanistan experts in Australia, the US and Sudan [see UNHCR 2010];  
a former assistant to the UN Special Rapporteur [see UNHCR 2010];  
and a former employee of Human Rights Watch [see UNHCR 2010].  
The allegations have also been questioned by the [Dutch] Advisory Committee on Aliens Affairs  
2008 (chapter 5) [6, 14].

The accusatory conclusions were further contradicted by the following Afghan sources:  
Presidents of the Afghan Parliament 2007 [3,5,8,11] 2008 [7,8,14] 2009 [7,13,14];  
members of the Afghan Parliament 2009 [7,13,14];  
the secretary of the [Afghan] Commission for International Affairs 2009 [7];  
Afghan legislation on entry rank and promotion policy in the armed forces [see UNHCR 2008];  
a large number of former KHAD/WAD employees of various ranks (3rd lieutenant to general)  
[see UNHCR 2010];  
senior security officials in the Afghan government in 2008-2010 [see UNHCR 2010];  
the Afghan Ministry of Foreign Affairs (2007) [11];  
the Afghan Consulate General 2007 [3,11,13], 2008 2x [7,13];  
and the Afghan Organisation of Human Rights and Environmental Protection (2009, 2010) [14].

In contrast to the six courts involved in their sixteen judgments, the Council of State found all these sources to be less reliable than the unverified fourth-hand rumours in the KhAD-WAD report from informants who were unknown even to the Ministry of Foreign Affairs and the Ministry of Justice.

As discussed in sections 3.2 and 3.3, acknowledged legal experts Dr. B.K. Olivier and Prof. R. Fernhout have raised serious questions about this double standard applied by the Council of State in favour of the unknown sources for the accusations in the KhAD-WAD report. The fact that, in a few cases not discussed here, the court preceded the Council of State by also considering information from Giustozzi and UNHCR not to be reliable, does not alter this.

It is also worth noting that some of the experts and organisations that, according to the KhAD-WAD report and the underlying memoranda, were supposed to support the conclusions of the KhAD-WAD report, to wit Amnesty International, Human Rights Watch, the UN Special Rapporteur and Dr Rubin, explicitly stated after 2000 that they did *not* support those conclusions. Not a word or critical question from the Department to the Foreign Affairs Ministry about this.

The Department added a third standard to its double standards by considering public sources to be reliable as long as the Ministry of Foreign Affairs said that they supported the sweeping accusations in the KhAD-WAD report, but downgrading them to unreliable when they contradicted those conclusions.

The Council of State ignored its own requirements for an expert report, including gathering all relevant information (for and against), applying the principle of hearing both sides, being open about the client's influence on the wording of the final report, etc..

The Council of State did not consider the Vice-minister's acknowledgement, that not all KhAD and WAD officers and NCOs had tortured people, as proof that the allegations of torture against ALL those KhAD and WAD employees were therefore incorrect.

With regard to the counter-information from the Afghan government, the Council of State also set aside the principle of inter-state trust without explaining why the Afghan government should not be considered reliable in this matter. The fact that the sources of the Afghan government are unclear is not sufficient to set aside the statements by the Afghan government; that is why it is called a principle of trust.

#### **4.2 In brief**

In short, in the period 2004-2013, the Council of State overturned all sixteen rulings by six different district courts in which had been concluded that the sweeping accusations in the KhAD-WAD report against ALL former KhAD and WAD officers and NCOs were incorrect and unreliable. In contrast to the various courts, the Council of State did not ask the Foreign Office any critical questions about the KhAD-WAD report and the underlying memoranda, despite there being every reason to ask such critical questions. The Council of State also ignored, called unreliable,

distorted or reformulated on its own initiative everything that contradicted the reliability of the KhAD-WAD report. As also noted by the annotators of two KhAD-WAD 1F key judgments, the Council of State applied – and continues to apply – double standards by giving preference to fourth-hand, totally unchecked rumours from unknown informants, on which the general accusations are entirely based, over the opinions of dozens of experts. In dismissing these expert sources, the Council of State also ignored the fact that, in any case the international experts, had nothing to gain and everything to lose by providing incorrect or unreliable information. In addition, the international experts who were uncritically considered reliable by the Council of State as long as they appeared to support the sweeping allegations were considered unreliable by the Council of State as soon as they proved to contradict the allegations.

It must be concluded that, after its first, criticised, key ruling of 30 November 2004 in the KhAD-WAD 1F affair, the Council of State focused with tunnel vision on being consistent. When such a first ruling is possibly incorrect (see e.g. the annotation by B.K. Olivier), it is not a good idea to focus on being consistent over being fair. The Council of State also failed to take into account possible, not to say probable, political influences on the final wording of official reports, as annotator Olivier already noted in 2004.<sup>62</sup>

It is striking that of the 16 overturnings by the Council of State of KhAD-WAD rulings by district courts, 13 took place under the chairmanship of one and the same Councillor of State, the same Councillor of State who began his role in this affair by presiding over the very disturbing key ruling of 24 September 2009 (see section 3.3 above). How likely is it that, after such a ruling aimed first and foremost at keeping the KhAD-WAD report intact, that Councillor of State would change his mind, even if the facts overwhelmingly pointed out the error of his ways? The fact that the same Councillor of State continued to preside over rulings on the reliability of the KhAD-WAD report, even after harsh public and unanswered criticism of his first ruling from a legal expert like former National ombudsman Professor R. Fernhout (see section 3.3, paragraph 7 above), raises questions about the internal checks and balances of the Council of State.

The Council of State itself is best placed to explain why the responsible Councillors of State did all this to uphold a report that clearly does not meet the Council of State's own requirements of impartiality, objectivity and transparency. Hopefully, the Council of State, as well as politicians and the media, will see the information in this document as an additional reason to examine KhAD-WAD 1F cases with particular urgency from now on, with protection by the law for all and redress of judicial errors as primary objectives. See the impartial Court of Appeal in Antwerp, which on 17 October 2023 labelled the accusations based on the KhAD-WAD report as general, vague, from an unknown source, and no obstacle to naturalisation to Belgian citizenship by a victim of the KhAD-WAD report who ten years earlier had fled from The Netherlands to Belgium.<sup>63</sup>

To which it must be added (January 2026) that the KhAD-WAD report does not meet *any* of the seven conditions that, according to the Vice-minister for Justice in November 2023, a document must *all* meet in order to be taken into account in a decision on a residence application.<sup>64</sup>

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<sup>62</sup> Annotation by B.K. Olivier on the Council of State's ruling from 2004, JV 2005/49, paragraph.4. abc1f.nl, under document 12-2 (retrieved 26 February 2026).

<sup>63</sup> Court of Appeal of Antwerp, case number 2023/6497, roll number 2023/FE/27, 17 October 2023, paragraph 11. abc1f.nl, document 12-25 (retrieved 26 February 2026).

<sup>64</sup> District Court of Arnhem 15 November 2023, ECLI:NL:RBDHA:2023:18504, final judgment, section 3.1 second part. And also the associated provisional ruling of the District Court of Arnhem 15 November 2023, ECLI:NL:RBDHA:2023:18503. Both rulings in Dutch and at abc1f.nl, document 26 (retrieved 26 February 2026).