

## CASE LAW COVER PAGE TEMPLATE

<b>Name of the court <sup>1</sup> (English name in brackets if the court's language is not English):</b> <i>Administrative Jurisdiction Division of the Council of State</i>	
<b>Date of the decision:</b>	(2016/06/15)
<b>Case number:<sup>2</sup></b>	201509454/1/V2 ECLI:NL:RVS:2016:1630
<b>Parties to the case:</b> <i>Applicant vs. Dutch State Secretary for Security and Justice</i>	
<b>Decision available on the internet?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide the link: <a href="https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=88064&amp;summary_only=&amp;q=201509454%2F1%2FV2">https://www.raadvanstate.nl/uitspraken/zoeken-in-uitspraken/tekst-uitspraak.html?id=88064&amp;summary_only=&amp;q=201509454%2F1%2FV2</a> (If no, please attach the decision as a Word or PDF file):	
<b>Language(s) in which the decision is written:</b> <i>Dutch</i>	
<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> <i>Ghana</i>	
<b>Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s):</b> <i>The Netherlands</i>	
<b>Any third country of relevance to the case:<sup>3</sup></b> <i>No</i>	
<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):**

1951 Refugee Convention, Lesbian, gay, bisexual, transgender and intersex (LGBTI), Persecution on the basis of sexual orientation or gender identity

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

By decision of November 17, 2015, the State Secretary rejected applicant’s asylum request. The applicant argued that he was caught in sexual acts with another man and therefore had to flee his home country Ghana. The State Secretary considered his story not to be credible, including his alleged sexual orientation. By decision of December 22, 2015, the Court dismissed the appeal as unfounded.

The appeal to the Administrative Jurisdiction Division of the Council of State d the creation and content of Working Instruction 2015/9 (hereinafter: WI 2015/9) and its application in this case. WI 2015/9 explains how the State Secretary has to investigate and evaluate an alleged sexual orientation. The applicant argued primarily that WI 2015/9 does not respond to the deficiencies of the work instruction as found in the judgment of July 8, 2015. Secondly, the Applicant argued that the State Secretary did not examine his alleged sexual orientation as carefully as he should do according to WI 2015/9.

According to the applicant, the State Secretary does not ask further for more information when an applicant gives him vague and unclear answers, while it appears that the State Secretary uses these answers in his decision against the applicant.

**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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Paragraph 2.7.: As follows from the above considerations of the Council of State (see the judgments of March 20, 2013), the method for individual research (as provided for in WI 2015/9), is suitable for the investigation and assessment of an alleged sexual orientation as asylum motive. The State Secretary carries out the investigation of an alleged sexual orientation on the basis of statements given during interviews, which are conducted by specially trained officers. [...] For this investigation, the State Secretary has developed a standard methodology to implement the Council of State's judgment of July 8, 2015, from which it can be deduced when and why he asks certain questions. In principle, he interviews applicants on the basis of aspects mentioned in WI 2015/9, which are, in view of the documents used in the development of WI 2015/9, suitable for the investigation and assessment of an alleged sexual orientation. The extent to which certain aspects are discussed during a concrete interview, depends on the individual circumstances of the applicant and the details of his asylum request. [...] To give applicants the opportunity to bring their sexual orientation forward as complete as possible, the State Secretary, in line with the aforementioned documents, asks as many open questions as possible. He will, if necessary, always ask the applicant to further clarify, complement or confirm his/her answers. The Council of State considers that the State Secretary conducts, on the basis of this standard methodology, a careful investigation of an alleged sexual orientation as asylum motive.

Paragraph 2.9.: In his assessment, the State Secretary rightfully attaches significant value to the statements of the applicant on his/her personal experience. Every applicant who alleges sexual orientation as an asylum motive must, at some point, have realized this sexual orientation and that this orientation is not – generally – accepted or even illegal in his/her surroundings or country of origin. Therefore, the applicant must be able to relate with respect to the moment at or the period in which the applicant became aware of his/her sexual orientation, the personal meaning of this sexual orientation and in which way the fact that homosexuality is not accepted had an influence he/she expressed this sexual orientation. All of this in light of the background of the country of origin and the applicants' surroundings, whereby the moment of awareness and other significant moments, such as entering into a relationship, are important. During the assessment, the State Secretary rightfully does not expect that every applicant has experienced an extensive awareness process or an internal struggle, because this would be based on stereotypical assumptions about sexual orientation or a certain country. During the hearing, the State Secretary put forward that the circumstance, that an applicant made inadequate statements about his personal experience, without there being a justification for this inadequacy, does not always lead to the conclusion that the stated sexual orientation is deemed not credible. In this sense, it must be regarded that the applicant can put forward convincing statements regarding other aspects of his sexual orientation serving as asylum motive. The State Secretary explained during the hearing of the Council of State that it is not possible for him to provide general insight on the way he values and weighs statements of an applicant. However, with regard to the aforementioned WI 2015/9, he has sufficiently made clear in which way he assesses statements regarding sexual orientation, thereby dispelling the aforementioned deficiencies which followed from the Council of State's judgment of July 8, 2015.

Paragraph 2.11.: [...] The State Secretary admitted during the hearing of the Council of State on April 6, 2016, that he had not asked sufficient more in depth questions during the interviews of March 10 and 16, 2015, under WI 2015/9. [...]

Paragraph 3: The Court declares the appeal well-founded.

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

This decision needs to be interpreted in the context of *A, B, C v. Staatssecretaris van Veiligheid en Justitie*, C-148/13 to C-150/13, European Union: Court of Justice of the European Union, 2 December 2014, available at: <http://www.refworld.org/docid/547d943da.html> and the decision of the Council of State dated July 8 2015. In this decision Council of State ruled that, in general, the investigation by the State Secretary regarding the credibility of sexual orientation is within the limits of EU law. However, he has failed to explain how he assesses the credibility of an applicant's alleged sexual orientation in specific cases. The State Secretary was requested to formulate a clear policy document on the basis whereof the State Secretary examines and assesses an alleged sexual orientation. Working Instruction 2015/9 is the result of that.

## **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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