



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-148/13 to C-150/13  
A, B, C v Staatssecretaris van Veiligheid en Justitie

## **The Court clarifies the methods by which national authorities may assess the credibility of the declared sexual orientation of applicants for asylum**

Directives 2004/83 and 2005/85 establish, respectively, the minimum requirements that third country nationals must fulfil in order to be able to claim refugee status, and the procedures for examining applications for asylum and the rights of applicants.<sup>1</sup>

A, B and C, third country nationals, each lodged an application for asylum in the Netherlands, relying on their fear of persecution in their country of origin on account of their homosexuality. However, the competent authorities rejected their applications on the grounds that their sexual orientation had not been proven.

The three applicants appealed against those decisions. Hearing the dispute, the Raad van State (Council of State, the Netherlands) is uncertain whether there are any limits imposed by EU law as regards the verification of the sexual orientation of applicants for asylum. The Raad van State takes the view that the mere fact of putting questions to an applicant for asylum may, to a certain extent, infringe the rights guaranteed by the Charter of Fundamental Rights of the European Union.

In the first place, the Court of Justice states in its judgment given today that the declarations by an applicant for asylum as to his sexual orientation are merely the starting point in the process of assessment of the application and may require confirmation.

However, the methods used by the competent authorities to assess the statements and the evidence submitted in support of applications for asylum must be consistent with the EU law and, in particular, the fundamental rights guaranteed by the Charter, such as the right to respect for human dignity and the right to respect for private and family life.

Furthermore, the assessment must be made on an individual basis and must take account of the individual situation and personal circumstances of the applicant (including factors such as background, gender and age) in order for it to be determined whether the acts to which the applicant has been or could be exposed would amount to persecution or serious harm.

Against that background, the Court gives the following guidance as to the methods of assessment used by national authorities.

Firstly, assessment of applications for asylum on the basis solely of stereotyped notions associated with homosexuals does not allow those authorities to take account of the individual situation and personal circumstances of the applicant concerned. The inability of the applicant for asylum to answer such questions is not therefore, in itself, a sufficient reason for concluding that the applicant lacks credibility.

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<sup>1</sup> Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p.12) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13).

Secondly, while the national authorities are entitled to carry out, where appropriate, interviews in order to determine the facts and circumstances as regards the declared sexual orientation of an applicant for asylum, questions concerning the details of the applicant's sexual practices are contrary to the fundamental rights guaranteed by the Charter and, in particular, to the right to respect of private and family life.

Thirdly, as regards the option for the national authorities of allowing, as certain applicants for asylum proposed, homosexual acts to be conducted, the submission to possible 'tests' in order to demonstrate their homosexuality or even the production by those applicants of evidence such as films of their intimate acts, the Court makes clear that, besides the fact that such evidence does not necessarily have probative value, such evidence would of its nature infringe human dignity, the respect of which is guaranteed by the Charter. Furthermore, the effect of authorising or allowing such types of evidence would be to incite other applicants to offer the same and would lead, de facto, to requiring applicants to provide such evidence.

Fourthly, having regard to the sensitive nature of information that relates to a person's personal identity and, in particular, his sexuality, the conclusion of a lack of credibility cannot be reached on the sole basis that, due to his reticence in revealing intimate aspects of his life, that person did not declare his homosexuality at the outset.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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