

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 (Administrative Jurisdiction Division of the Council of State)	
Date of the decision:	15-11-2016
Case number:²	201605720/1/V2 ECLI:NL:RVS:2016:3010
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=89463&summary_only=&q=geloofwaardigheid (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):	
Countr(y)(ies) of origin of the applicant(s): Unknown	
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 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 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 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: Article 46(3) of Directive 2013/32/EU (Procedures Directive) Article 47 of the EU Charter of Fundamental Rights

Topics / Key terms: (see attached ‘Topics’ annex):

**Directive 2013/32/EU, ‘ Procedures Directive’
EU Charter of Fundamental Rights
The right to an effective remedy
Credibility assessment**

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

The Council of State handed down four judgments on 15 November 2016 regarding the intensity of judicial review with regards to the credibility assessment done by the administration. These four judgments build upon the Council of State’s judgments which were handed down on 13 April 2016 regarding the explanation of the required ‘full and *ex nunc*’ assessment that has to be performed by the courts of first instance.

In the case at hand the court of first instance quashed the State Secretary’s decision after which the State Secretary appealed to the Council of State bringing forward that the administrative judge had replaced his assessment of credibility with its own. In doing so, the administrative judge failed to recognise the discretion that is granted to the State Secretary when it comes to the credibility assessment.

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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3.1. Other than what the State Secretary assumes, the fact that the State Secretary is granted discretion when it comes to the assessment of statements regarding asylum claims which have not been supported by evidence, does not mean in itself that the court of first instance should follow his point of view regarding those statements. As the Council of State decided in its judgment of 13 April 2016 (ECLI:NL:RVS:2016:890), the fact that the State Secretary has this discretion does not take away from the fact that he should still provide a duly motivation, which can be scrutinised by the administrative judge. It is this motivation which enables the administrative judge to conduct a thorough assessment of the decision (see paragraph 56 of *Samba Diouf* ECLI:EU:C:2011:524 and paragraph 84 of *J.K. v. Sweden* ECLI:CE:ECHR:2016:0823JUD005916612). Such scrutiny was applied by the court of first instance in the case at hand. The fact that the court of first instance decided that the State Secretary failed to duly motivate his point of view does not mean per se that the court of first instance failed to take the discretion that is granted to the State Secretary into account.

Judgment

The Council of State declares the State Secretary's appeal unfounded and confirms the contested judgment of the court of first instance.

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

Administrative Jurisdiction Division of the Council of State, 13 April 2016, ECLI:NL:RVS:2016:890 and ECLI:NL:RVS:2016:891.

Court of Justice of the European Union, 28 July 2011, *Samba Diouf*, ECLI:EU:C:2011:524.

European Court of Human Rights, 23 August 2016, *J.K. v. Sweden*, ECLI:CE:ECHR:2016:0823JUD005916612.

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.

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