

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,

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General

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

In the past I was involved in working groups for development of new laws, national plans and proposals for changes in the Bulgarian and EU legislation (Amendment of the Bulgarian Penal Code and development of the Bulgarian Act for Protection Against Discrimination, development of Law for Registered Partnership). Bulgaria's representative in the International ILGA-Europe's (International Lesbian and Gay Association for the European Region) EU Coordination Network from 2004 to 2007. Engaged with monitoring and dissemination of information on national government's positions on EU policy initiatives, on implementation of EU policy at national level and on national-level developments in the context of gender identity and sexual orientation discrimination; Coordination of national lobbying and wide involvement of other partners and NGOs; Participated in the development of policy proposals and other materials. Member of Bulgarian Gay Organization "Gemini" since 2000. Taking up the positions of vice chair, chair person, public and international relations. I have been communications and campaigns coordinator at the Bulgarian Helsinki Committee since the beginning of 2010.

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

State Agency for Refugees - <http://www.aref.government.bg>

Bulgarian Helsinki Committee - <http://bghelsinki.org>

Bilitis Resource Center Foundation - <http://www.bilitis.org>

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.

The average annual number of LGBTI cases is 2. The stated number is based on conducted interviews with staff interviewers of the State Agency for Refugees (national decision-maker) and lawyers from the Refugees and Migrants Legal Protection Programme of the Bulgarian Helsinki Committee who provide legal aid to asylum seekers and refugees in Bulgaria since 1994 as an UNHCR's implementing partner.

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

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

0

What are the main issues in these cases?

The number of women refugees entering Bulgaria in general remains as little as 11% for 2010 and 13% for the period 1993-2010 according to the official statistics provided by the State Agency for Refugees.

The assumption is that even in case of persecution based on homosexuality or bisexuality, a woman would never dare to disclose her sexual orientation. When seeking protection she would rather state another, more convincing and common ground.

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

Most of the reported cases, with minor exceptions, are concerning gay men.

What are the main issues in these cases?

Treatments such as death, torture and imprisonment in their home countries, after their sexual orientation has been discovered.

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?

There is only one case of bisexual man from Lebanon reported. The married man, with two children was persecuted by his family and wife after being caught having an affair with another man. The Bulgarian authorities found his case not genuine and illfounded, therefore he was denied asylum.

Bisexuality could be a stumbling stone for the decision makers. Most of the interviewees from the State Agency for refugees expressed the opinion that a married man with children could not be bisexual.

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?

N/A

e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

N/A

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

1 Iran - 3

2 Nigeria - 2

3 Afganistan - 1

4 Lebanon - 1

5 Iraq - 1

6 Armenia - 1

7

8

9

10

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.

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)

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.

subsidiary protection? On which basis?

The legal grounds for granting a subsidiary form of protection in Bulgaria are based on the provisions of Art. 2 and 3 of the ECHR.

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.

It results that LGBTI people are not recognised as a "social group" for the purposes of the 1951 Refugee Convention in Bulgaria, thus humanitarian status (subsidiary form of protection based on Articles 2 and 3 of the ECHR) is the presumed form of protection they could get. The known cases of humanitarian status granted so far are two.

The decision to grant humanitarian status is based on Article 9, para 1 from the Bulgarian Law on Asylum and Refugees:

"Humanitarian status shall be granted to an alien forced to leave, or to stay outside his/her country of origin because of facing a real danger of severe encroachment in such state, such as

1. death penalty or execution"

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.

The age of consent in Bulgaria is 14, as specified by Articles 149 and 151 (1) from the Criminal Code .

The number of underaged asylum seekers entering Bulgaria is 17% or 2754 for the period 1993-2010 according to the official statistics provided by the State Agency for Refugees. None of them so far claimed asylum on LGBTI ground.

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.

Bulgarian Helsinki Committee is a human rights NGO that runs a permanent programme for legal aid to asylum seekers and refugees since 1994, when Bulgaria joined the 1951 Refugee Convention. BHC does not have a specific activities aimed at LGBTI claimants and they are entitled to the general services, advice and representation as provided to all the rest of the beneficiaries.

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

In general, the overwhelming attitude of suspiciousness and mistrust of the decision-maker in Bulgaria makes it hard to prove most of the refugee stories that asylum seekers do state in order to substantiate their recognition and protection. It is despite the fact that in dubio pro fugitivo principle is explicitly regulated in the national law. However, in the LGBTI cases the burden of proof attributed to asylum seekers is even higher as it concerns intimate, and, generally, publicly unmanifested relations to which no evidence, except oral testimony of the opposite person involved, can be provided or secured.

Secondly, the LGBTI applicants share common unwillingness to reveal fact or circumstances related to their sexual orientation and thus, refugee claim, as they fear to be confronted by ridicule, misunderstanding and rejection as they have been treated in their country of origin.

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

Staff and network lawyers are employed to provide legal aid and representation before the asylum administration and the courts.

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

No Yes. Which organisation(s)?

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

No Yes. In what form?

e) Do they have contact with the government?

No Yes. In what form?

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

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.)

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

- 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.

- 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.

- 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

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

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

Yes. Please specify where you found these references.

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?

For the time being the few cases of LGBTI applicants that have been investigated were decided on solely on the basis of the applicant's statements as well as medical examinations.

Although the use of medical examinations to confirm homosexuality constitutes a deplorable violation of the basic human rights this is the most common method to be used by the State Agency for Refugees. Despite the fact that in one of the cases a gay man was even jailed two times because of his sexual orientation, the asylum seeker could convince the authorities that he is actually gay only by presenting a "certificate" issued by a sexologist.

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?

Medical experts opinion that "proved" the opposite, previous or present marriage and/or matrimony, self-born children and widespread prejudicial understandings amongst the State Agency decision-making officials.

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

One of the indicatory cases presented by the Agency unveils the presumable method that is used in the decision making process. The claimant, a 26 y.o. gay man from Iran, subject to persecution due to his sexual orientation, escaped from his country of origin after being arrested two times and fearing a third arrest followed by a death sentence. After the first interview, an extension period of two months was given for further clarification of case's circumstances. A second interview was conducted to "verify" the claimants sexual orientation. The interview included inadequate

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

questioning about him being "passive" or "active", number of sexual partners and whether in the past he had a relationship with a woman.

The position by the decision-making expert on his case concluded the following:

"I believe, that there are no obstacles the applicant to return to Iran, where his life and liberty are not threatened and he is not at risk of persecution, torture or inhuman or degrading treatment or punishment. I recommend that he should be denied refugee status as well as humanitarian status in Bulgaria."

The superior expert dissented in his opinion with this recommendation and the case was reopened for reconsideration.

The gay man was required to travel to another city where a medical examination in a private clinic could be performed. The sexologists statement was rather confusing:

"The examination and medical history establishes that the person who has primary and secondary male sex characteristics, has a psychological homosexual gender. This leads to homosexual behavior, which is an irreversible condition, according to the present knowledge in sexology."

Regardless of the absurdnes of the described "certificate" as issued by the clinic, the Agency's officials stated that it was owing to the said document why the claimant was granted humanitarian status.

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

One of the certain reasons to reject protection to homosexual or bisexual claimants is an existing marriage with a person from the opposite gender and/or self-born children. Prejudices and not enough knowledge on the topic leads to misunderstandings and wrong decisions. A common opinion is that a gay man should necessarily "look feminine" and "display" his sexual orientation, same applies to homosexual women. Bisexuality is either considered as "not existing" or just a temporary "vagary".

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)?

Medical certificates and any other document that could prove the sexual orientation and/or gender identity of the applicant, including oral or written statement of intimate partners.

Decisions and/or case law. Good/bad practices

None, except the one described in the paragraph above "verification" method.

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?

Sexologist.

b) What does the examination include?

Unknown.

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

Unknown.

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

From the reviewed cases the expert's opinion is considered significant to the level of decisive in the decision making process. None of the claimants confirmed as not being homosexual/bisexual by a sexologist was recognised as a refugee or granted a humanitarian status in Bulgaria.

Decisions and/or case law. Good/bad practices

See, d). above

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 following questions are extracted from an interview that should serve as a proof for the sexual orientation of a gay man:

- When did you first realise you were attracted to representatives of the same sex?
- When did you start your sexual life?
- How did you find your partners?
- How many partners have you had?
- Have you ever had a sexual intercourse with a representative of the opposite sex?
- Are you passive or active in your contacts?

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

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.

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

Anyone falling out of the stereotypes for LGB is considered as not credible. Marriage and children are believed to be one of the first indicators for the sexuality of a person. There is one case of a bisexual man from Lebanon, being rejected because of having a wife and self-born children.

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

As visible from the cases reviewed there is an adequate and actual information provided on the situation regarding LGBTI in their country of origin. The unit "Specialised information" from the International Department for Cooperation and Eurointegration is the main source of information. In the inquiry they also make reference to the UNHCR reports.

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.

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

No

Yes. Could you describe this information?

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?

If the expertise was required by the decision-making officials the costs ought to be covered under the budget of the State Agency for Refugees. It is highly unlikely that an independent expertise would be accepted and taken into account at the stage of administrative determination, though it is mandatory, if requested by the applicants or his/her legal representative at the stage of court hearings. However, under the national law, if at the stage of court revision proceedings the applicant would wish to contest a rejection or another expert opinion, s/he should cover the costs him/herself.

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

Determining. All decision-making officials stated that the expert opinion, including those who provided COI prevails all other evidence that might be available in certain individual case.

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

The COI information is taken into consideration by the decision makers.

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.

There are no such cases.

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.

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

There are no such cases.

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

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

Normally the existence of sodomy laws or other provisions endangering LGBTI people in their country of origin wouldn't be enough for a positive decision. According to the Agency's officials a proof for persecution of the claimant would be inevitably required.

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?

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

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.

Although there are no decision and/or caselaw related to LGBTI cases in this respect, conclusion can be drawn from the general attitudes among decision-making officials who, in the majority of the cases, require explanation did the applicants turn to the police and why not, in cases they stated they didn't. In the majority of the cases in general the explanations "why not" are considered as unconvincing. In the majority of the cases in general seeking protection form the police or other institution is considered as a preconditions for successful asulym application.

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

Again, the answer is based not specifically on LGBTI cases, but on the general trends in assessing asylum claims. In relation to countries of origin where it is established that no authorities are

available or that the authorities are hostile or persecuting themselves particular groups or individuals, for examples, adulterers in Iran, seeking protection from them is not required.

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?

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

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...)?

Physical violence by parents and/or other relatives and punishment such as lashing inflicted by paramilitary voluntary or militia groups, detention by authorities, hormonal therapy.

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?

Detention and probable execution are the threats considered by the authorities as persecution. Any other "less harmful" form of persecution is considered as insufficient.

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).

N/A

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.

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.

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.

It cannot be found in official documents, but unfortunately there is a common opinion shared by the Agency's officials that it is better if a gay man returns to his country of origin and tries to live a more discreet life or even to make an attempt to "change".

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?

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).

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

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

It is not transposed in the legislation, neither as concept, nor as an explicit rule.

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?

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

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

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

The law explicitly provided for the right of the asylum applicant to require interviewer from the same gender.

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

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?

55B) Is the training:

- Obligatory No Yes. For whom?

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

55C) Who has access to this training?

55D) Are judges included in these trainings?

No Yes

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

55F) Who does the training?

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.

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.

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.

According to § 1 (3) of the Asylum and Refugees Act ‘members of the family’ are: a) the spouse or the person with whom s/he is in a proven stable and longterm relationship; and b) children under 21 years of age who are not married.

Thus, the law does not recognise LGBT partners as family members for the purpose of obtaining derivative status – refugee status or a subsidiary form of protection, i.e. humanitarian status. The research did not find any statistics on this. There are no new developments with regard to asylum and subsidiary protection of LGBT persons in Bulgaria during the period 2007-2010.

Article 34, para.1 of Asylum and Refugees Act entitles the refugee or the person recognised as deserving a form of subsidiary protection the right to claim family reunification in Bulgaria granted by the asylum authority, the State Agency for the Refugees.

Para. 1(3) of Additional Provisions of the same act defines as a family member ‘...the spouse or the person with whom s/he is in a proven stable and long-term relationship and their minor and non-married children’. However, paragraph 5 of the same article requires the family reunification applicant to provide official documents evidencing the matrimonial status or the relationship.

Nevertheless, if the applicant for family reunification cannot present official documents proving the matrimonial status or the relationship, he or she may provide evidence about the links to the joining family members through a written declaration or in another way. This seems to open up the

⁵ Family Reunification Directive:

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

possibility for cohabiting same-sex partners to benefit from family reunification. However, no cases are known to the reporter of reunification being requested for LGBT partners.

The reporter (the Bulgarian Helsinki Committee, the only non-governmental human rights organisation established in 1992 to protect the rights of refugees and migrants) and state authorities competent to grant asylum have been working closely together since 1996. Based on the experience from this working relationship, the reporter can state that official statistics are not comprehensive and such cases, if any, have not been properly recorded.

There are no new developments with regard to family reunification of LGBT persons in Bulgaria during the period 2007-2010.

*Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity [European Union Agency for Fundamental Rights, May 2010]

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?

62B) Are the authorities aware of these problems?

- No Yes. How do they react?

62C) Does a complaints mechanism exist?

- No
 Yes. Is it effective? No Yes

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

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

No

Yes. Please explain

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?

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.

LGBT people in danger who do choose to seek refuge in Bulgaria might become victims of discrimination and unfair decisions owing to the scarce knowledge and existing widespread prejudices in the society and local communities.

The national asylum authority, State Agency for Refugees, does not have a practice of granting LGBTI refugee status on the grounds of belonging to a “particular social group.”

The State Agency for Refugees should establish clearer guidelines, start providing official statistics and organise trainings on sexual orientation and gender identity to help decision makers avoid stereotyping LGBTI refugees. The trainings must be based on the UNHCR Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity.

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.