



A Cruel Paradox: How the “Safe Country of Origin” Concept Failed Female Asylum Seekers

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Abstract

This blog analyses the impact of the Court of Justice of the European Union (CJEU) ruling of 1 August 2025 in the joined cases *Alace and Canpelli*, which challenged the use of partial “Safe Country of Origin” (SCO) designations. It examines the SCO concept in the context of the Dutch asylum system, focusing on the suspension of the national list of Safe Countries. The blog demonstrates how the former *Spoor 2* procedure - the Dutch fast-track process for applicants from SCOs - systematically disadvantaged minority groups, particularly women. It further shows why the transition to *Spoor 4* - the standard Dutch asylum procedure with full investigation, legal safeguards, and the Rest and Preparation Period - constitutes a necessary correction to ensure human rights protections.

Key words: Safe Country of Origin; EU asylum law; female asylum seekers; Dutch asylum procedure; gender-based persecution; ICCPR

Introduction

On 1 August 2025, a landmark ruling by the Court of Justice of the European Union (CJEU) fundamentally altered European asylum law. By declaring that a country cannot be designated as “safe” unless safety is guaranteed across its entire territory, the Court effectively banned “partial safety” designations. This judicial shift sent shockwaves through the Dutch asylum system, leading to the abrupt suspension of the national “Safe Country of Origin” (SCO) list. An SCO is a country designated by EU or national law as generally safe for asylum seekers, where persecution or serious harm is presumed unlikely. This suspension exposed a policy that had long prioritized efficiency over the safety of vulnerable groups. To understand the true human cost of the former system, and why it specifically failed women, we must look beyond

the map and examine the *Spoor 2* procedure through the critical lens of the International Covenant on Civil and Political Rights (ICCPR).

The European legal framework

Again, on 1 August 2025, the [CJEU issued](#) a fundamental ruling in the joined cases C-758/24 and C-759/24.¹ The [case](#) concerned two Bangladeshi nationals who, upon being intercepted at sea by Italian authorities, were denied an accelerated border procedure because Bangladesh was designated as a SCO.²

The judgment centers on a strict interpretation of Article 37 of the Asylum Procedures Directive. This provision defines a country as “safe” only when there is generally and consistently no persecution or threat of violence. In a decisive move, the Court clarified that a Member State cannot label a country as “safe” unless the entire territory and population can be guaranteed security.

The Court explicitly noted a discrepancy between the strict Article 37 and the upcoming Asylum Regulation, which might theoretically allow for partial safety designations in the future. However, to prevent “automated rejections” under current law, the Court ruled that exceptions are not permitted. Consequently, if specific groups within a population, such as women or minorities, are not safe, the entire safe country designation is invalid. The Court emphasized that evidence for such a designation must be rigorous and transparent; without this, asylum seekers are [deprived](#) of their rights and judicial review becomes impossible.³

This strict interpretation had immediate consequences for the Netherlands. Until this ruling, the Netherlands maintained a national list of Safe Countries that relied on the very “partial safety” logic the Court just banned. Following the absolute prohibition in *Alace* and *Canpelli*, the Minister for Migration acknowledged that this distinction was no longer tenable. The logic

¹ Kareem Assaf, ‘Europe Court Raises Bar for Safe Country Designation in Landmark Asylum Ruling’ (JURIST, 3 August 2025) <https://www.jurist.org/news/2025/08/cjeu-raises-bar-for-safe-country-designation-in-landmark-asylum-ruling/> accessed 27 December 2025 ; Joined Cases C-758/24 and C-759/24 *Alace and Canpelli* ECLI:EU:C:2025:591.

² Paolo De Stefani, ‘The Court of Justice of the EU Puts the Breaks on the Externalisation (in Albania) of Asylum Procedures by Imposing a Judicial Control on the “Safe State of Origin” Designation. The C-758/24 and C-759/24 Judgment, 1 August 2025’ (Human Rights Centre - University of Padova, 4 August 2025) <https://unipd-centrodirittiumani.it/en/topics/the-court-of-justice-of-the-eu-puts-the-breaks-on-the-externalisation-in-albania-of-asylum-procedures-by-imposing-a-judicial-control-on-the-safe-state-of-origin-designation-the-c-75824-and-c-75924-judgment-1-august-2025> accessed 27 December 2025.

³ Marco Rocca, ‘Longing for Safety before the European Court of Justice: The CJEU’s *Alace* and *Canpelli* Judgment’ (2025) University of Antwerp Institutional Repository (IRUA) <https://repository.uantwerpen.be/docman/irua/797dfbmotoM45> accessed 27 December 2025.



of EU law is now inescapable: if a country is unsafe for women, then under the Directive's criteria, it cannot be designated as "safe" at all. That being said, the upcoming Asylum Regulation, more specifically Article 61.2, has the potential to change this conclusion. It states that a country may be designated as "safe" even when certain parts of its territory or certain groups of people cannot speak of security. The Court found this to be a discrepancy, but what the future consequences of this radical change exactly entail remains an unanswered question.

The Dutch change

The suspension of the national list forces a fundamental shift in how female asylum seekers are processed; the transition from the accelerated procedure of *Spoor 2* to the general asylum procedure of *Spoor 4*. *Spoor 2* is a fast-track process designed for applications deemed "manifestly unfounded".⁴ Under this track, the IND operates on a rigorous presumption of safety. Consequently, the burden of proof is effectively reversed: the State does not need to prove that the country is safe for the applicant, rather the applicant must immediately demonstrate why she specifically is in danger. This procedure is designed to conclude within a matter of days, prioritizing speed above all else.⁵

Crucially, *Spoor 2* excludes applicants from the Rest and Preparation Period.⁶ In the standard procedure, asylum seekers are legally entitled to a six-day window to recuperate from their journey and consult with a lawyer before their first detailed interview. Because this right is withheld in *Spoor 2*, women are expected to articulate complex, often shame-laden, trauma immediately upon arrival without adequate legal counsel.

With the suspension of the "Safe Countries of Origin" list, these women are now channelled into *Spoor 4*. The legal difference is profound. In this track, the "duty to investigate" shifts back to the state; the IND must actively investigate the validity of the claim rather than dismissing it on a presumption. Most importantly, the RVA- termijn is restored, being the six-day period for legal preparation and recovery before detailed interviews. This six-day window allows a woman to build trust with her lawyer and prepare her story. For victims of gender-

⁴ Wetenschappelijk Onderzoek- en Documentatiecentrum, *Veilige landen van herkomst* (WODC 2024) 3.

⁵ Wetenschappelijk Onderzoek- en Documentatiecentrum, *Maatregelen gericht op asielzoekers uit veilige landen* (WODC 2019) 101.

⁶ Vreemdelingenbesluit 2000 (Aliens Decree 2000), art 3.109ca (1)(b).



based violence, who often struggle with disclosure, this shift transforms the process from a procedural trap into a genuine opportunity for a fair hearing.⁷

The ICCPR comparison

The suspension of the SCO list is not just a procedural update; it is a vital human rights correction. While the CJEU ruling exposed the geographical limitations of the list, the ICCPR reveals the human cost of the previous system, particularly for women.

Article 13 (“effective remedy”) guarantees the right to submit reasons against their expulsion. In General comment No. 15, the UN Human Rights Committee clarified that the applicant must be given full facilities so that this right is not merely theoretical but can be carried out effectively.⁸ By systematically withholding the *RVA-termijn* (Rest and Preparation Period), the accelerated *Spoor 2* procedure rendered this right illusory.⁹ This is particularly problematic considering evidentiary weight placed on the asylum seeker in this track: they must rebut a presumption of safety while being denied time to do so. This paradox within the procedure is incompatible with the ICCPR standard, as applicants facing the heaviest burden of proof are denied the preparation time required to substantiate their claims.

Article 26 (Non-Discrimination) is a core provision guaranteeing equality before the law and prohibiting discrimination. Although the SCO list was a facially neutral measure, its application resulted in indirect discrimination against women, as it produced a disproportionate adverse effect on female asylum seekers fleeing gender-based violence. The criteria for designating a country as “safe”, derived from Annex I of the EU Procedures Directive, rely heavily on public indicators such as political stability and the presence of a formal legal system.¹⁰ While these metrics are effective at measuring the risk of state persecution, they fail to capture the reality of private, gender-based violence against women. Consequently, a country with domestic abuse legislation on paper, yet lacking effective enforcement in practice, may still qualify as “safe”. By applying a conception of ‘public safety’ that, as Spijkerboer argues, is inherently male-centric, the State treated substantively unequal situations as if they were

⁷ UN High Commissioner for Refugees, ‘Guidelines on International Protection No. 1: Gender-Related Persecution’ (7 May 2002) HCR/GIP/02/01.

⁸ UN Human Rights Committee, ‘General Comment No 15: The Position of Aliens Under the Covenant’ (11 April 1986) UN Doc HRI/GEN/1/Rev.1.

⁹ Vreemdelingenbesluit 2000 (Aliens Decree 2000), art 3.109ca (1)(b).

¹⁰ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180/60, Annex I.



equal, contrary to the requirements of substantive equality under Article 26 ICCPR.¹¹ By forcing women fleeing non-state actor violence into the accelerated procedure based on a definition of safety that does not apply to them, the State violated the substantive equality guaranteed by Article 26.

Finally, Article 7 (Non-refoulement), prohibits a State from deporting any individual to a country where they face a real risk of torture, cruel, inhuman or degrading treatment. Following the 2024 Moldova ruling, the State attempted to exploit a legal loophole. It argued that certain countries remained “safe” because the government maintained control over the entire territory, even if specific social groups were systematically unsafe. This distinction between territorial safety and identity-based risk failed to account for the fact that gender-based persecution is not geographically confined, but follows the individual upon return. By disregarding the gender-specific nature of the risk, the State exposed women to an accelerated procedure that significantly increased the likelihood of refoulement, prioritising a formalistic interpretation of the criteria over the absolute safety required by Article 7 ICCPR.

Conclusion

The CJEU’s ruling marked a humanitarian shift in EU asylum law by (re)affirming that safety cannot be selectively approached. By rejecting “partially safe” countries, the Court showed a structural weakness of national practice. These practices prioritised efficiency over substantive protection. Within the Dutch context, the suspension of the SCO list dismantled the legal ground of *Spoor 2* and forced the return to the general asylum procedure. This shift has been highly significant for women who flee gender-based violence. For them, the accelerated procedure systematically denied effective remedies and equality before the law. Through the lens of the ICCPR, this transition to *Spoor 4* is a necessary correction of human rights, not just an administrative adjustment. Thus, it restored fairness and safeguards the asylum process.

¹¹ Thomas Spijkerboer, *Gender and Refugee Status* (Routledge 2000).



Bibliography

Case C-406/22 *CV v Ministerstvo vnitra* (Moldova) EU:C:2024:190

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L180/60

Spijkerboer T, *Gender and Refugee Status* (Routledge 2000).

Tweede Kamer der Staten-Generaal, *Wijziging toepassing veilige landen van herkomst na arrest Hof van Justitie EU* (Kamerstuk 19 637, nr 3475)

UN High Commissioner for Refugees, 'Guidelines on International Protection No. 1: Gender-Related Persecution' (7 May 2002) HCR/GIP/02/01.

UN Human Rights Committee, 'General Comment No 15: The Position of Aliens Under the Covenant' (11 April 1986) UN Doc HRI/GEN/1/Rev.1

Vreemdelingenbesluit 2000 (Aliens Decree 2000).

Wetenschappelijk Onderzoek- en Documentatiecentrum, *Veilige landen van herkomst* (WODC 2024) <https://repository.wodc.nl/handle/20.500.12832/3350>.

Wetenschappelijk Onderzoek- en Documentatiecentrum, *Maatregelen gericht op asielzoekers uit veilige landen* (WODC 2019) <https://repository.wodc.nl/handle/20.500.12832/2429>.