

FLEEING HOMOPHOBIA

QUESTIONNAIRE

European Research Project

FLEEING HOMOPHOBIA, SEEKING SAFETY IN EUROPE,

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

Introduction

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

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

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

Guidance to the questionnaire

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

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

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

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

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

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

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

Thank you very much!

Best regards,

Sabine Jansen, COC Netherlands

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General

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

- LGBT activist for 20+ years in LGBT Denmark (former LBL) (including chairperson and spokesperson)
- Close collaboration for 10+ years with Danish Refugee Council (incl. board member)
- Former member of Refugee Appeals Board (2000-20002)
- Counselling of LGBT asylum seekers for 15+ years

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

- The 2009 study *Disturbing Knowledge* made mainly by myself and Mary Lisa Jayaseelan from Danish Refugee Council.

The study covers 147 cases presented to the refugee appeals board in the period 1990-2007. In the appendix 42 credible cases are described in details. These cases will be referred to below as e.g. "Russia (2002)" identifying the case in the appendix.

The report can be found on our website:

<http://www.lgbt.dk/uploads/media/DisturbingKnowledge.PA.01.pdf>

as well as on the website of the Danish Refugee Council:

http://flygtning.dk/fileadmin/uploads/pdf/Saadan_hjaelper_vi_PDF/asyl_PDF/disturbing_knowledge.pdf

In answering 1) c) below affirmatively I am referring to my own studies, notably *Disturbing Knowledge*.

I should mention, that all my work is voluntary and unfinanced (except for my membership of the Refugee Appeals Board, 2000-2002).

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 Danish Refugee Council (<http://www.drc.dk/>) maintains a database of all decisions by the Refugee Appeals Board. DRC is a major NGO with an asylum section, which helps asylum seekers and asylum lawyers, and which is appeals body for the manifestly unfounded procedure. The database only contains cases from the Refugee Appeals Board, and thus only cases which were rejected by Immigration Service.

We don't have any information on LGBT cases, which were approved by Immigration Service. It should be mentioned, that typically approvals are rather scarcely explained - thus it is usually difficult to understand, what was the precise reason for approval. (This opinion is based on non-LGBT cases.)

I have two times made a study of the LGBT cases in the database:

- In 2001 on a call from UNHCHR to provide information on persecution of LGBT persons

- In 2009 in a study published at the Worlds Outgames 2nd International Conference on LGBT Human Rights

I have a very close work relation with the Danish Refugee Council: They e.g. put me up for one of their places in the Refugee Appeals Board (we were removed from the board when the right wing government took charge in 2001).

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

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

4

What are the main issues in these cases?

There are very few cases concerning lesbians and bisexual women in the study. In general there are more male than female applicants, no less in the LGBT- cases. Lesbian women face severe stigmatization and exclusion and probably often have no means to organize a flight.

In an Iraqi (2004) case the application was rejected because the sexual orientation of the applicant was not known to the authorities, and homosexuality is not criminalized in Iraq.

Three cases are described in Disturbing Knowledge:

- Persecution (including rape) by private parties complaining over un-islamic behaviour. Ignored by authorities. The case concerns two sisters who do have a sexual relationship, but who do not identify as lesbians. Rejected (Kazakhstan (1993))
- Forced marriage, fear of honour killing. Rejected (Russia (2000))
- Detention and repeated rape by prison officers. Refugee status (Romania (1994))

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

Almost all cases are gay cases. It is difficult to distinguish between cases of gays and bisexual men, as in the latter cases only the homosexual part of the case is relevant and considered. Thus, bisexual cases are actually treated as homosexual cases.

What are the main issues in these cases?

This is an extract from Disturbing Knowledge:

There are some distinct patterns. The vast majority of the cases are from SNG states, Middle East and Eastern Europe. There are no cases from the Americas except for a withdrawn case from Cuba.

[...]

SNG AND GEORGIA

Findings

The early cases illustrate the conditions during the Soviet regime. Homosexuality was criminalized and this was used for oppression. In most penal codes in the area, homosexuality was decriminalized in mid 90s.

During the time of criminalization, there is a number of recurring “Soviet style” findings:

- Gay men were often referred to mental institutions when drafted, and here they were subject to medical treatment including injections and electroshock therapy.
- Typically gay men did not get the necessary papers to get access to education and work.
- If doing military service, homosexual men were often sexually abused by other soldiers and officers.
- Gay men were usually threatened to inform on other homosexuals.
- Because of the criminalization homosexuals were victims of criminal offences, against which they could not defend themselves nor obtain protection.
- Homosexuals were extensively exploited for bribes.
- Often KGB was involved in the repression and exploitation.
- Often homosexual men were victims of sexual assaults by private parties or persons from authorities.

The picture is the same throughout the region. After decriminalization there is still evidence of assaults from private parties and lack of protection by the authorities. There is much intolerance and discrimination.

[...]

Decisions

Before decriminalization: Typically, if the applicant had been imprisoned the Refugee Appeals Board granted refugee status. There are cases though, which were rejected, because the harassment, exploitation and discrimination was not considered to constitute persecution.

Immediately after decriminalization the Board refers applicants to seek the protection by local authorities.

In a case from Russia (2003) the applicant complained to local and regional authorities. The application was rejected because the applicant did not complain to national authorities.

In a case from 1992 the partner of an applicant got refugee status in consequence of the applicants refugee status. Thus their family relation was recognized even though their relation of course had no legal foundation in their countries of origin.

In some of the rejections of the Board, the applicants are advised to move to larger towns, where they presumably can find a sub- culture, which is supposedly thought to help the applicants not to

be victims. Technically the Board refers the applicants to some kind of protection by some diffuse perceived sub- culture.

EUROPE

Findings

The European cases are from the old Eastern European and Baltic countries.

Basically the kinds of findings are similar to those described for the SNG countries, though most of the cases were less aggravating.

[...]

Decisions

Many of the applicants are referred to seek protection in their home countries through higher authorities.

In a Romanian case part of the grounds for rejection was the expected decriminalization, though it had not happened at the time of the rejection.

MENA AND TURKEY

The majority of the cases from this region are from Iran.

Most of these cases concern applicants, whose sexual orientation has become known to the authorities, and who now fear the possible consequences.

A case mentions a situation from the times of the Shah, when minors were imprisoned for homosexuality in a prison for children.

The general picture drawn in the cases is of a society, where it is dangerous to be homosexual because of risk of imprisonment, maltreatment and possibly execution. Thus homosexuals are not open.

There are examples on use of torture against prisoners. There is mentioning of rape by police officers and basijs.

There is not much information to take from the cases. In many cases most of the information is rejected as not being credible. In some cases all information is rejected except the single key issue – i.e. that the authorities know the applicant is homosexual. In two cases refugee status was given with next to none credible information.

In a large number of cases, which were all lost by the applicant because they were not found credible, there is a recurring story about the applicant and his partner having sex and some

family member opening the door seeing them. The story appears in many cases from Iran but not from other countries. Before dismissing the story on lack of credibility it should be considered, that this situation actually happens often anywhere in the world, especially in societies where the different generations live together, e.g. because it is common to live with the parents until marriage. While it is embarrassing everywhere, it would be very few places it constitutes an asylum motive. Thus it would not necessarily appear in cases elsewhere.

Decisions

In 1995 there was a case, where convention status was given. The applicant had been imprisoned three times suffering torture, and a fourth sentence would result in death penalty.

This is the only case, where the Board granted convention status. In a few subsequent cases, the status type was discussed, but the was always secondary status.

At the turn of the century one sees decisions, where evidence is being rejected, and then there is an addition saying that furthermore, homosexuals are not that persecuted in Iran. This was based on different background materials.

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 are a number of (male) cases, where the applicants identify as bisexuals. These are evaluated as cases of homosexuality, thus considering the 'homosexual part' of the applicant only.

There are cases, where the asylum motive is homosexual acts in the country of origin, while the male applicant is now living with a woman in Denmark. An applicant was granted asylum in such a case.

d) Did you find transgender asylum cases?

No

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

What are the main issues in these cases?

In the study 3 cases of transgendered applicants were found. Since the study I have been

consulted in two asylum cases by transgendered applicants. One of them told, she asked for hormones because she was presently in treatment and the treatment should not be interrupted. The doctor in the accommodation centre thus prescribed hormones for her.

From Disturbing Knowledge:

There are but very few cases of transgendered applicants. This is remarkable considering the extent of persecution throughout the world.

There are three cases: Russia (2003), Slovakia (1999) and Turkey (2000). There are a number of appalling similarities between the cases. The applicants were subject to massive stigmatization

and exclusion in society, and to brutality and sexual abuses by the police. And they were all rejected by the Board.

[...]

The rejection of the cases is based on an assumption, that the authorities in the countries of origin have the means and intentions to protect against such evidently criminal offences.

e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

In the three transgender cases I cannot distinguish if any of the applicants were intersex.

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

1 Iran (9 Status + 29 Rejected + 2 Withdrawn = 40 Total)

2 Russia (3 Status + 21 Rejected = 24 Total)

3 Romania (1 Status + 15 Rejected = 16 Total)

4 Kazakhstan (1 Status + 4 Rejected = 5 Total)

5 Ukraine (5 Rejected = 5 Total)

6 Lebanon (5 Rejected = 5 Total) One of these cases were later resumed and resulted in status

7 Lithuania (4 Rejected = 4 Total)

8 Georgia (3 Rejected = 3 Total)

9 Bosnia & Herzegovina (3 Rejected = 3 Total)

10 Iraq (1 Status + 2 Rejected = 3 Total)

11 Israel (3 Rejected = 3 Total)

12 China (3 Rejected = 3 Total)

I have provided an overview of all cases in the study in a separate spreadsheet.

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.

But I am aware of LGBT people who do not apply because they are afraid not to succeed with the application.

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)

There is only a single decision resulting in convention status.

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?

Before 2002 the subsidiary protection was the 'de facto status'. As of 2002 it is called 'protection status'. The rights of the refugee are the same no matter if they have convention status or subsidiary status, except for their passports.

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.

Humanitarian reasons are used exceptionally seldom in Denmark. I know of no LGBT cases.

b) other grounds (discretionary leave)?

No

Yes. Please quantify and explain.

I do know one case under the quote system: Denmark receives 500 refugees per year assigned by UNHCR, i.e. their asylum claim is not treated by Danish authorities. A few of the 500 places are reserved to critical cases, e.g. persons escaping from torture who have severe medical and personal needs. One such case was a gay man.

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.

But there are cases where the events of the case took place, when the applicant was not of the age of consent, e.g. Disturbing Knowledge, Romania (1995), Iran (2000), Iran (2002 I), Iran (2002 II)

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.

- Myself

- Danish Refugee Council (<http://www.drc.dk/>). They assist asylum seekers. Because of the long-time commitment of LGBT Denmark, which is a member organisation of Danish Refugee Council, they are well aware of the issue.

- I know Hiv-Danmark (<http://www.hiv.dk/index.php?id=256>) has counselled cases concerning hiv-positive asylum seekers. They do not do legal counselling, they provide psycho-social counselling.

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

The main problem is to be known to the potential users. I only communicate with a rather small fraction of the LGBT asylum seekers. Probably the hiv-positive are more often made aware of Hiv-Danmark by medical staff, whereas other LGBT asylum seekers may go through the whole procedure without coming out to anyone but the authorities who decide the case.

This is a severe problem as most asylum seekers have no understanding of the procedure. Quite often they damage their case substantially, e.g. by not reporting issues on sexual orientation from the beginning of the case.

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

- Danish Refugee Council has a legal section, which also do counseling. They are specialized legal advisors.

- LGBT Denmark has no staff at all.

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

No Yes. Which organisation(s)?

LGBT Denmark is the main LGBT organisation in Denmark, and the only one providing legal counselling.

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

No Yes. In what form?

From my time in the Refugee Appeals Board I know which lawyers are good and which to avoid. I always suggest a lawyer to the asylum seekers. Lawyers regularly contact me for help with background information.

If I need to address UNHCR, I do it through Danish Refugee Council, which has a very good working relation with UNHCR.

e) Do they have contact with the government?

No Yes. In what form?

LGBT Denmark is a very active lobby organisation. In the area of refugees, however, the political climate is very difficult. We have not been able to affect the law to include specific mentioning of sexual orientation and gender identity.

We do not address the ministry in asylum cases, as they do not have any mandate to interfere.

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

Danish Refugee Council has a network of lawyers with expertise in the area of asylum. Through that, they may inform about LGBT issues, e.g. our publication of Disturbing Knowledge.

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.)

All asylum seekers have the possibility to talk to the legal advisors of the Danish Refugee Council. The advisors visit the asylum centres on a regular basis. Only few asylum seekers, however, use this opportunity.

Asylum seekers, who seek information themselves, e.g. by Danish Refugee Council or LGBT Denmark, of course get all help they need.

Sometimes it is the nurses of the asylum centres who spot, that a person may be homosexual and they often help with a contact to LGBT Denmark.

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.

The negative case is known: When e.g. Romania decriminalized homosexuality the cases were rejected by the Refugee Council, and soon a practice was stipulated. Thus subsequently asylum seekers from such countries were extracted in the manifestly unfounded procedure.

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

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?

[Discussion of directives:

First I should note the special situation of Denmark concerning collaboration within EU concerning justice and home affairs. Denmark participate on intra-national level but not on super-national level.

(Decision on Edinburgh European Summit, December 1992)]

In the interviews the applicant is asked to describe different circumstances concerning the case, e.g. social life, meeting places, personal life.

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

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

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

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?

Typically it is the interpretation of the body of information as a whole. If the case seem not credible in general, a claim of homosexuality should be substantiated by good explanations or sources, e.g. letters or other documents. In asylum cases there are often no sources.

In some cases a verdict or a summon for the court is presented. Such documents are typically scrutinized by a special unit to assess if it is genuine. Often it is send to the Danish representation in the home country to be assessed by local expertise (of course independent of the local authorities).

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

Sometimes the authorities misinterpret information. A case was rejected by Immigration Service as totally non-credible, among other reasons because the applicant told he took a ride in a tourist bus in Copenhagen to find the LGBT scene, and that he was subject to telephone harassment but after getting a devise to show the telephone number of the caller the harassment ceased. They did not understand he was looking for rainbow flags in Copenhagen, and that number showing devises in his part of the world gives off a signal to the calling part, who thus know a devise is in use.

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

In general the authorities accept if an applicant state he or she is homosexual. Only if the applicant seem unconnected with the story told, it is doubted.

I know of no cases where gender identity was doubted.

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)?

Decisions and/or case law. Good/bad practices

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

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.

Only insofar they concern the case.

In case of rape there will be questions concerning this. I have never seen LGBT cases with couples, where one part had been raped. I saw many cases among heterosexual asylum seekers in my time in the Refugee Appeals Board. In such cases the lawyer of the applicants could ask the partners being interviewed separately by the board, in case the husband did not know of the rape.

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

Only if it is essential to the case, e.g. the applicant states he is persecuted because of the way he dresses or because he don't want to cut his hair.

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.

This is usually done, not the least because it gives an opportunity to relate to background information.

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

It is well understood that such things are not incompatible. In one case the applicant got refugee status because of homosexual conduct in his home country and while living with a women in Denmark.

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

- The Refugee Appeals Board maintains its own COI database based on other COI sources.
- Danish Refugee Council work with COI and provide assistance to lawyers etc. They regularly issue overview COI documents on countries most relevant to cases in Denmark.

None of these are specifically concerned with LGBT issues.

The Refugee Appeals Board promptly required Disturbing Knowledge after I presented it on national tv.

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.

They are hardly trained. But they are aware. Danish Refugee Council participate in fact finding missions with Danish authorities.

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

No

Yes. Could you describe this information?

A decade ago a Swedish COI report said, that homosexuality was actually no big deal in Iran, and this was used by the Refugee Appeals Board to reject applicants. Typically the cases were weak, but they now got a conclusion, that even if the applicant was gay, this would not be a problem. Subsequent Danish fact finding missions dismissed the idea, that homosexuality was not a problem, mainly because of the lack of any non-government-controlled sources.

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?

The asylum section of Danish Refugee Council can assist to some extent.

I regularly assist lawyers. I collect COI from different sources and pick out excerpts for ready use in the written statement of the lawyer.

There is no payment.

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

Our work is used only within the written statement of the lawyer. The lawyer will always refer to original COI documents, not a Danish NGO digest. Some of the COI documents available are from major international NGOs, e.g. Human Rights Watch, which are considered credible.

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

All COI documents are evaluated for credibility. But evidence from COI databases are not rejected.

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.

The example mentioned above concerning Iran is such a case.

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.

When former Soviet sphere countries decriminalized homosexuality applicants were immediately required to seek protection by local authorities.

The Refugee Appeals Board will expect to see some kind of evidence, or - if that is not available - then to have a good explanation on lack of evidence in COI documents.

If I am involved and I cannot find COI documentation, I always discuss this with the applicant and ask for his or her help in providing evidence. I recently had a trans-case from Central America, where the documentation in the databases was somewhat scarce. I got the applicant to find newspaper extracts etc. (in Spanish) which we supplied as evidence.

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.

Typically the situation of lesbians are significantly less documented than for gay men - and often homosexuality is not criminalized for women. However the number of lesbian cases is very low, and thus there are few experiences.

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

I don't recall any 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

The situation is quite common, that LGBT people come out late in the procedure. This is always a problem, because it can be difficult to distinguish the genuine LGBT applicants from applicants who 'add homosexuality' to their claim to improve chances for refugee status. A large number of applicants from Iran have been dismissed e.g. due to non-credibility of their claim of homosexuality.

Thus, if an applicant come out late in the case, it is necessary that the lawyer address this fact and explain the reason for the late arriving information.

Example: Iraq (2004)

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

Criminalisation is not sufficient for asylum. The Danish authorities may decide, that if the homosexuality/bisexuality of the applicant is not known to the local authorities, the case is rejected. Such decisions are known from Iran (Iran (2000)) and Algeria (Algeria (1992), Algeria (1998)).

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?

Often persecution will be from non-state actors, e.g. family. In the cases, in which asylum was granted, a combination of state and non-state actors has been involved. In non-LGBT cases it is common (I have co-decided such cases myself.)

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

Not enough information to answer. In the few lesbian cases it has been non-state actors (Kazakhstan (1993), Russia (2000)) as well as state actors (Romania (1994)). In the transgender cases it has been state (Slovakia (1999), Turkey (2000)) as well as non-state actors (Russia (2003)).

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.

Cf. the two peculiar Algerian cases (Algeria (1992), Algeria (1998))

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.

Russia (1994), Albania (2002), Lithuania (1997), Turkey (2000)

Russia (2003)

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

When former Soviet sphere countries decriminalized homosexuality claims were rejected immediately before any evidence for proper protection by the authorities could be obtained (e.g. Russia (1994)). In Roumania (1995) the decision made use of the expected decriminalisation in near future.

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?

That would be a very general conclusion and as such it would hardly end up in a decision. It might possible be used to sustain more specific informations in the case.

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?

In practise the Refugee Appeals Board has proposed an internal flight alternative - though without stating directly that this was the case, see Russia (2003) :

"The Board found, that according to background information there was no reason to expect systematic persecution of transgendered persons in Russia, neither by private persons nor by the authorities.

The Board thus referred the applicant to seek the protection of higher authorities in Russia and suggested she move to a larger city, where it could be expected there would be a possibility to find a community of persons with her sexual orientation (sic.), and where it is less likely the applicant be victim to illegal abuse by the police."

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

From the decision in Russia (2003) just mentioned, it seems that the board consider it advisable not to be open to the police.

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...)?

All of the above. Disturbing Knowledge is a compilation of this information, and I will refer you to the report.

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?

Actually none of these would be recognized per se if they are - or must be considered - a criminal offences in the home country and homosexuality is not criminalized.

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).

Cf. 37B

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.

Hardly.

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.

Though there is an old decision, Russia (1992), where non-convention grounds have been ignored specifically.

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.

Iran (2000). There were a number of Iran cases at that time, of the same character.

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?

There was a single decision giving convention status, Iran (1995), but all subsequent positive decisions have been given secondary status (de facto status and protection status). Danish authorities are exceptionally reluctant to interpret any group of people under the 'social group' term.

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?

Considering the transgender cases in Disturbing Knowledge, it seems that no matter how aggravating the persecution, the applicant is returned to apply for the protection by higher authorities. Sexual orientation is criminalised in some countries, and the criminalisation has seem essential to the recognition of refugee status. Since transgenderism is hardly criminalised anywhere it seem difficult to gain approval of the application.

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

Danish decisions seldom refer to conventions or law.

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

There is no such thing in the law.

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.

Withdrawal would only happen to larger groups of refugees, e.g. from Afghanistan, upon improvement of conditions in the home country.

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

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

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

Only to some extent. Depends also on the availability of translators.

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

Again, to some extent.

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.

It is the manifestly unfounded procedure.

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

No Yes. Please explain.

From Disturbing Knowledge:

The Danish asylum procedure

Submission of the application for asylum

When an asylum seeker enters Denmark he or she must register with the police. The Danish National Police Commissioner's Office (Rigspolitiet) is responsible for establishing the identity of the asylum seeker. The police will take a statement from the asylum seeker, which includes a description of the travel route used.

On the basis of the police report the Immigration Service (Udlændingetjenesten) makes a decision to one of the following:

- (a) send back or transfer the asylum seeker another EU- country, or
- (b) reject to a 'safe third country', or
- (c) that Denmark will process the asylum application

Three procedures

If the Immigration Service decides that an asylum application can be processed in Denmark, the Immigration Service will determine whether asylum can be granted. The Immigration Service will decide on this after an in- depth interview based on an application form in which the asylum seeker explains the reason for seeking asylum in Denmark.

On the basis of the application and the interview the Immigration Service decides which procedure the application shall be processed in:

- (a) Normal procedure, or
- (b) Manifestly unfounded

Most cases are processed according to the normal procedure. This means that if the case is rejected in the Immigration Service the case is automatically referred to the Refugee Appeals Board for a final ruling.

In the manifestly unfounded procedure – which applies to cases where the Immigration Service finds that the applicant is clearly not eligible for asylum - the case is referred to the Danish Refugee Council (DRC), which is a private, humanitarian organisation. If the DRC finds that the case is not manifestly unfounded the applicant will have a right to appeal. If on the other hand the DRC agrees with the evaluation from the Immigration Service, the Immigration Service will make a decision in the case with no right to appeal.

If granted asylum

If an asylum seeker is granted asylum in Denmark he or she will receive a residence permit, be asked to live in a particular part of Denmark decided by the Immigration Service and placed under a three- year introduction programme, which among other things includes language and culture classes.

Rejection

If the rejection of the application for asylum is final the asylum seeker must leave the country immediately. If a rejected asylum seeker refuses to leave voluntarily the police is responsible for making sure that the person leaves Denmark, if considered necessary by the use of force.

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.

LGBT Denmark has repeatedly but unsuccessfully asked the authorities to ensure, that same-sex couples will not be returned to safe countries, if a non-persecuted partner cannot obtain consequence status due e.g. to lack of legal recognition of same-sex relations. (Third country or Dublin procedure)

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.

Family Reunification Directive⁵, Council Directive 2003/86/EC

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.

Actually I have no cases, but in one case the partner got status in consequence of their long-time relationship in their home country. Thus, this is not family reunification but consequence refugee status.

Family reunification is possible in common (non-asylum related) cases.

⁵ Family Reunification Directive:

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

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?

Typically by other applicants in accommodation centres. We have had cases, where the applicants had to be moved from one center to another to evade conflicts.

62B) Are the authorities aware of these problems?

- No Yes. How do they react?

As mentioned by moving the applicants elsewhere. In a recent transgender case, the applicant got a single room, which is highly unusual for singles in accommodation centres. (I answer No in 64, because this must be considered exceptions, though the accommodation centre administrators will do what they can to avoid conflicts.)

62C) Does a complaints mechanism exist?

- 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

However the applicants are (usually) not internalized in the accommodation centres. Many live with friends outside the centres, and come to the centres only to pick up money and report their presence.

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?

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

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.

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.