

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Raad van State (Council of State)			
Date of the decision:	14-09-2016	Case number:²	201603036/1/V2 ECLI:NL:RVS:2016:2474
Parties to the case: Applicant v. State Secretary for Security and Justice			
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, please provide the link: https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=88854 (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):			
Country(y)(ies) of origin of the applicant(s): Albania			
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: X	
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Relevant articles of the Convention on which the decision is based: X	
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Relevant articles of the Convention on which the decision is based: X	
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Relevant articles of the Convention on which the decision is based: X	
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: Articles 36 and 37 of Directive 2013/32/EU (Procedures Directive)	

Topics / Key terms: (see attached 'Topics' annex):

**Safe Country of Origin
Procedures Directive
Albania
LHBTI**

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

The case at hand concerns two Albanian women who are in a relationship together. They based their asylum applications on their sexual orientation, stating that due to their sexual orientation, they cannot return to Albania. The State Secretary denied their applications on 18 November 2015, based on the fact that he has declared Albania to be a safe country of origin on 10 November 2015. The two applications failed to attest that due to their sexual orientation, Albania cannot be considered a safe country of origin in their specific situation. The court of first instance declared the appeals by the applicants unfounded. The applicants then appealed before the Administrative Jurisdiction Division of the Council of State. They argue primarily that the State Secretary's decision to consider Albania as a safe country of origin is unlawful. Secondly they argue that, in their specific situation, Albania cannot be considered as a safe country of origin due to their sexual orientation. UNHCR was asked to partake in the proceedings. UNHCR was not participating in the hearing, but sent a written statement. The Council of State then proceeded to merely take in UNHCR document regarding country information. The other document provided by UNHCR was disregarded as it was stated that only the text as orally brought forward was to be considered as valid. In this case an advisory opinion of the Advocate General was requested and provided.

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. (...) The requirements and conditions to mark a country as a 'safe country of origin' shall be discussed, as it is important to know these conditions to know what judges can look at when an applicant challenges the decision to mark a certain country as a 'safe country of origin'. Afterwards, the intensity of the judicial scrutiny will be discussed, and applied to the question whether Albania was rightfully considered as a 'safe country of origin'. Finally, the conditions for an applicant to attain that in his/her specific situation, the country cannot be considered as a 'safe country of origin', will be discussed and then applied to the case at hand.

3.4.1. In order for a country to be deemed a 'safe country of origin', it has to be clear that in that country there is, in general and durable manner, no persecution as described by the 1951 Refugee Convention and no treatment contrary to Article 3 ECHR takes place. The assessment whether this condition is met, has to involve legal as well as factual factors. This means that there is legislation in place that prohibits aforementioned persecution and treatment contrary to Article 3 ECHR, and that there is an actual system in place in practice that offers relevant protection against breaches of this legislation. EASO, UNHCR and Council of Europe information has to be taken into account.

3.4.2. (...) The State Secretary explained that the use of the concept mainly serves a procedural purpose. Applicants that originate from a safe country of origin get an accelerated procedure, and will have to leave the country immediately when their application is declined. The decision to declare a country a 'safe country of origin' is also published in the country concerned, to send the message that residents from that country should only come to the Netherlands to apply for asylum if they have very specific reasons to do so. According to the State Secretary, the application of the 'safe country of origin' concept does not make a significant difference in terms of the investigation and assessment of a claim as well as the burden of proof between parties involved. (...)

3.8. The applicants were right to claim that the State Secretary could not attach the weight he wanted to the fact that Albanian residents are exempted from visa duties and that several other EU Member States consider Albania a 'safe country of origin' (...).

3.8.1. Albania's status as candidate-Member State of the EU, and the European Commission's proposal to put Albania on a shared EU-list of safe countries of origin, do not play a direct role when considering a country to be a 'safe country of origin'.

3.8.2. The State Secretary has made the European Commission's investigation his own investigation by conducting upon it an independent investigation himself and reaching his own conclusion. He also involved reports by the UK Home Office in a similar manner. Doing so, he based his decision to consider Albania a 'safe country of origin' on sources of information, as they are described by Article 3.105ba(2) Aliens Decree 2000. Thus, so far, the decision to mark Albania as a 'safe country of origin' is in accordance with the requirements as explained in 3.4.1.

3.10.2. (...) It does not become apparent from the provided information, nor from the grounds brought forward by the applicants, that the aforementioned problems, for LHBTI specifically, are taking place on such a large scale, that the conclusion must be that Albania cannot be considered as a 'safe country of origin'.

3.11. (...) Thus, the decision of the State Secretary to consider Albania as a 'safe country of origin' meets all legal requirements. (...)

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

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

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