

FLEEING HOMOPHOBIA

QUESTIONNAIRE

European Research Project

FLEEING HOMOPHOBIA, SEEKING SAFETY IN EUROPE,

Best Practices on the (Legal) Position of LGBT Asylum Seekers in the EU Member States

Introduction

Each year, thousands of lesbian, gay, bisexual, transgender and intersex (LGBTI) people apply for asylum in the European Union. Although the EU Qualification Directive recognises that they might qualify for international protection (Article 10(1)(d)), it does not address the particular difficulties they are confronted with. As a result of this considerable differences exist in the ways in which applications of LGBTI asylum seekers are dealt with in the various EU Member States. Yet, data with respect to these issues are very scarce. Through this research project we hope to fill this data gap.

Your answers to this questionnaire (= the country reports) will supply the empirical data for the comprehensive, normative analysis we will draft. We will also make an inventory of statistical data, although our initial research shows that these are hardly available.

The data provided by the country reports will enable us to identify best practices regarding qualification for international protection and asylum procedures. We will draft a policy document, translating the best practices into policy recommendations for the EU and its Member States. We hope this will contribute to the development of a common European approach to address the specific needs of LGBTI asylum seekers and to a European practice of adequate protection for LGBTI asylum seekers.

Guidance to the questionnaire

In this questionnaire we ask you to describe legislation and policy, practice and case law concerning LGBTI asylum seekers. We use the EU Directives Articles only as a means to structure the questions.

It is clear that there are not only considerable differences in the handling of LGBTI asylum applications in each EU country, but in their numbers as well. The availability of these cases will

also vary per country. If your country has a small number of cases available, we would like you to give a full description of these cases. An extra effort should be made to find more cases. If large numbers of LGBTI cases are available, your main effort will consist of studying them. Because it may not be possible to describe all cases, we would then like you to provide a more general picture. We ask you to report on the argumentation in legal practice: decisions and/or case law. Some of you may have access to decisions, but if this is impossible or too complicated, you can confine to case law.

We strongly advise you to cooperate with other stakeholders (refugee and/or LGBTI NGOs, lawyers, UNHCR, government officials etc.) in collecting cases and answers to the questionnaire. If you cannot answer a question yourself, if there is a gap in your knowledge, please involve other experts. For example: lawyers should ask NGOs and NGOs should ask lawyers.

We consider practices ‘good’ when they are in line with human rights standards and ‘bad’ when they are not. While we aim at identifying good/ best practices, we are also very interested in bad/ worst practices. So please don’t hesitate to mention all good and bad practices that came to your attention.

We would like you to point out and make explicit whether you refer to written law, decisions or practice. Please send decisions and/or case law as attachment, or a summary in English (French or German) when the question requires this. We would prefer English summaries and translations, but if this is a major obstacle for you, French or German will do as well.

If possible, please give comprehensive answers, although the maximum length of your answers should not exceed 50 pages (not including questions and attachments). In the grey boxes you can type longer answers, the yes/no boxes can be ticked with the space bar or by using your mouse. You can move through the questions with the tab key or arrow keys.

Thank you very much!

Best regards,

Sabine Jansen, COC Netherlands

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General

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What is the basis of your expertise on LGBTI asylum issues?

I am a social worker, I have 10 years of experience in working with asylum seekers, and I am the president of the Belgian Working group on International Solidarity with LGBTI (WISH).

What sources did you use in responding to this questionnaire (e.g. your own cases, case law, lawyers, NGOs, government representatives)?

own cases, case law, government reports and representatives, lawyers, academics,

(1) See also: "Quand les amours prennent des couleurs" red. C. Gouffiau (Merhab) et V. Tosolini (Alliège), Brochure et DVD d'information, 2010

Frequency of LGBTI asylum claims

1) Statistics on LGBTI asylum seekers

- a) Does your government provide statistics on LGBTI asylum seekers (their numbers, countries of origin, proportion of L, G, B, T and I cases, positive or negative decisions, recognition rates etc.)?

No

Yes. Please provide us with a copy/translation.

- b) Do NGOs in your country provide statistics on LGBTI asylum seekers?

No

Yes. Please provide us with a copy/translation.

- c) Do other sources in your country provide statistics on LGBTI asylum seekers?

No

Yes. Please provide us with a copy/translation.

- 2) If no national statistics are available, could you tell us how many asylum claims based on persecution for reasons of actual or perceived (imputed) sexual orientation and/or gender identity you know of in your country? Please explain the basis of your answer (published case

law, lawyer network, LGBTI community, other NGOs, newspaper reviews, intuition) and indicate the time frame.

3) L, G, B, T, I separately

a) What is the approximate number of lesbian cases within these asylum claims?

300 gays vs. 62 lesbians in 2009

What are the main issues in these cases?

b) What is the approximate number of gay cases within these asylum claims?

300 gays vs. 62 lesbians in 2009

What are the main issues in these cases?

c) Did you find bisexual asylum cases within these asylum claims?

No

Yes. Indicate the number of male and female cases. What are the main issues in these cases?

I am aware through own cases about asylum seekers reporting bisexuality or extra-marital (heterosexual marriage) same-sex relationships as being at the origin of the problems faced, those claims are treated correctly and if the person is consequent, coherent and consistent he has a reasonable chance of getting his claim recognised. There are also a number of gay and lesbian asylum seekers and recognised refugees having child(ren), this is not always an indication of bisexual behaviour at the origin of the problems faced, but it indicates an open and unique approach to each case.

d) Did you find transgender asylum cases?

No

Yes. Indicate the number of male-to-female and female-to-male cases.

What are the main issues in these cases?

e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

Through own cases I am aware of 2 intersex cases. The issue in one rejected case was the lack of consistence of the persons' narratives and the interference with migration motives based on a relationship with a Belgian partner.

4) What are the most common countries of origin of LGBTI asylum seekers in your country? If possible, quantify.

- 1 2009: Cameroon 67 claims (C), 38 rejected (R), 29 Accepted (A)
- 2 Mauritania 57 C, 42 R, 14 A
- 3 Senegal 49 C, 31 R, 18 A
- 4 Iran 25 C, 17 R, 6 A, 2 technical refusal (TR)
- 5 Kosovo 20 C, 13 R, 6 A, 1 TR
- 6 Guinea 16 C, 10 R, 6 R
- 7 Tanzania 13 C, 8 R, 5 R
- 8 Albania 9 C, 6 R, 2 A, 1 TR
- 9 Gambia 9 C, 8 R, 1 A
- 10 Uganda 6 C, 3 R, 3 A

5) Are you aware of L,G,B,T or I people who do not apply for asylum because of fear of the consequences?

No

Yes. Please explain.

The reference persons within reception centers for asylum seekers highlight the existence of considerable numbers of people who do not apply for asylum based on their sexual orientation, not always because of fear of the consequences, but rather because of unawareness and eventually internalised shame about one's sexual identity. (1)

6) When asylum/ protection is granted to LGBTI asylum seekers, is this generally:

refugee status based on membership of a particular social group? (If so, what is the description of the particular social group, e.g. lesbian women in Pakistan)

The reason for granting protection is not published when the person gets the protection in the first instance, the Commissioner General for Refugees and Stateless Persons. The reference person at the CGRSP stipulates in a mail of 1 July 2010, concerning the 2009 statistics: 'the relation to the convention of Geneva is in most of the cases the membership of a particular social group.'

refugee status for fear of persecution for reasons of sexual orientation or gender identity based on another Convention ground (political opinion, religion, nationality, race) If so, please explain.

The reason for granting protection is not published when the person gets the protection in the first instance (Commissioner General for Refugees and Stateless Persons).

For the Commissioner General for Refugees and Stateless Persons the existence of effective persecution for reasons of sexual orientation in the country of origin is an important guiding indicator.

subsidiary protection? On which basis?

In 2009 only three Iraqi claims based on sexual orientation were granted subsidiary protection. Their claims were considered as inconsistent or incoherent, they got subsidiary protection because there was no doubt about the country of origin, Iraq.

7) Do you have any information on LGBTI asylum seekers receiving another form of protection on the basis of national law, such as:

a) humanitarian grounds?

No

Yes. Please quantify and explain.

There are no asylum seekers receiving another form of protection on the basis of national law, there is the possibility for people who are out of the asylum procedure (rejected) to ask for a residence on humanitarian grounds. On those criteria LGBTI-rights or sustainable same-sex relationships are respected if credible. The issues to get protection are often the formal criteria imposed by the law.

b) other grounds (discretionary leave)?

No

Yes. Please quantify and explain.

8) Do you have information about LGBTI applicants in your country who are, according to your national law, under the age of consent?

No

Yes. Please quantify and explain.

Through personal cases I am aware of three asylum seekers under the age of consent (18), only two of them, a lesbian senegalese and a gay from afghanistan, mentioned sexual orientation as the ground of the asylum claim, the third person mentioned another motive.

One under age bumster/gay-sexworker from Gambia got rejected, he reached the age of 18, before his final rejection.

Expertise, Support

9) Do you know general or specialised NGOs supporting LGBTI asylum seekers in your country?

No

Yes. Provide their name and explain what kind of activities specifically aimed at LGBTI asylum seekers they undertake.

WISH vzw

AHHA

MERHABA

ASSIST

RAINBOWS UNITED

TELS QUELS/ OASSIS

TRUE COLORS CAFE

Shouf Shouf

a) What are the main problems they face while providing support?

Lack of structural support for an individual, social guidance of LGBT asylum seekers

b) Do they employ staff or do they work with volunteers only?

AHHA is a project run by the federal authorities responsible for the reception centres, they allow a full time staff member to run the project and support the project with other staff.

Merhaba has one full time staff member for socio-cultural activities, not for individual work, although they do some guidance work.

Assist is a temporary project to collect the present expertise concerning LGBT asylumseekers and to develop a portal website and some training, they work with a part-time equivalent

Tels Quels has staff for socio-promotional education, not for individual support, although they try to do it.

Rainbows united, WISH, True Colors and Shouf Shouf has no staff.

c) Are they supported by bigger LGBTI and/or refugee umbrella organisations?

No Yes. Which organisation(s)?

Assist is embedded in the LGBT - federation,

The support by the federation for the other initiatives was very low and the interest by the federation is more recent than all of the initiatives itself, except the Rainbows United gatherings.

d) Do they work with lawyers or with UNHCR on LGBTI issues?

No Yes. In what form?

Most of the organisations have a number of lawyers they rely on for objective information and consult. They work with the UNHCR/ Belgian Committee for Refugee Aid, in special cases.

e) Do they have contact with the government?

No Yes. In what form?

WISH vzw and Tels Quels have very frequent contact with the Commissioner General for Refugees, on the quality of the procedure and of the country of origin information, there is a collaborative but critical atmosphere to prevent the asylum procedures from fake demands. WISH vzw visited the CGRS at many times with LGBT activists from the south (Uganda, Senegal, Cameroon, Nigeria, Burundi,...) to brief them about the situation in the countries of origin. Tels Quels had more contacts about the quality and content of the interviews. Recently (2011) there was a meeting about the role of the confidential counsellor, the individual that can join the asylum seeker during the interview.

10) Special training for NGOs

a) Do people working for general refugee NGOs receive special training on LGBTI issues?

No Yes

b) Do people working for LGBTI NGOs receive special training on refugee law?

No Yes

c) Do people working for LGBTI Asylum NGOs receive special training on refugee law?

No Yes

11) Lawyers' expertise on LGBTI

a) Are there lawyers with expertise in LGBTI asylum cases?

No Yes

b) Are there networks of lawyers with expertise in LGBTI asylum cases?

No Yes. Please provide the web address of the network

There is no formal network of lawyers specialised in LGBTI asylum cases, there is a project, ASSIST, carried out by çavaria, the LGBTI umbrella organisation for the Flemish community aiming at realising such kind of network.

The network 'progressive lawyers' has built up a large experience.

There is also a magazine on alien law, to which numerous lawyers subscribe and which publishes regularly and constructively on LGBTI issues and jurisprudence

12) Sometimes potential asylum seekers are not aware of the fact that sexual orientation or gender identity is a ground for asylum. Are they informed about this?

No

Yes. Who gives the information and how is such information given? (If it is given through a booklet or leaflet, please attach.)

There is an expanded network of LGBTI asylum seekers in reception centers that are aware of the fact that sexual orientation or gender identity is a ground for asylum, they meet on regular basis (see: Rainbows United and Oasis). Information goes through social workers and/or other asylum seekers in the reception structures. There is a set of posters concerning the monthly Rainbows United meetings available to raise awareness.

Policy, legislation, case law

13) Specific law and/or policy

a) Does your country have specific law and/or policy concerning LGBTI asylum seekers? (primary or secondary legislation, guidelines, internal instructions and/or circulars, etc.)?

No

Yes. Please give English (French/German) translations **and** attach the text in the original language. Are these binding? No Yes

The qualification directive,

b) Does your country have gender guidelines for the handling of asylum claims?

No Yes

Are these guidelines used in LGBTI claims? No Yes. Please explain.

There are internal guidelines within the CGRSP.

14) Does your country have explicit law and/or policy on LGBTIs coming from specific countries of origin, for instance to grant asylum to LGBTIs from a specific country? (We do not ask for Country Reports.)

No

Yes. Please describe them.

15) Do you have leading or binding court decisions on LGBTI asylum?

No

Yes. Please provide a brief summary of the case. Provide full citation and attach judgment.

VBV 8 april 1992, nr. 89-206/E24, cited by L. LEJEUNE,

"The definition of a social group", T.Vreemd. 2000, 27.

Belgium has the case of homosexuality included in the definition of a social group based on inalienable characteristics through jurisprudence, since 1992.

All decisions taken by the Alien Law Litigations Council are published anonymously

16) Did you find any references to the Yogyakarta Principles¹ and/or to UNHCR's Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity² in decisions or case law?

No

Yes. Please specify where you found these references.

NO for the Yogyakarta

No for the UNHCR's guidance note (except where mentioned by lawyers).

These "no's" concern the published decisions of the RVV (Alien law litigations council).

Qualification Directive³, Council Directive 2004/83/EC

Article 4 Qualification Directive: Credibility (of sexual orientation/ gender identity)

17) How is sexual orientation/ gender identity generally established?

Through jurisdiction a positive information plight on the position of LGBT in the country of origin has been imposed as a burden of proof,

Through jurisdiction a positive information plight on the identity and activities of the partner(s) has been imposed.

Through jurisdiction a positive adoption of a substitutional identity (being gay is inter-exchangeable with homosexual acts) upon arrival in Belgium has been imposed.

In general for the establishing of the sexual orientation/identity the CGVS accepts in some cases attestations from Belgian LGBT organisations,

another important element is the validation of the existence of past relationships,

¹ Yogyakarta Principles: <http://www.yogyakartaprinciples.org/>

² UNHCR Guidance Note: <http://www.unhcr.org/refworld/docid/48abd5660.html>

³ Qualification Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

and the knowledge of the LGBT-world in the country of origin.

Not knowing the LGBT world in the country of origin, not knowing details about the life/activities/family situation of a partner, or not knowing any LGBT organisations in Belgium, can be seen as a factor of 'incredibility' and lead to rejection.

Incapability to share information about the partner which reasonably can be expected after a relationship of a certain term (RvV 24 augustus 2010, nr. 47383); Lack of knowledge about the professional activities of the partner with whom the applicant had a relation of several months (RvV 9 november 2009, nr. 33809; RvV 9 february 2010, nr. 38436; cf. A lesbian claimant, incapable to give details about her partner RvV 26 april 2010, nr. 42311; cf. RvV 27 may 2010, nr. 43948; cf. RvV 17 june 2010, nr. 45004; cf. RvV 15 july 2010, nr. 46374).

E.g. RvV 15 july 2010, nr. 46373 (lack of knowledge about the socio-cultural situation of LGBT in the country of origin); RvV 9 february 2010, nr. 38436; cf. RvV 19 april 2010, nr. 41838; cf. RvV 3 september 2010, nr. 47783 (lack of knowledge about the criminal code and provided punishments); RvV 9 november 2009, nr. 33809 (Lack of knowledge by a catholic asylum seeker about the attitude of the catholic church towards homosexuality). See also RvV 16 february 2010, nr. 38809 (lack of knowledge about websites for homosexuals); cf. RvV 9 march 2010, nr. 39981; cf. RvV 28 april 2010, nr. 42513; vgl. RvV 29 april 2010, nr. 42553; cf. RvV 3 september 2010, nr. 47781. RvV 21 may 2010, nr. 43692 cf. RvV 23 june 2010, nr. 45272.

RvV 9 february 2010, nr. 38436.

18) Could you describe cases in which credibility of the stated sexual orientation/ gender identity was the reason for denying asylum?

No. Please go to question 19.

Yes. Please answer questions 18A and 18B.

18A) If the stated sexual orientation or gender identity was not believed, what was the reason given for this?

Very often not knowing details about the partner's activities/social life, his family situation is a key argument,

Sometimes the judicator gives 'a lack of empathy' when talking about the sexual orientation and then gives a number of reasons that makes it less credible.

Not knowing the social life of LGBT in the country of origin is seen as an indication of poor credibility

see supra for caselaw

Homosexual sex workers/prostitutes are seen as having deliberately broken the national law, because of an opportunistic and economic motive, and have been rejected protection.

Decisions and/or case law. Good/bad practices.

Rejection of sexworkers: "the engagement in criminalised homosexual acts motivated by economic and opportunistic reasons" (refusal of protection) RvV 17.431 21/10/2008, RvV 17.471 22/10/2008, and 19.383, 19.842, 19.837, 21.996

18B) Which patterns - if any - do you perceive in rejecting LGBTI cases based on credibility?

Most of the decisions are based on the conclusion that the applicant's credibility is poor because of a lack of knowledge concerning the socio-cultural situation of LGBTs in the country of origin, or lack of knowledge concerning the criminalisation (law, section,...)

19) Is supporting evidence required and/or accepted to prove sexual orientation/ gender identity, apart from the declaration of the person concerned?

No.

Yes. What does the supporting evidence include (e.g. witness statements from other people than the applicant, membership of LGBTI organisations, declarations of LGBTI organisations, other)?

All of these are sometimes accepted, sometimes rejected as 'solicited attestations'.

Declarations of LGBT organisations are sometimes considered.

Decisions and/or case law. Good/bad practices

RvV 23 november 2007, nr. 3936. Zie ook RvV 21 oktober 2008, nr. 17438. Vgl. VBV 4 maart 2003, nr. 03-0007/W8443.

For a declaration by a gay organisation considered credible: RvV 23 november 2007, nr. 3936. For a declaration considered as 'solicited' (made on demand), RvV 19 may 2009, nr. 27492

20) Is medical/ psychological/ psychiatric/ sexological evidence requested or accepted in proving the sexual orientation?

No

Yes

a) Who is considered a 'medical expert' in this respect?

no case known

b) What does the examination include?

no cases known

c) Does it include any inhuman/degrading element? Please explain.

no

d) What weight is given to the 'expert's' opinion?

no cases known

Decisions and/or case law. Good/bad practices

no

21) Is medical/ psychological/ psychiatric/ sexological evidence requested or accepted in proving the gender identity?

No

Yes

a) Who is considered a 'medical expert' in this respect?

b) What does the examination include?

c) Does it include any inhuman/degrading element? Please explain.

d) What weight is given to the 'expert's' opinion?

Decisions and/or case law. Good/bad practices

22) Are explicit questions asked about sexual activities?

No

Yes. Please describe them and include the source of the information.

The judicator can ask explicit questions about the sexual activity between two partners, including the kind of sexual acts and especially the moment and place of those acts, as well in a general time-place frame (at night/evening/day), inside/outside/doorlocked?,... as in the relationship e.g. when did you first touch private parts, tongue kiss, fellatio, coitus,...

There is also a reported tendency among Belgian decision-makers to consider a relationship only as relevant for an LGB claim, if it includes (anal or oral) sexual activity or to consider the date of the first sexual intercourse as the starting date of the relationship, even if the applicant indicates an earlier date as the beginning of a relationship.

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

Yes. How can you recognise another gay person on his conduct, is an often used question. How do LGBT people meet and recognise each other. There is also a tendency to consider a relation only as a relation if (or from the moment) it includes (anal/oral) sexual activity.

24) Are questions asked with respect to familiarity with gay scenes or membership of LGBTI groups in the country of origin or in the country where asylum is claimed?

No

Yes. Please describe decisions and/or case law in which such questions were relevant.

Both questions about the country of origin and questions about Belgium.

e.g. do you know popular stars in your country with the reputation of being LGBT?

Where do LGBT people meet in the city?

Are there cruising places?

Where did you go to negotiate same-sex sexual desires?

25) Did you find cases in which the sexual orientation/ gender identity was not believed because the applicant was married or had children?

No Yes. Decisions and/or case law. Good/bad practices

There are numerous LGB(T?) that got recognition even if they had children, or were married.

RvV 1321-1426, 21/8/2007: a Bangladeshi got asylum after the person engaged in a same-sex marriage in Belgium.

Article 4-3 Qualification Directive; Article 8-2 Procedures Directive: Country of origin information

26) Do decision makers/ courts /tribunals have effective access to Country of Origin Information (COI) concerning the position of LGBTI asylum seekers?

No Yes

There is a good practice of preparing the interview based on COI

27) Does your country have national COI researchers?

No. Please go to question 29

Yes. Are they trained in investigating LGBTI issues? No Yes

Please give details.

Some COI researchers had a special training concerning gender-related cases and they do special efforts to examine the specific LGBT-related COI

They are open to collaborate with LGBT activists from the countries to exchange information and resources on the specific situation.

28) Does the COI from these national researchers report that state protection is available for LGBTIs?

No

Yes. Could you describe this information?

The key element for the COI is the effective persecution, in countries where there are no effective persecutions it will be mentioned as an argument.

29) Can the legal representative of the applicant consult and instruct an independent COI expert?

No

Yes

a) Can the expert draft a report? No Yes

b) How is the expert paid for?

no provision

c) What weight is given to the expert's report?

30) How is the available COI concerning the position of LGBTI asylum seekers dealt with by decision making authorities, and by judges?

As very important, they do efforts to be well informed country by country on the LGBT situation.

31) Do your decision makers or courts consider the reasons why reports of persecution may be unavailable in some countries?

No

Yes. Please give examples.

32) Sometimes a lack of information on lesbian/ bisexual/ trans/ intersex people or a lack of criminal sanctions against same-sex conduct by women or against trans/intersex individuals is regarded as a lack of evidence of persecution. Did you find examples of this?

No Yes. Please describe the examples.

CRR 364.910, 20/06/2001, no evidence of persecution of female homosexuals in Armenia.

33) Sometimes general COI which is not relevant for the situation of the LGBTI concerned is used as a basis for a decision (e.g. information on gay men used wrongly to assess the risk for lesbians or trans people; information on heterosexual women's status used for lesbians). Did you find examples of this?

No Yes. Please describe the examples.

Article 5 Qualification Directive; Article 32 Procedures Directive: Coming-out late

34) Does it occur that LGBTIs who have “come out” after leaving the country of origin, are recognised as refugees or as being in need of subsidiary protection?

No

Yes. Please explain with decisions and/or case law. Good/bad practices

Positive decisions by the CGRSP are not published. Subsidiary protection is not used for LGBT issues.

35) Does it occur that LGBTIs who – for instance out of fear or shame – did not speak about their sexual orientation or gender identity immediately, but do so later (in a later phase of their first procedure, or in a repeat procedure), are recognised?

No

Yes. Please explain with decisions and/or case law. Good/bad practices

There are a number of rejected second or third asylum demands based on sexual orientation not mentioned in the first one, although the fact of not mentioning it is not used as a single argument. They have rather small chances to get positive, but it does happen.

Article 6 Qualification Directive: Persecution by the state

36) Are LGBTI applicants granted asylum if in their country of origin homosexual acts and/or identity is criminalised (by explicit ‘sodomy laws’ or by other criminal law provisions)?

- No. Please go to question 37.
 Yes. Proceed with question 36A.

36A) Is it required that those criminal law provisions are actually enforced, or is the existence of those criminal law provisions sufficient? Please provide further information. Decisions and/or case law. Good/bad practices

The existence of the criminal law is essential, although a credible subjective fear for persecution can lead to a recognition, even if the enforcement of the law is not proven. (e.g. LGBT from Burundi got recognition).
Often cases are rejected because of lack of effective persecution.

Article 6 Qualification Directive: Persecution by non-state actors

37) Do you have examples of LGBTIs who have suffered or feared persecution or serious harm inflicted upon them by non-state actors?

- No. Please go to question 38.,
 Yes. Proceed with questions 37A and 37B.

37A) Did they get protection?

- Yes
 No. Do you know what were the reasons to consider that they did not have a well founded fear of future persecution or serious harm?

Algeria, homophobic acts by muslim extremists. Recognition of a possible fear for persecution (by non-state actors) after depenalisation is considered.

37B) Did you find that persecution by non-state actors was relatively more common in lesbian or transgender/ intersex claims?

- No Yes. Decisions and/or case law. Good/bad practices

Domestic violence/young lesbian girls and trans are more often victims of domestic violence/ violence by family members.

Article 7-2 Qualification Directive: State protection + effective legal system

38) Are LGBTI asylum seekers who fled persecution from non-state actors required to have sought protection from the police or other authorities prior to fleeing their country of origin in order to prove that the authorities are unable or unwilling to provide this protection?

- No. Please go to question 39
 Yes. Proceed with questions 38A, B and C.

38A) Is seeking protection from the police or other authorities also expected when the LGBTI asylum seeker came from a country that threatens homosexuality, homosexual acts (and/or transgender identity) with criminal laws?

- No Yes. Please give details. Decisions and/or case law. Good/bad practices.

38B) Is seeking protection from the police also expected when the LGBTI asylum seeker came from a country where the police has a reputation of being homophobic, transphobic, etc.?

- No Yes. Please give details. Decisions and/or case law.

In Belgium a lesbian woman from Mongolia saw her case rejected for lack of credibility, one of the arguments was that she did not look for a lawyer or a human rights organisation to report the problems she had with the police. This can be read as an induction of the criteria to look for legal/international protection by non-state actors. (RvV 43714, 25 may 2010)

38C) Is the requirement to seek protection dependent on country of origin information showing that protection would generally be available for LGBTIs?

- No Yes. Decisions and/or case law. Good/bad practices

39) Do your decision makers and courts acknowledge that the existence of criminal sanctions against LGBTIs, even if not enforced, contribute to a homophobic atmosphere in which persecution by state and/ or non-state actors can flourish?

- No
 Yes. Could you give examples?

Mali, Burundi, Tanzania

Article 8 Qualification Directive: Internal relocation

40) Has an internal relocation alternative been held available for LGBTI asylum seekers?

No. Please go to question 41.

Yes. Please answer questions 40A and 40B.

40A) Could you give examples of reasoning to consider places or situations in the country of origin a good relocation alternative?

40B) If so, was discretion reasoning involved in this matter, i.e. could the LGBTI be open about her/his sexual orientation or gender identity in the relocation alternative or was he/she expected to hide there?

No Yes. Decisions and/or case law. Good/bad practices

There is no absolute discretion reasoning present in most of the motivations.

Sometimes a tendency to expect discretion occurs e.g. on the basis of a very strange use of COI: RvV 31 march 2010, nr. 41185: Based on COI and different objective sources, homosexuality appears to be a frequent practice in Iran, and the behaviour of the Iranian population does not always correspond with the law. In reality homosexual relations are very frequent and commonly accepted as long as they are not made public. There is a general 'de-facto' acceptance if homosexuals live their relation in private. The society knows gender segregation and for a homosexual it is more easy to rent a hall for a gay party than to find a hall for a male-female mixed population, as the Iranian law forbids mixed parties. See also RvV 20 may 2010, nr. 43639.

Article 9 Qualification Directive: Acts of persecution

41) Could you describe what kind of persecution or serious harm LGBTI asylum seekers who fled to your country experienced in their country of origin (physical violence, (“corrective”) rape or other sexual violence, detention, other criminal penalties, execution, honour killings, medical abuse (as a “cure”), harassment, threats, blackmail, intimidation, forced marriages, other psychological violence, no access to education, health care, housing, welfare, employment, judiciary, and so on...)?

Harrassment, threats, blackmail and intimidaton are the most often mentioned, also arrests are very frequent and discrimination in the work place,

being outed by a third party (after risen visibility) is often the beginning of a growing fear for persecution. The rise in visibility can be caused by activism, a relation with a rich/expat person, internal or external travelling to the home address of the partner, etc.

visibility through manifestation of a personal identity .

Lesbian asylum seekers have significantly 'heavier' stories, and they often experienced more serious harm and abuses than gay asylum seekers.

41A) Which of these experiences have been recognised as persecution or serious harm, and which were found to be insufficient to constitute persecution or discrimination that did amount to persecution?

Most of these reasons can be recognised if the story of the person is consistent, coherent, credible, consequent,... Although negative decisions also occur

41B) Please describe differences in the nature of persecution experienced by men and women respectively, due to their gender (in all of the categories of LGBTI).

see supra

corrective rape, domestic and family violence is current with lesbians, as well as sexual humiliation in public, by men

42) Is attention being paid to non-conformity to heterosexual gender roles and social roles in the decisions and/or case law?

No Yes. Please give examples.

The expression of a personal identity through transforming into a person of the opposite sex on special occasions (e.g. in the weekend , for a party,...) is considered a legitimate desire.

Article 9 Qualification Directive: Discrimination /persecution

43) Are LGBTI asylum seekers refused because the harm/ persecution they experienced is labelled as discrimination instead of persecution?

No

Yes. Please give examples. Decisions and/or case law. Good and bad practices.

Especially for those countries where there is a criminal code, the argument of discrimination never appears

Article 9-1-a,b, f /10-1-d Qualification Directive: Discretion (upon return)

44) Decision makers sometimes argue that LGBTI people will not be persecuted as long as they act discreetly or hide their sexual orientation or gender identity to avoid persecution ('go home and be discrete'). Do the asylum authorities in your country use this reasoning?

No

Yes. Could you provide further information and describe decisions and/or case law in which this happens? Good and bad practices.

Article 10-1-d Qualification Directive; Article 37-38 Procedure Directive: Implementation

45) Does your law or practice recognise explicitly that people who flee because of their sexual orientation can belong to a particular social group?

No

Yes. Are there any differences between L, G and B applicants, and if so, what differences?

Bisexuals have a certain disadvantage to prove their credibility, but some are recognised effectively, if their story appears coherent and credible. The CGVS also (implicitly) recognises that bisexuality (or 'heterosexual behaviour to cover up') is more frequent in countries where homosexuality is criminalised.

46) Does your law or practice recognise explicitly that people who flee because of their gender identity can belong to a particular social group?

No. Does your country have any other policy that provides protection to transgender asylum seekers?

Yes. If there is explicit policy or legislation, please give a translation into English (French or German).

No explicit national legislation, but a practice of protection.

47) Does your country apply Article 10(1)(d) of the Qualification Directive in such a way that members of the group must not only share an immutable/innate/ fundamental characteristic, **and** also the condition that the group has a distinct identity, because it is perceived as being different by the surrounding society, or is one of these requirements sufficient?

No Yes

One of the requirements is sufficient, there is no indication for the use of both criteria.

48) How is the Qualification Directive's concept of 'gender related aspects' taken into consideration in your legislation?

not yet
in practice yes

Article 11-1-e, 14 Qualification Directive: Cessation/Withdrawal of asylum status

49) Do you have examples of LGBTI asylum seekers whose asylum status was withdrawn, because the credibility of their lesbian, gay, bisexual orientation or gender identity was doubted later on?

- No
 Yes. What was the reason?

50) Do you have examples of LGBTI asylum seekers whose asylum status was withdrawn, because their lesbian, gay, bisexual orientation or gender identity had changed?

- No
 Yes. What was the reason?

RVV 30.300, 6/8/2009

The interview with the brother (who arrived in Belgium later) revealed the gay identity of the recognised refugee as fake. After a new interview the status was withdrawn (Iran).

51) Are there cases in which asylum status was withdrawn because the position of LGBTIs in the country of origin had improved?

- No
 Yes. Please give examples.

If the answer to questions 49 and/or 51 was yes:

51A) Did the authorities examine whether the person involved could still be at risk in the country of origin for being a perceived LGBTI?

- No Yes. Please give details.

Article 20-3 Qualification Directive: Vulnerable persons

52) Are LGBTI asylum seekers considered part of a 'vulnerable group' or a 'group having special needs' in your national legislation/policy/practice?

No

Yes. Please give details

in the practice yes, AHHA is a project run by the authorities themselves in the reception centres to develop adapted counselling and social guidance for LGBT in the refugee reception centers.

Procedures Directive⁴, 2005/85

Article 13 Procedures Directive: The interview

53) Can asylum seekers ask for an interviewer and/or interpreter of the gender (sexual orientation/gender identity) of their own choice?

No

Yes. Is such a preference usually recognised? No Yes

The preference is always recognised, where possible, gay asylum seekers are interrogated by gay judges and L by L, the CGRSP has a large diversity of people engaged and is very open to LGBT staff members

54) Can asylum seekers express a preference for an interviewer and/or interpreter who is not a member of their own ethnic community?

No

Yes. Is such a preference usually recognised? No Yes

It is a policy of the CGRSP not to work with interviewers of the own ethnic community. For interpreters it is more complicated: if an alternative interpreter is available, they will respect the demand of the claimant.

55) Do you have trainings on LGBTI issues available for officers who take interviews and decisions?

No. Please go to question 56.

Yes. Please answer questions 55A, B, C, D, E and F.

55A) Is this part of a general training or is it a specific training?

⁴ Procedures Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

Both, the general (basic) training includes a basic module on gender related cases, there are specific trainings and workshops organised during the year.

55B) Is the training:

- Obligatory No Yes. For whom?

For interviewers a general training is obligatory.

- Optional No Yes. How many people follow this training (coverage)?

55C) Who has access to this training?

Interviewers and COI workers, there is a large number of judicators who have followed gender-related trainings

55D) Are judges included in these trainings?

No Yes

55E) What is the level and frequency of these trainings?

A few times a year there is an offer to follow a workshop on gender-related issues,
A few times a year, the CGRSP offers (in collaboration with WISH vzw) the occasion for researchers and judicators to meet with LGBT activists from countries of origin to exchange a general view on the socio-cultural life of LGBT in a specific country of origin.

55F) Who does the training?

The CGRSP collaborates with LGBTI organisations and LGBTI-activists from the countries of origin in creating a training programme. They have an internal reference person who is able to identify professional trainers on specific gender-related topics

56) Do you have trainings available for interpreters on the appropriate terminology for use with LGBTI asylum seekers?

No Yes

Article 23-3,4 Procedures Directive: Accelerated procedure

57) Does your country have accelerated asylum procedures?

No

Yes. Is an exception made for claims of LGBTI asylum seekers?

No Yes. Please explain.

There is a non-consideration option for a second, third, or more.. asylum claim.

58) Are applications from LGBTI asylum seekers prioritised by the national authorities?

No Yes. Please explain.

Articles 29-31 Procedures Directive: Safe countries

59) Do the asylum authorities use lists of ‘safe countries of origin’?

No. Please go to question 60.

Yes. Please answer questions 59A and B.

59A) Does the list include countries that have criminal provisions against same-sex conduct (or obvious homophobic practice)?

No

Yes. Please give the names of these countries.

59B) Does the list provide exceptions for LGBTIs from specific countries?

No Yes. Please explain.

Article 27, 36 Procedures Directive: Dublin Regulation

60) Did you find examples of LGBTI asylum cases in which the European country responsible for examining the asylum application (Dublin Regulation) was not considered a safe country (because of LGBTI aspects of the case)?

No

Yes. Please give details.

Poland vs. Chechenya, it was considered that Poland might not be capable to assure the security of the claimant because of a great influx of homophobic Chechenyans.

Family Reunification Directive⁵, Council Directive 2003/86/EC

⁵ Family Reunification Directive:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>

Article 10 Family Reunification Directive: Family members

61) Does your country recognise same-sex marriage or same-sex partnership for nationals?

No. Please go to question 62.

Yes. Please answer question 61A.

61A) Does your country provide family reunification rights based on same sex relationships for partners of refugees?

No Yes. Please explain under which circumstances.

The big problem is how to prove an enduring relationship with someone in a country where homosexuality is criminalised, although there is no refusal of family reunification. Also e.g. minor children of gay men can be reunited if the family (mother) in the country of origin accepts to give permission, which is not always evident.

Reception Directive⁶

Article 17 Reception Directive: Reception

62) Do LGBTI asylum-seekers face problems (harassment, ill-treatment etc.) while in reception/ accommodation centres or in immigration detention, based on their sexual orientation/ gender identity?

No. Please go to question 63.

Yes. Please answer questions 62A, B and C.

62A) By whom are these problems caused?

Sometimes problems are reported with people from the same country of origin/ religion. Especially the bigger reception centres are subject to these incidents.

62B) Are the authorities aware of these problems?

No Yes. How do they react?

The practice of transferring the victim has been stopped, nowadays the homophobic actor can sometimes be subject to a sanction, including a transfer to a different center.

62C) Does a complaints mechanism exist?

No

⁶ Reception Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>

Yes. Is it effective? No Yes

63) Does the possibility of housing in private accommodation exist during the asylum procedure?

No

Yes. Please explain

There are small-scale reception initiatives, and local reception initiatives in which people live in private accommodation or share a house with a small group of people, equal to the number of available sleeping rooms.

64) Is it possible in reception/ accommodation centres or immigration detention to be placed in an accommodation separate from people from the same country and/or religious background?

No

Yes. Are asylum seekers informed about this possibility? No Yes

Articles 17 and 15 Reception Directive: Transgenders/ intersex

65) Do transgender and intersex people have the possibility to choose whether they want to be housed in a women's or men's (section of) reception/ accommodation and detention centre?

No Yes

66) Do transgender/ intersex applicants have access to specific health care and support,

a) during the asylum procedure

No Yes

b) after they are granted asylum?

No Yes

67) If your country provides the possibility to legally change a person's name and sex, does this also apply to trans/ intersex asylum seekers and trans/ intersex refugees?

No Yes

Any other issues

68) Are you aware of any other specific problems for LGBTI asylum seekers?

Heteronormativity

Assumption of what kind of behaviour can prove homosexuality, based on typical western concepts of sexuality

Lack of sexo-ethnologic knowledge about sexual accepted practices and "growing-up-sexually" differences from culture to culture,
and the absence in some cultures/languages of terminology and words to express feelings, e.g. in most swahili speaking countries, the male active partner does not identify as gay, they only have a swahili term (a negative one) for the passive/effeminate person.

See for this info: the international sexological encyclopedia

69) Are you aware of any other good practices concerning LGBTI asylum seekers?

70) Please add any other comments on the situation of LGBTI asylum seekers in your country.

The translation/ interpretation is a weak link, some interpreters have no positive words to use during the interview and fall back on the use of humiliating terms referring to culturally embedded homophobia (terms based on Lot, Sodomo, ...) which are in themselves insulting.

Also the judicators often talk about 'homosexual' rarely about 'gay' or other terms coming from self-identification.

Thank you!

SHORT LGBTI GLOSSARY

Age of consent

The minimum age at which a person is considered to be legally competent of consenting to sexual acts.

Bisexual

An individual who is physically, romantically and/or emotionally attracted to both men and women. Bisexuals need not have had equal sexual experience with both men and women. In fact, they need not have had any sexual experience at all to identify as bisexual.

Coming out

A lifelong process of self-acceptance. People forge a lesbian, gay, bisexual or transgender identity first to themselves and then may reveal it to others. Publicly identifying one's sexual orientation may or may not be part of coming out.

Gay

Used to describe people whose enduring physical, romantic and/or emotional attractions are to people of the same sex (e.g., *gay man*, *gay people*). Often used to describe a man who is sexually attracted to other men, but may be used to describe lesbians as well.

Gender

Refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.

Gender Identity

Refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. It includes the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Intersex

Refers to a condition of having sexual anatomy that is not considered standard for a male or female. Intersex can be used as an umbrella term covering differences of sexual development, which can consist of diagnosable congenital conditions in which development of chromosomal, gonadal or anatomic sex is atypical. The term *intersex* is not interchangeable or a synonym for *transgender*.

Lesbian

A woman whose enduring physical, romantic and/or emotional attraction is to other women.

Sexual Orientation

Refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender.

Sodomy Laws

Laws that define certain sexual acts as crimes. The precise sexual acts meant by the term sodomy are rarely spelled out in the law, but are typically understood by courts to include any sexual act deemed unnatural. Consensual homosexual acts between adults are illegal in about 70 to 80 countries in the world; in 40 of these, only male-male sex is outlawed.

Transgender

An umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. Transgender people may identify as female-to-male (FTM) or male-to-female (MTF). Transgender people may or may not decide to alter their bodies hormonally and/or surgically.