

# 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

Thomas Spijkerboer, VU University Amsterdam

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## General

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

Future Worlds Center is an implementing partner of the UNHCR in Cyprus and runs a project that offers legal and social advice free of charge. Within the context of this project we deal with asylum cases and with the relevant authorities, and within this work we have come across LGBTI asylum cases and issues.

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

The cases we have dealt with, other NGOs, government representatives of the two determining bodies in Cyprus (there is limited case law in Cyprus on asylum issues in general and no case law regarding LGBTI asylum issues)

### ***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.

2005 - Present: Due to the fact that there are no national statistics we cannot give an accurate answer concerning the number of asylum claims which are based on LGBTI reasons, however the reported number of LGBTI cases that received protection is accurate. In addition to the lack of statistics the two determining bodies examining asylum claims (first and second instance) do not keep records of asylum cases based on the grounds of the claim, therefore it is not possible for us nor the authorities themselves to search for LGBTI asylum cases in the database. As a result we have had to depend on individuals' memories (NGO workers, government caseworkers who dealt with LGBTI cases remembering the personal details of the applicant in order to retrieve the file from the archive).

In this report we have documented on 9 LGBTI asylum cases. The cases were identified by information provided by the lawyers of our organisation who have dealt with LGBTI cases amongst the general asylum cases, one other NGO in Cyprus that deals with asylum issues, government representatives from the two determining bodies and the UNHCR representative in Cyprus. Based on our experience and from discussions/interviews with the above contributors to the questionnaire we estimate that the number of LGBTI cases is probably 3 times the reported number, however we believe that the cases reported in the present questionnaire reflect the situation in Cyprus concerning LGBTI asylum claims and demonstrate the way in which these cases are dealt with and decided on by the authorities.

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

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

2

What are the main issues in these cases?

- Cameroon - Fear of persecution from a non-state agent due to a lesbian affair, fear it would extend to state persecution. She claimed she had a lesbian affair with a woman (neighbour) and was in danger from her husband and the father of her two children (she is his 2<sup>nd</sup> wife and they did not reside in the same house) who found out about it. She did not state whether she considers herself to be lesbian or not. When her husband found out he burnt the house she and the children lived in when they were not at home, although he was under the impression that she was. She fled the country alone and left the children with her sister. She is in fear he will continue to attack her and

he will notify the authorities, which due to anti homosexual laws in Cameroon will lead to state persecution. There is no option of state protection. Rejected as non credible.

- Iran - Fear of persecution from a non state agent due to being lesbian, fear it would extend to state persecution. She claimed her employer found out that she is a lesbian, fired her and threatened to report her to the police and her family. Her family was not aware that she is a lesbian and she stated she could never inform them of this as it would shame them and she was afraid of the consequences, psychological and physical. Her family had forced her into two marriages. The first unconsummated marriage lasted 3 months and was annulled and the second marriage lasted seven months with a husband who constantly pressured her into sex; however this marriage also ended with a divorce settlement, which was paid by her parents. She was rejected as non credible regarding the claim that she is lesbian, because she had been married.

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

Total 6 - 3 from Cameroon and 3 from Iran.

What are the main issues in these cases?

1. Cameroon - Fear of persecution from a non-state agent (father) due to an affair with a man, fear it would extend to state persecution, due to anti gay laws and practices. He had a relationship for years in Yaoundé, with a man holding a good position in the public sector, but his parents with whom he was living, did not know about it. When they wanted him to get married, he announced to them he was gay and they threatened to denounce him to the authorities. His case was rejected by both the Asylum Service and the Reviewing Authority, as non credible, the examining officer underlined the fact that he was not sure whether the authorities really knew about him and that he did not explain precisely the position of his partner in Cameroon. He is currently detained awaiting deportation.

2. Iran – Fear of state persecution, he had faced several problems with the authorities due to his liaisons with other men. He had also gone to court one time due to these liaisons but his father had connections with an influential person who managed to help him. The applicant did not state in his initial application his LGBTI claim. He explained that during the completion of his application, his father was present and he could not write the problem of his sexuality, however he then stated that his parents knew that he is homosexual and had no problem with this. He was rejected on both first and second instance as non-credible. The case then received large media attention and support both nationally and at a European level, by a large number of activist organisations and his Cypriot

partner. This was accepted as new elements to the case, as the Iranian authorities would have knowledge of his claim and he was recognised.

3. Cameroon – fear of state persecution due to imputed sexual orientation. The applicant had claimed he was not gay but considered as such by the authorities, because he had been arrested with a gay friend of his in a bar, and then detained. During the interview he also explicitly stated that he had come to Cyprus in order to improve his living conditions, which was used to reject his claim on non-credibility as his true intention was considered to be financial. The case is now pending at the Reviewing Authority.

4. Iranian – fear of State persecution. The applicant claims he does not feel at ease with his homosexuality, that he lived isolated for many years and is afraid of State repression, and that he wants to live freely. As he himself stated that no one has knowledge of his sexuality (he was arrested once, but for alcohol, not on LGBT grounds) his case will most probably be rejected according to the examining officer.

5. Iranian – fear of state persecution. [We do not have details regarding the exact circumstances in Iran that made him flee the country nor on the decision that led to his rejection]. The applicant had appeared in gay porn movies in Iran and claimed the Iranian authorities had knowledge of this. He was rejected as non credible. We know that he had submitted the movies as evidence but we do not know if these were accepted - and the reasoning- in the decision on them. The examining officer ridiculed him when he said that he liked young boys, as it was interpreted as paedophilia whereas he considered himself as a young boy (at the time he was approximately 19 years old). His claim was rejected and he was detained pending deportation for 2-3 years, as he refused to cooperate with authorities to return to Iran. After a hunger strike he was hospitalised in a psychiatric hospital due to his mental situation. His parents eventually came to Cyprus and brought him back to Iran.

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?

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?

Iraq - male to female - Fear of persecution from non state agent and state agent. She began transforming her appearance early in her teens. She dressed and behaved as a woman and took hormones for her breasts. Due to this she was expelled from school and her family began to treat her violently. Her family beat her, locked her in the basement of the house, shaved her hair. She was arrested by the authorities during a general attack against gays, lesbians and transgenders. She was detained for a week and during this time she was repeatedly beaten and raped. She was granted refugee status.

e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

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

1	Cameroon
2	Iran
3	Iraq
4	
5	
6	
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.

In the case of an Iranian gay, he claimed he did not state his real claim, which was the sexual orientation claim in the asylum application, because his father was present. He did not mention the claim during the interview either and he later explained that he did not trust the interpreter translator

whom he suspected of being related to the Iranian embassy and was afraid he would give information about him to the embassy.

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)

In the two cases in which refugee status was granted this was based on membership of a particular social group,

- transgender from Iraq

- gay from Iran

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?

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.

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.



### ***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.

- Future Worlds Center (FWC) is a non profit, non governmental organisation registered in Cyprus in 1991. FWC implements a UNHCR funded project, which offers free legal and social support to asylum seekers and persons under international protection (recognized refugees, subsidiary protection). Regarding LGBTI asylum seekers, FWC provides individuals with social and legal support and their cases are given priority due to the sensitive issues related to such cases as well as the lack of support, expertise and knowledge in Cyprus on LGBTI individuals and asylum claims.

- KISA is a non profit, non governmental organisation registered in Cyprus in 1998, supporting migrants and asylum seekers. They provide support to LGBTI Asylum Seekers but are not specialised in that specific category. At present they do not have a legal advisor working in house for them and due to this there is a limitation in the legal support they can offer, however when necessary they use lawyers that offer their services pro bono. They were directly involved in the case of the iranian gay, which was widely publicized and ended in recognition. KISA lobbied for this case and was in regular contact with a Cypriot MEP and with LGBT umbrella organisations such as ILGA Europe who both contributed to the final result.

- ACCEPT is a non profit, non governmental organisation formed in Cyprus in 2011, dedicated to promoting the rights and interests of LGBT people in Cyprus, as well as raising awareness and assisting LGBT individuals, including third-country nationals. At present due to the fact that they have recently commenced activities they do not have specific activities aimed at LGBTI asylum seekers.

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

The main problems faced by the three organisations are

- identifying LGBTI asylum seekers or being contacted by them at an early stage in the asylum process so that they may be effectively supported. Please note that there is no process in Cyprus by which applications are screened once submitted to identify various issues, such as unaccompanied minors, persons with special needs, including torture victims, victims of violence etc. In Cyprus cases are not documented according to the claim.

- the lack of expertise: none of the persons working or volunteering in these organisations are trained both on LGBTI issues and refugee law.

- the lack of knowledge, awareness and training on behalf of the authorities on LGBTI issues makes it more difficult to provide effective support to such cases.

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

Future Worlds Center employs mainly staff and is supported by interns and volunteers, KISA employs staff and works with volunteers. ACCEPT is in the process of being legally registered therefore at present it cannot employ staff and operates with volunteers.

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

No  Yes. Which organisation(s)?

FWC is the national coordinator for the ELENA network.

KISA is a member of the Euro Mediterranean Human Rights Network (funded by the EC) and Migreurop.

ACCEPT is in the process of affiliation to ILGA Europe.

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

No  Yes. In what form?

FWC is an implementing partner of UNHCR and works closely with UNHCR on all necessary cases including LGBTI.

KISA collaborates when necessary with lawyers and UNHCR

e) Do they have contact with the government?

No  Yes. In what form?

FWC legal advisors offer legal support throughout the asylum procedure and have continuous contact with the examining authorities. This includes advising on the asylum procedure (application, rights etc), escorting applicants to interviews, preparing administrative appeals, contacting authorities in person or by correspondence on necessary issues, filing complaints to the authorities, the Minister of Interior, the Ombudsman's office, EU level, lobbying on the improvement of the asylum procedure and the rights enjoyed by asylum seekers and persons under international protection.

KISA offers social support to asylum seekers and contacts authorities in person or by correspondence on necessary issues, files complaints to the authorities, the Minister of Interior, the Ombudsman's office, EU level. KISA has an important role in promoting the improvement of the asylum procedure and rights enjoyed by asylum seekers and persons under international protection.

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.)

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**Policy, legislation, case law**

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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.

According to the Cyprus Refugee Law, article 17 (1)(β), for the determination of Refugee Status, the Head (of the Asylum Service) shall be guided by the Handbook on Procedures and Criteria for Determining Refugee Status, issued by the Office of the United Nations High Commissioner for Refugees. According to UNHCR the guidelines issued on various issues are considered supplementary to the Handbook, therefore any UNHCR guidelines, guidance notes on gender related claims or sexual orientation should be used when handling asylum claims. In the cases identified for the purpose of the present research only one case referred to gender related guidelines (see below under 16, re the recognition of transgender MtoF).

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 Principles<sup>1</sup> and/or to UNHCR's Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity<sup>2</sup> in decisions or case law?

No

Yes. Please specify where you found these references.

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### **Qualification Directive<sup>3</sup>, Council Directive 2004/83/EC**

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

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

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

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

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

There are no guidelines nor practice followed in order to establish an applicant's sexual orientation or gender identity, this is left to the discretion of the examining officer. Due to this there is a wide disparity on how these cases are examined and how the issue of sexual orientation/gender identity is perceived. A lot depends on the personal character of the officer, as well as the individual knowledge, the awareness and exposure he/she has on such issues.

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?

- In the case of a lesbian applicant the fact that she had a heterosexual relationship and children was considered a point of non-credibility. Another reason for not believing her was that she did not flee the country of origin with the woman she had the relationship with, it was stated that if it was a genuine relationship she would not have left without her.

- In the case of a lesbian applicant the fact that she had two previous marriages was considered reason not to believe her sexual orientation even though she had claimed that both marriages were forced and that the first was not consummated, which led to it being annulled and the second was forcefully consummated and also ended in divorce.

- In the case of a gay applicant the fact that he did not initially state his sexual orientation as his claim. Also the fact that he served the army without issues and did not try to avoid serving, and that he was arrested 4 times in Iran but none were for homosexuality.

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

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

Most cases are rejected on general credibility and/or a combination of general credibility and credibility regarding the sexual orientation or gender identity claim. The actual sexual orientation or gender identity is not adequately examined, on the contrary there is more of an effort to find the applicant non credible regarding his/her sexual orientation or gender identity and if this is not

possible then to establish that there is no fear of persecution by finding the applicant non credible on the general credibility or the facts supporting the events that led to him/her fleeing the country.

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)?

Declarations of LGBTI organisations, membership of LGBTI social networking sites.

[Note that although this evidence will be accepted and examined it may often be dismissed in the final decision either as non credible, depending on the country and/or organisation that issued them or they may be dismissed as documents in general are supportive evidence and do not prove what was stated (this argument is used often in all asylum cases regarding supporting documents).]

Decisions and/or case law. Good/bad practices

Bad practice: In the case of a gay applicant he was asked if he is a member of any social networking sites for gays. When he answered positively he was requested to give his personal password for the examining officer to confirm his statement.

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?

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

Note: No information of any cases where such evidence was requested or provided. Judging from asylum cases in general such evidence if provided would be accepted but its evaluation would depend on the examining officer's attitude towards the case and the officer's individual character as mentioned 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

Note: No information of any cases where such evidence was requested or provided. Judging from asylum cases in general such evidence if provided would be accepted but its evaluation would depend on the examining officer's attitude towards the case and the officer's individual character as mentioned above.

22) Are explicit questions asked about sexual activities?

No

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

No information on such questions, however due to the lack of guidelines and the fact that the questions related to the examination of the applicant's sexual orientation or gender identity are left to the discretion of the examining officer it cannot be ruled out that such questions have never been asked or will never be asked in the future.

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

- In the case of a gay applicant he was asked if he is a member of any social networking sites for gays. When he answered positively he was requested to give his personal password for the examining officer to confirm his statement.

- In the case of a gay applicant he was asked questions regarding his service in the army and the fact that he did not try to avoid the army, which is mandatory in his country was found to be contradictory with stereotypical gay conduct.

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.

In the case of a gay applicant he was asked if he is a member of any social networking sites for gays. When he answered positively he was requested to give his personal password for the examining officer to confirm his statement.

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

- In the case of a lesbian applicant the fact that she was married and had children was considered a point of non-credibility.

- In the case of a lesbian applicant the fact that she had two previous marriages was considered reason not to believe her sexual orientation even though she had claimed that both marriages were forced and that the first was not consummated, which led to it being annulled and the second was forcefully consummated and also ended in divorce.

***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

Both bodies examining cases have access to COI on the position of LGBTI asylum seekers from relative sites on the internet, it is up to the individual officer to research the available information.



This was confirmed when reviewing the files for the current questionnaire as almost all cases had some sort of COI information.

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?

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?

The COI cited by decision making authorities often supports the rejection of the asylum seeker. Specifically in the case of a gay Iranian his credibility regarding his sexual orientation was disputed and in addition COI was included which stated that 'even if his claim was true and he is homosexual, according to Iranian law, an offence can only be proved against him if there were four witnesses present during the sexual act, if it occurred in a public space and offended the public sense of decency'. The case is from 2009.

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.

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

This would be seen as an indication of non-credibility. In the case of a gay applicant, the fact that he stated that he had become gay 4 months before departing from the country of origin was seen as a point that disputed his credibility.

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

In the case of a gay Iranian he did not express his sexual orientation in the application nor in the interview. Two years after the interview his case was still pending due to delay on behalf of the examining body and he expressed the sexual orientation claim at this stage. The examining body was obliged to interview him on this claim and according to the report of the examining officer, during this 2<sup>nd</sup> interview he had explained that when completing the application for asylum, his father was present and he could not write the problem of his sexuality. In the same report it is mentioned that despite this he then stated that his parents knew that he is homosexual and had no problem with this. He was rejected as non credible and one of the points was the fact that he did not speak of his sexual orientation initially. He filed an administrative appeal which was rejected for the same reasons but was later recognised based on new elements due to the media attention his case received and the fact that the Iranian authorities after this would definitely have knowledge of the fact that he is gay.

***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

***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

Note: Our case sample is not sufficient to conclude on this.

***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.

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

Note: No examples of the above

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...)?

- Lesbian, Iran, forced into two marriages, the first was not consummated but regarding the second she claimed she was forced to have sex. She also mentioned that she was afraid of the psychological and physical consequences in case her family found out about her sexual orientation but she did not elaborate nor was she asked further questions as to what these consequences might be.

- Lesbian, Cameroon, attacked by her husband who also burnt down her house (as she was his second wife they did not reside in the same house)
- Transgender, Iraq, expelled from school, family members beat her, hit her with a gun in the eye, locked her in the basement of the house, shaved her hair. The authorities arrested her and she was detained for a week, during which she was tortured, repeatedly beaten and raped. After her release she tried to commit suicide.
- Imputed Gay, Cameroon stated he was arrested for being gay and was detained, during which he was tortured. No further details as the examining officer did not ask any further questions, only asked if he would be willing to go before a medical board to be examined, to which he refused and the officer did not explain the purpose of the examination nor the consequences of his refusal.
- Gay, Cameroon, threatened by family

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?

The transgender case was considered persecution and was granted refugee status. All other cases were rejected, based on credibility, either the applicant's credibility concerning their sexual orientation or the credibility regarding the events surrounding the stated persecution. Based on this there were no conclusions on the actual acts of persecution or serious harm.

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).

Sample not big enough to exhibit differences.

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.

In the case of a gay from Iran as he had stated that no one had knowledge of his sexual orientation it was considered that he can go back to Iran and does not have fear of persecution. As the decision is still pending we do not know if the above reasoning will be explicitly mentioned.

**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?

No 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).

The national law transposed article 10 of the directive word for word. The respective article in the national law, article 3d (1)(d) states:

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with Cyprus national law.

Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;

As the one transgender case in Cyprus was prior to the implementation of this article we do not know how the above will be interpreted and if it will cover gender identity.

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

The legal analysis in the reasonings of the reported cases are not detailed enough and do not analyze the above point. Article 10(1)(d) has been translated and transposed into the national legislation word by word. Unfortunately the legal analysis in cases in general is very basic so you will never find such detailed analysis as to whether both requirements must be met or if one is enough. If the examining officer views that the applicant should be recognised as a refugee based on membership of a group, only this will be mentioned.

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

There is no interpretation or reference in any case or decision that can indicate how the above is taken into consideration.

***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

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**Procedures Directive<sup>4</sup>, 2005/85**

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***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

According to the authorities an asylum seeker can ask for an interviewer and/or interpreter of the gender of their choice, however in practice this request may be ignored if it is made orally to the examining officer, again depending on the character of the officer. If the request is made beforehand in writing by a lawyer/legal representative or the applicant it will not be ignored.

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

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

An asylum seeker will most probably not come across an interviewer of their own ethnic community due to homogenous population of Cyprus therefore this issue has never arose and there is no practice on it. Regarding the interpreter asylum seekers often request the interpreter is not from their own ethnic community but this is not granted.

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.

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**Family Reunification Directive<sup>5</sup>, Council Directive 2003/86/EC**

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**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.

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**Reception Directive<sup>6</sup>**

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**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?

If it is obvious by appearance and/or mannerisms an asylum seeker will face harassment in detention. The problems would be caused both by other inmates and policemen.

62B) Are the authorities aware of these problems?

No  Yes. How do they react?

It would depend on the officer in charge.

62C) Does a complaints mechanism exist?

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<sup>5</sup> Family Reunification Directive:

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

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

No

Yes. Is it effective?  No  Yes

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

No

Yes. Please explain

Asylum Seekers can reside anywhere in Cyprus and in private accommodation. If they do not have funds to sustain themselves they can apply for social benefit and in such a case they may be referred to the one existing reception centre, however this center can hold approximately 100 persons. If there is no availability, which is often the case, the asylum seeker will receive social benefit and can reside in private accommodation. Although such a situation has not arisen, in accordance with our experience we believe that if an LGBTI individual was sent to the reception center and there was no adequate separate accommodation, with the intervention of an NGO or legal representative the social welfare would accept to allow the individual to reside in private accommodation due to the special circumstances.

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

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**Any other issues**

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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.

There is a general societal stigma against LGBTI individuals and issues in Cyprus, mainly due to the small size of the island and the conservative views of the population. As a result the majority of Cypriot LGBTI are closeted and there is no activism on LGBTI issues nor do individuals take a stance on issues that concern them in fear of being exposed to their community and family. At the end of 2010 the first LGBTI organisation was founded but as it is now being legally established it will take time for it to have an impact on relative issues. This general attitude of the population towards LGBTI issues has a direct effect on LGBTI asylum seekers as it affects the way in which their cases are perceived, examined and decided on. In addition it leads to the lack of development of policies, practices and training on LGBTI related issues.

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.