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4.3.2 Safe country of origin and safe third country concept

4.3.2 Safe country of origin and safe third country concept

icon for safe country concept and safe countries of origin

Within EU law and as defined in the recast Qualification Directive, a safe country of origin is considered to be a place where the law is applied democratically, and political circumstances do not generally and consistently lead to persecution, torture, inhuman or degrading treatment or punishment, or threat by reason of indiscriminate violence in situations of international or internal armed conflict. The assessment of a country as a safe country of origin considers aspects such as:

- relevant laws and regulations of the country and the manner in which they are applied;
- observance of human rights, in particular non-derogable ones;
- respect for the *non-refoulement* principle; and
- provision for a system of effective remedies against violations of rights and freedoms.

When a third country is regarded as a safe country of origin, it is usually included in a national list and presumed to be safe for applicants originating from that country, unless evidence to the contrary is provided. The procedure to designate a country as safe is guided by the recast Asylum Procedures Directive.

According to the recast Asylum Procedures Directive, Article 38, the safe third country concept means that Member States may send applicants to third countries with which the applicant has a connection, where it would be possible to request and receive international protection and when other conditions are fulfilled. In particular, the applicant must not be at risk of persecution, *refoulement* or ill treatment in violation of the ECHR, Article 3 in the third country.

In addition, the recast Asylum Procedures Directive, Article 39 defines the concept of a European safe third country. A third country may only be considered safe if it has an asylum procedure in place prescribed by law and has ratified and observes the provisions of the Geneva Convention without any geographical limitation and the ECHR, particularly on effective remedies.

Member States need to lay down in law the implementing modalities and consequences of the application of this concept. In such cases, the authorities may not be obliged to examine or fully examine an applicant’s request for international protection and their safety if the applicant tries

to enter or has entered the territory of the Member State illegally from a country considered to be a European safe third country.

Safe country of origin concept

icon for safe country concept

Several changes to the list of safe countries of origin were made by EU+ countries in 2021 and national courts also assessed the application of this concept in several cases.

Austria added the United Kingdom on its list of safe countries of origin as of 1 January 2021.480 Greece classified Bangladesh and Pakistan as safe countries of origin under Joint Ministerial Decision No 778.481 In May 2021, Cyprus updated the list of safe countries of origin by ministerial decision adding Armenia, Benin, Kenya, Kosovo, Moldova, Mongolia and Togo.482

Malta introduced a new provision in December 2021 in its Procedural Regulation that only the International Protection Agency (IPA) can designate a safe country of origin and it must be included in the Schedule to the Act.483

The Netherlands reassessed the situation in several countries of origin. After reviewing political developments in Tunisia in the summer of 2021, it was decided to still apply the safe country of origin designation. However, specific attention should be provided to persons who criticise the Tunisian president or government, including journalists, activists and political opponents.484 India was suspended from the safe country of origin list since September 2020, but the authorities deemed that India was now a safe country of origin. However, exceptions are made for the following territories and categories of applicants: the union territory Jammu and Kashmir; religious minorities, including Christians and Muslims; Dalit women and girls; and journalists. In addition, specific attention is given to human rights activists, scholars and protesters who are critical of the government and government policies.485 Algeria was removed from the list.486

The Netherlands also reviewed the designation of Bosnia and Herzegovina, Brazil, Georgia, Ghana, Jamaica, Kosovo, Mongolia, Morocco, Senegal and Serbia as safe countries of origin and retained them on the list.487 For Ghana, special attention is, however, afforded to LGBTIQ persons, journalists and others facing discrimination. Also, an exception is provided to LGBTIQ applicants from Senegal, and special attention is given to persons facing criminal prosecution and discrimination. In addition, Albania, Montenegro and North Macedonia remained on the list of safe countries of origin for the Netherlands with no exceptions. The State Secretary also announced that 12 countries will be removed from the list because there was no substantial interest or relevance to keep them on the list: Andorra, Australia, Canada, Iceland, Japan, Lichtenstein, Monaco, New Zealand, Norway, San Marino, Vatican and Switzerland.488 Lastly, the assessment done for Ukraine in July 2021, when the country was considered a safe country of origin, changed in 2022 due to the armed conflict with Russia.489

A similar action was taken in Iceland, where the Directorate of Immigration removed Ukraine from the list of safe countries published on its website on 24 February 2022.490

A new Royal Decree in Belgium confirmed the same eight countries on the list of safe countries of origin: Albania, Bosnia and Herzegovina, Georgia, India, Kosovo, Montenegro North Macedonia

and Serbia.491 The decree was adopted in January 2022 and came into force at the end of February 2022.

By decision of the Council of State in France, three countries were removed from the list of safe countries of origin set by the Office for the Protection of Refugees and Stateless Persons' (OFPRA) board of administration: Benin (which had already been suspended from the list by the board in 2020), Ghana and Senegal. As a result, cases concerning applicants from these three countries are no longer considered in the accelerated procedure because of this criterion, and appeal cases are heard in collegial panels of the National Court of Asylum (CNDA, Cour nationale du droit d'asile), instead of single-judge panels.

Further judicial assessments of specific countries of origin were made in Luxembourg, where the Administrative Tribunal ruled on Serbia as a safe country of origin for an applicant claiming persecution from a drug trafficking gang and in the Netherlands, where the Council of State ruled on the need to reassess the designation of Mongolia as a safe country of origin for an LGBTIQ applicant. In this case, the Council of State noted that the State Secretary must consult the sources of information as specified in the revised recast Asylum Procedures Directive, Article 37(3) and that the reassessment can be done on the basis of several criteria, namely democratic governance, protection of the right to freedom and security, freedom of expression, freedom of religion and association, protection against discrimination and prosecution by third parties, access to independent investigations, and access to effective legal remedies.

In Sweden, legislative changes to the Aliens Act were introduced and came into force on 1 May 2021.492 According to Chapter 8, Section 19, the Migration Agency may reject an application as manifestly unfounded when the applicant comes from a country included on a list of safe countries of origin. The decision then becomes immediately enforceable with no automatic suspensive effect or right to remain pending the outcome of an appeal procedure.493 The Swedish Migration Agency is responsible for adopting the list of safe countries of origin. This list entered into force on 25 May 2021 and Albania, Bosnia and Herzegovina, Chile, Georgia, Kosovo, Mongolia, Northern Macedonia and Serbia were included.494

To determine whether the principle of legal certainty was respected in individual cases, the Swedish Refugee Law Centre, in cooperation with UNHCR, analysed negative decisions with an immediate enforcement pronounced by the Swedish Migration Board in the first 3 months from the setting up of the rules on safe countries of origin. The centre examined 37 cases which applied to 63 people: 39 men and 24 women, including 12 families and 22 children. The recommendations included the appointment of public lawyers, the provision of a real opportunity for applicants to refute the presumption that the country is safe for them, clearer guidelines for cases concerning vulnerable people, and an adequate assessment of the best interests of a child.495

Safe third country concept

icon for safe third country concept

National high courts assessed the application of the safe third country concept in several EU+ countries. For example, in February 2021, the Belgian Constitutional Court clarified that the

concept may be applied to unaccompanied minors as applicants when the principle of the best interests of the child is respected *(see Section 5)*.

In Croatia, the Constitutional Court clarified the nature and content of the duty of national authorities to determine a safe third country, in light of the principles established by ECtHR jurisprudence. The Constitutional Court held that, prior to sending back applicants to Serbia, an individual assessment must be carried out in order to establish whether the applicant would have access to the asylum procedure with adequate safeguards and protection against *refoulement*. The court concluded that Croatia failed to fulfil its obligations under the ECHR, Article 3.

In the Netherlands, the Council of State clarified in a judgment of 20 January 2021 that the right to family life must be taken into consideration when assessing the possibility of applying the concept of a safe third country.

Turkey was designated a safe third country on 7 June 2021 by Joint Ministerial Decision No 42799/2021 for applicants from Afghanistan, Bangladesh, Pakistan, Somalia and Syria.496 A judicial review application was lodged against this decision before the Council of State on 7 October 2021 by the Greek Council for Refugees (GCR) and Refugee Support Aegean.497 NGOs argued that the condition of an essential connection between the asylum applicant and Turkey, as well as the consent of the third country to receive the returnee, were not met. Furthermore, they noted that the decision applied even to applicants from countries with high recognition rates for international protection, such as Afghanistan, Somalia and Syria.498 They also highlighted that a significant number of potential beneficiaries of international protection were left in a state of legal insecurity as Turkey does not accept readmissions from Greece and the EU-Turkey Statement has not been in force since March 2020.499 In addition, in March 2021 Turkey withdrew from the Istanbul Convention.500 The Greek Council of State held in 2017 that Turkey could be considered a safe third country for Syrians.

UNHCR published its Recommendations on the Safe Third Country Declaration by Greece in August 2021, urging the authorities to clarify the methodology and analysis used in the safe third country declaration, as required under Greek and EU law, and its monitoring role in protecting safeguards in law and in practice. UNHCR also urged Greece to reconsider the extensive use of admissibility procedures in favour of substantive, fair and fast asylum procedures.501 The implementation of the safe third country concept in Greece in relation to readmissions to Turkey was also raised in the European Parliament as a priority question.502 In December 2021, Albania and North Macedonia were also added to the list of safe third countries. 503

In Switzerland, civil society organisations expressed concern about the implementation of the safe third country concept in the absence of an adequate assessment on the human rights situation in the countries and in the absence of clarification about the possible risks to which a person returning there would be exposed. They also noted that the standard of judicial review in Switzerland was inadequate from a human rights perspective.504

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