

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

General

Name: Gábor GYULAI

Telephone number: + 36 1 321 4323

E-mail address: gabor.gyulai@helsinki.hu

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

My short bio:

Gábor Gyulai has been working in the field of asylum since 2000. After working for two years at the UNHCR Representation in Hungary, he joined the Hungarian Helsinki Committee, where he currently works as the coordinator of the refugee programme and as a human rights trainer. His main fields of research and professional interest are evidence assessment, country information (COI) and medico-legal evidence in asylum procedures; statelessness; intercultural communication; family reunification; legislative advocacy and human rights/refugee law education. In recent years, he has trained lawyers, judges, asylum officers, police staff and social workers on these issues in fifteen European and Latin American countries. He is member of the “Asylum Systems” policy core group of the European Council on Refugees and Exiles (ECRE) and the European COI Training Network, provided expertise in the European Asylum Curriculum (EAC) project and a global expert consultation process on statelessness under the auspices of the UNHCR. He also collaborates with the Open Society Justice Initiative as consultant on statelessness-related issues.

Specific experience in LGBTI:

In the framework of his daily work, the researcher participated in several asylum procedures involving gay asylum seekers (providing advice, performing COI research, preparing materials, etc.). He trained Hungarian asylum officers, lawyers and judges on the gender concept, as well as specific related issues such as female genital mutilation. In 2009, he gave a lecture at a conference in Spain on the gender aspect of credibility assessment and the establishment of sexual orientation in asylum procedures in Central European countries (including phallometry). The HHC has been playing a leading role for years in advocating for better and more sensitive asylum procedures for LGBTI asylum-seekers in Central Europe.

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

- information provided by the Office of Immigration and Nationality - OIN (Bevándorlási és Állampolgársági Hivatal - BÁH);
- data provided by NGOs operating in Hungary and dealing with asylum-seekers or LGBTI persons;
- independent lawyers of the Hungarian Helsinki Committee's network, who assist asylum-seekers;
- decisions issued by the Metropolitan Court (Fővárosi Bíróság) which until recently had exclusive competence over asylum cases, interviews with judges ruling in asylum cases;
- available decisions issued by the Office of Immigration and Nationality;
- the HHC's own professional experience;

Frequency of LGBTI asylum claims

1) Statistics on LGBTI asylum seekers interview

- 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.

According to the OIN, asylum seekers who indicate their sexual orientation as the reason of persecution are considered as "belonging to a particular social group". Therefore, claims based on sexual orientation cannot be identified as such in the statistics. The OIN has nevertheless informed the HHC that sexual orientation is not a frequent ground for seeking asylum in Hungary. According to its estimate, approximately 20-30 such cases were known in the last five years in Hungary. This

information is in line with the HHC's estimate.

Two court decisions - issued by the same judge in 2008 and 2009 - expressly stated that, based on the 1951 Refugee Convention, homosexual orientation is not a ground for protection. This is however not the general position of administrative authorities or the judiciary.

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

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

There are no official or otherwise comprehensive statistics.

The HHC has knowledge of one Liberian, one Nigerian and two Nepali lesbian women who claimed asylum in 2008 (the Liberian) and in 2010 (all the other three).

What are the main issues in these cases?

All four clients referred to persecution because of their sexual orientation.

1. The Liberian woman fell in love with her female friend. Her partner's husband wanted to kill the applicant as revenge. In the end, the applicant's brother was killed instead of her and she escaped from Liberia. The woman later got married with a man in Ghana and gave birth to children. The applicant referred to her sexual orientation only in the judicial review phase of the procedure. Based on this and other statements which were deemed to be superficial and incoherent, and in light of the applicant's marriage and cohabitation with a man after the recognition of her lesbian sexual orientation, the authority questioned her credibility and stated that "it is evident that if the applicant was a lesbian she would not marry a man and would not live with him for several years."

2. The Nigerian woman left her country of origin because she was persecuted by her family and social environment due to her sexual orientation. The applicant claimed that she was beaten by her parents and brought to the imam who imprisoned her for a few days before issuing a decision for her to be stoned. This was the reason why she finally decided to escape. Based on the country information gathered, the psychological expert's opinion regarding the applicant's lesbian orientation, the low risk of eventual persecution in the country of origin, and the authority's negative credibility finding the applicant was not granted any other form of international protection.

3. Two Nepali asylum seekers arrived together in Hungary after living for four years in Israel. As a reason for their flight from their home country – apart from the threats of the army – they alleged being outcast by their families and the society due to their sexual orientation. The OIN questioned the applicants' credibility and it did consider the situation in Nepal severe enough for granting any sort of protection.

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

There are no official or otherwise comprehensive statistics.

14 cases could be identified through the HHC's network (the only organisation providing free-of-charge legal assistance to asylum-seekers in Hungary) and 2 more OIN decisions from other sources. Anecdotic information could be retrieved about five other LGBTI persons who applied for refugee status in recent years (there may be some overlap between the two groups).

What are the main issues in these cases?

In most cases, the applicants have suffered physical aggression from individual citizens or members of (extremist) groups. In general, the applicants report being afraid to turn to the police or having their complaint rejected or ignored when doing so. In some cases homosexual acts are felonious according to the penal law of the country of origin. Applicants often reported being outcast by their families because of their sexual orientation.

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?

Only one such case could be found. An Algerian male applicant revealed his bisexuality only in a later stage of the asylum procedure, while in earlier phases he had referred to other grounds of persecution. He claimed that he would have been harassed by people if he had shown his sexual orientation and he would have been forced to conceal it. The applicant, however, did not experience direct persecution.

The applicant's credibility was questioned because of his contradictory statements regarding his earlier life and the circumstances of his flight from the country of origin. The authority explicitly stated that the applicant was not bisexual.

In another case, an Algerian applicant significantly altered his narrative about whether he was gay or bisexual. He more often claimed to be gay rather than bisexual, therefore this case was not categorised as bisexual.

d) Did you find transgender asylum cases?

No

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

What are the main issues in these cases?

The HHC has knowledge of a case of an Algerian couple in 2001 or 2002, formed by a gay man and a male-to-female transgender person. Both of them were granted asylum.

e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

The HHC was informed by the police on one recent case. The police caught an intersex person who illegally crossed the border of the country. The officers were uncertain whether they should place the person in the detention facility for men or women. The officer in command declared that this should be decided according to the person's preference and the result of a medical examination. In the end, the intersex asylum-seeker was deported to Austria.

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

As mentioned above, the asylum authority does not produce official statistics on this. Based on information, case files and/or decisions/judgments collected from lawyers, judges and the OIN, the following list could be prepared:

1. Algeria (7)

2. Tunisia (3)

3. Nepal (2)

Côte d'Ivoire (2)

5. Nigeria (1 or 2)

6. Others: Iran, Turkey, Cameroon, etc. (1-1)

The HHC had previous knowledge about gay asylum-seekers from Afghanistan, Kosovo and Cuba, but due to the lack of detailed information or case files, these cases could not be included in the present research. In addition, anecdotic information suggests that the number of Iranian applicants in reality has been higher, but no case files or concrete names could be found.

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.

No, but the HHC experienced at least 3 cases in which a gay asylum-seeker based his claim on other (false) grounds, i.e. religious conversion, because he was afraid of revealing his sexual orientation (the true ground for seeking protection). The "coming out" in these cases was a result of professional legal counselling and the HHC's information leaflet for asylum-seekers (which

explicitly refers to sexual orientation as a valid protection ground). The “coming out” in at least one procedure resulted in recognition of refugee status. In another case, the applicant’s homosexuality was not believed because he only revealed this in the third asylum procedure and his narrative contained several contradictions.

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 recent years, the OIN has in practice accepted persecution due to sexual orientation as a ground for protection. Asylum-seekers received protection if they argued that their sexual orientation was a reason for their persecution as a member of a particular social group. Positive decisions do not contain justification. However, it seems that such cases refugee status is indeed granted on the basis of membership in a particular social group. If the applicant’s narrative is deemed credible and country information supports the statements and shows that there is an individualised (!) risk of persecution, the authority grants refugee status merely based on the sexual orientation or gender identity.

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.

The Hungarian Helsinki Committee (Magyar Helsinki Bizottság, www.helsinki.hu) is the only NGO providing free legal assistance to asylum-seekers in Hungary (at all places where asylum-seekers are detained or accommodated). Even though the HHC is not a LGBTI organisation, it strives to ensure that all LGBTI asylum-seekers have access to protection in Hungary (e.g. by explicitly referring to this issue in its information leaflet available in ten languages). In addition, the HHC has been particularly active and has played a pioneer role in raising awareness about this issue in Central Europe.

I. Other NGOs active in the field of asylum (information obtained from publicly available sources, e.g. websites)

1. Menedék Migránsokat Segítő Egyesület (Menedék - Hungarian Association for Migrants)

Menedék was established in 1995 as a civil initiative. The Association operates as a non-profit organisation, independent from governmental institutions. Its objectives are to represent international migrants towards the majority society; to promote the social, and cultural integration of those refugees and migrants who are planning to stay in Hungary by means of targeted programmes and projects; to represent the interests and rights of migrants towards political, administrative, governmental and municipal bodies and in the media; to step up and provide expertise for the elaboration of Hungary's anti-discrimination and migration policy; to make migration-related statistical data and research available primarily for organisations trying to help migrants or researching the topic of migration. In order to achieve these goals the Menedék Association organises and coordinates social, informational, mental health programmes promoting the social integration of refugees and migrants staying in Hungary;

provides personal assistance to migrants in order to promote their integration and to protect their rights; takes part in the elaboration of decisions relating to migration policy; organises training activities to strengthen professional competence of those involved in refugee affairs. In the framework of these programmes Menedék deals with LGBTI asylum-seekers as well.

www.menedek.hu

2. Cordelia Alapítvány a Szervezett Erőszak Áldozataiért (Cordelia Foundation for the Rehabilitation of Torture Victims)

The Cordelia Foundation was established in 1996 as the accredited member of the International Rehabilitation Council for Torture Victims. The Foundation received the public benefit status in 1998. Its aim is to improve the mental state and quality of life of severely traumatised asylum-seekers, refugees and their families, through complex psycho-social rehabilitation. The treatment of the psycho-social and somatic problems of this unique target group is a public-benefit task, and the Cordelia Foundation is the only civil organisation in Hungary which serves this role. The professional team of Cordelia consists of therapists with multicultural experience and training, five psychiatrists, one psychologist, and one non-verbal therapist, who generally treat the refugee clients at the reception centres. The methods used by the therapists have been internationally acknowledged, and the activity of the therapists is supported by a social helper, and three to five trained interpreters. In 2009, 831 clients were benefited by its services. The foundation regularly provides trainings and supervision for professionals working with refugees. The UNHCR rewarded the work of Cordelia with the 2004 “Asylum prize”.

www.cordelia.hu

3. Artemisszió Alapítvány (Artemisszió Foundation)

The Artemisszió Foundation has been operating since 1998 as a non-profit organisation of public interest. The Foundation aims at the application of theoretical anthropologist knowledge and results of research to foster social and personal development, allied at promotion and use of the theory and practice of intercultural communication. The goals of the Artemisszió Foundation are to encourage continuous dialogue and interaction between culturally, ethnically and socially diverse groups and to foster their mutual understanding; to support the social integration of socially and culturally disadvantaged groups; to strengthen scientific and cultural relations internationally; to develop and disseminate intercultural training courses, educational materials and methods. The mission of the Foundation is to provide an opportunity for the widest possible section of society to take part in activities that develop competences that

strengthen relations among people, improve communication and conflict-resolution skills, and contribute to the development of tolerance, mutual understanding and cooperation. For the foundation it is a priority to include socially disadvantaged groups - the unemployed, people living in rural areas, the Roma and immigrants - to increase their equal opportunities and to fight social exclusion.

www.artemisszio.hu

4. Magyar Ökumenikus Segélyszervezet (Hungarian Interchurch Aid)

The Hungarian Interchurch Aid (HIA) was founded in 1991 and since then it has gained considerable international reputation. Its goal is to provide assistance to those in need regardless of gender, nationality and religion. The HIA's activities are based on openness and adherence to humanitarian principles and international development standards. The HIA - as a member of numerous international (umbrella) organisations - has gained wide experience in humanitarian and development work. The activities of the HIA are divided into three areas: domestic social and development activity; international humanitarian and development activity; cases of asylum seekers and migration. Since 2008, the HIA runs different projects related to asylum cases: operating a shelter for unaccompanied children and young adults; training of childcare experts; and prevention of human trafficking.

www.hia.hu

II. LGBTI NGOs (information obtained from publicly available sources, e.g. websites)

1. Háttér Egyesület ("Háttér" Association)

The association was founded in 1995 and plays an important role in gay movements in Hungary. It aims at the organisation of supporting services, prevention of HIV/AIDS, community building and also awareness-raising among the general public on the difficulties and solutions for problems faced by LGBTI persons. The Háttér Association endeavours the protection of the LGBTI community's interests and the demolishing of the stereotypes towards their principal target group. Besides these activities the Háttér takes part in the organisation of cultural events, and it is very active in commenting public or political events.

www.hatter.hu

2. Labrisz Egyesület (Labrisz Association)

The Association is active in organising social events and informal meetings in lesbian and bisexual matters since 1996. It is the first and only lesbian association in Hungary. Its aim is to help the formulation of a society where women could freely choose their partner and lifestyle without fear. The association endeavours to strengthen the self-acceptance of lesbian and bisexual women and the visibility of this group in society. Labrisz also runs educational programmes in schools.

www.labrisz.hu

3. Patent Egyesület (Association against Patriarchy)

This association defending human right was founded in 2006 by experts dealing with the prevention of violence against women with the aim to create a society relied on equality between men and women. The association advocates with decision-makers for the introduction of legal reforms for amelioration of the situation of minorities – including sexual minorities.

www.patent.org.hu

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

The main problem is funding. All these NGOs are dependent on project-based funding, which results in lack of flexibility or of quick, demand-tailored action. Project-based financing also leads to overloaded administration and inflexible financial management. Projects are constantly endangered by the possible shortage of funding, which may limit effectiveness in some aspects.

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

All the above-listed organisations employ some paid staff. Besides the core permanent positions, staff is eventually recruited for temporary activities in projects. NGOs often work with volunteers as well.

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

No Yes. Which organisation(s)?

The HHC and Menedék are active members of the European Council on Refugees and Exiles (ECRE). Cordelia Foundation is an accredited member of the International Rehabilitation Council for Torture Victims (IRCT). The Háttér Association is a member of the International Lesbian and Gay Association (ILGA).

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

No Yes. In what form?

The NGOs providing assistance to asylum-seekers and refugees – especially the HHC, Menedék and Cordelia – are in regular contact with the UNHCR and cooperate with the UN agency on

various issues (joint advocacy, training, exchange of information and intervention in individual cases). There is an excellent and quite active working relationship between the UNHCR and these NGOs. In recent years, the HHC has been providing the UNHCR Regional Representation with information on problematic methods of “credibility assessment” in LGBTI cases in Central Europe (including phallometry).

e) Do they have contact with the government?

No Yes. In what form?

NGOs often have the opportunity to comment on draft laws (even though this is sometimes only a formality with no concrete impact). Other forms of contact are joint training activities, seminars, consultations, etc.

10) Special training for NGOs

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

No Yes

Refugee-assisting NGOs do not have regular training on LGBTI issues, given the very low number of relevant cases. However, attention towards this issue has increased recently. The first specialised LGBTI-focused training for lawyers was held in February 2011 by the Háttér Association. Several lawyers of the HHC attended this event.

The HHC – in the framework of a European project – held a two-day regional training seminar on the gender aspects of asylum in March 2011 in Budapest, with the participation of asylum authorities, NGOs, judges and UNHCR staff from Hungary, Bulgaria, Romania and Poland. The organisers dedicated half day to LGBTI issues and invited a professional trainer to this end. 5 HHC, 3 UNHCR and one Menedék staff member attended the event.

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

Even though the number of relevant cases is limited.

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

No Yes. Please provide the web address of the network

The Hungarian Helsinki Committee established and finances - with the support of governmental and EU funding - a network of lawyers specialised in asylum cases. The lawyers are not specialised experts in LGBTI issues, but they provide assistance in such cases as well and some of them have accumulated relevant expertise over the past years. Given the small number of LGBTI asylum cases in Hungary, there is not a compelling need for a specialised 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.)

An information leaflet prepared by the Hungarian Helsinki Committee in 2008 and available in 10 languages provides information for asylum-seekers concerning the asylum procedure in Hungary. This document explicitly mentions that sexual orientation/gender identity can constitute a valid ground for protection, helping asylum-seekers who are afraid to reveal such condition to understand that they can actually receive protection if they do so. Notwithstanding this positive practice, it is presumed that the provision of information should be further improved in this respect.

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

In Hungary, the sole relevant provision related to sex or gender can be found in Government Decree 301/2007 on the execution of Act LXXX on Asylum, which states that the applicant may request a same-sex decision-maker and interpreter.

According to the Office of Immigration and Nationality (OIN) there is no need to develop additional guidelines, instructions, circulars, etc. because of the low number of applications on the ground of sexual orientation or gender identity. The OIN nevertheless claims to take into account the UNHCR guidelines and international standards in its practice.

The National Police Headquarters informed the HHC that there is no existing legal document referring to the adequate treatment of LGBTI people (e.g. in alien policing detention).

The UNHCR guidelines on sexual orientation and asylum were translated into Hungarian and widely distributed by the UNHCR office.

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.

The UNHCR guidelines on gender and asylum were translated into Hungarian and widely distributed by the UNHCR representation in Hungary.

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.

According to the Office of Immigration and Nationality, there is no need to develop guidelines, instructions, circulars, etc., because of the low number of asylum applications on the ground of sexual orientation or gender identity.

The OIN confirmed that it does not use a “safe country list”; however, practice suggests the existence of a tendency to categorise certain countries as safe and others as unsafe.

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 judgement.

There is no tradition of “legal precedent” in the Hungarian legal system; courts’ decisions may nevertheless serve as a reference in future cases. Due to the limited number of LGBTI cases and the one-instance judicial review of asylum cases (with no higher courts involved), it was not possible to establish a tendency or to identify leading judgements.

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?

The Office of Immigration and Nationality first examines the asylum seeker's narrative and declarations. The officer asks the applicant questions about her/his life, individual circumstances, reasons for leaving and conditions when fleeing her/his country of origin. Although there is no pre-formulated set of questions to be asked, the investigated issues and the structure of the interviews show clear similarities in many cases.

If the authority finds significant and severe contradictions in the applicant's statements, sexual orientation or gender identity will not be examined and a decision will be taken based solely on the person's lack of credibility. Only in cases where the applicant is deemed credible will the OIN study her/his sexual orientation and the eventual persecution on this ground. With the applicant's consent, the OIN can initiate her/his psychological or psychiatric examination. In all relevant cases known to the HHC the applicant approved this examination. This practice is deemed discriminatory in comparison with cases where the alleged persecution is based on other reasons such as religion, political opinion, etc.

It appears that the OIN refrains from initiating a medical/psychological examination in cases of trans and clearly/visibly effeminate gay men asylum-seekers, but it would be difficult to provide concrete data on this practice.

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.

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>

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 majority of cases where sexual identity was not believed, the authority referred to an excessive number of contradictions in the narrative of the applicant regarding her/his personal circumstances (not only with regard to sexual orientation). Not revealing one's sexual orientation in the very first phase of the procedure is definitely considered a negative factor in credibility assessment. Heterosexual relationships and children born out of them – in particular if the heterosexual relationship was established after the “recognition” of homosexual orientation – were also grounds for questioning the credibility of asylum seekers.

The OIN can also use medical/psychological experts' opinion to support a negative credibility finding.

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

1. In the case of a Nigerian woman the OIN deemed it improbable that the applicant would use “Latin terminology” (sic!) such as “homosexual” given her educational background. The authority supposed that the applicant heard or invented the story of her homosexuality to obtain refugee status. The medical examination resulted in a finding of “strong feminine sexuality” (sic!). Other elements were also considered to undermine the credibility of the applicant.

2. In the case of two Nepali asylum seekers, the authority neither questioned the declaration of the applicants that they were lesbians nor requested them to undergo a medical examination. The authority refused to grant protection because considering that persecution was unlikely to happen in the country of origin.

3. In the case of a Liberian woman (see answer to question 3) the authority estimated that the applicant made incoherent and superficial statements regarding her lesbian relationship. The sexual orientation was questioned because the applicant married (and cohabited with) a man 15 years after she had first established a lesbian relationship. The applicant revealed her lesbian orientation during a later stage of the procedure. This fact was also understood by the authority as a sign of lack of credibility.

4. In the file of a Turkish asylum-seeker no reference was found about his homosexuality, even though the applicant had mentioned this to his legal representative as an element of his fear of persecution (in addition to his identity as a “liberal artist” and Armenian and Kurdish origin).

5. An Algerian applicant first talked about his bisexual orientation only in the course of his second asylum application, while his narrative was based on completely different grounds in the first

procedure. The authorities considered the late coming-out (in addition to other contradictions) as an evidence of lack of credibility.

6. A Tunisian asylum-seeker's credibility was questioned because his narrative was considered to contain an excessive number of contradictions with regard to dates, relations to Hungary and the migration target country of the applicant. For this reason, the authority did not further examine the applicant's alleged homosexual orientation.

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

See answer to question 18A, first case.

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)?

Supporting evidence is not formally required; it may however be helpful. In some cases the applicant's declarations (in light of country information) serve as a basis for granting asylum, but in others (probably in the majority) these declarations are subjected to "verification" by a psychiatric/psychological examination.

Decisions and/or case law. Good/bad practices

1) No supportive evidence required – examples

1. In the case of two applicants from Nepal, the OIN took their declarations into consideration and examined gay-specific COI; however, the applicants were finally deemed not to be credible due to other inconsistent statements.

2. The OIN accepted two applicants' declarations regarding their gay sexual orientation but considered that no persecution on grounds of sexual orientation was likely to happen in the applicants' country of origin, and consequently refused to grant protection.

3. In the case of an Albanian applicant, the OIN accepted his declaration of being gay. In addition, his narrative was supported by the existence of web pages of gay-friendly content set up and operated by the applicant. The applicant's allegations were also strengthened by the fact that he was a member of a gay association, supported by the COC (a prominent LGBTI organisation) in the Netherlands.

2) Supportive evidence required – examples

In some other cases the authority ordered a medical examination of the applicants, basing its decision partly on the outcome of these examinations. In none of the cases the medical expert or psychiatrist presented an explicit final conclusion regarding the sexuality of the applicant, but rather referred to the “probability” of a certain sexual orientation. In the case of a 16-year-old Iranian applicant, three different medical examinations were conducted. The first one – requested by his legal representative and provided by an independent psychiatrist of the Cordelia Foundation – stated that it is likely that the applicant’s “sexual orientation turned towards his own sex”, while the results of a second examination – this time conducted by an expert charged by the OIN – determined that “the applicant had a masculine sexual orientation and an appropriate identification of his sex” (sic!) and did not support the conclusion reached in the first examination. Due to the conflicting opinions and in accordance with the Act CXL of 2004 on the General Rules of Administrative Procedures and Services, the authority ordered new assessment by a third expert who finally concluded that, given the level of maturity of the applicant, it was yet impossible to decide what his sexual orientation was or would become later. In line with UNHCR Guidelines (and probably also considering the applicant’s vulnerability as an unaccompanied minor) the authority recognised him as refugee.

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?

The practice of the Office of Immigration and Nationality is not consistent. In cases where the OIN requests an expert’s opinion, the “experts” are forensic experts (without any specific professional interest in or training on sexual orientation or gender identity). In general, the forensic expert residing the closest to the residence of the applicant is mandated to carry out the examination. The OIN and the court in some cases also consider supporting medical opinions requested in general by the legal representative of the applicant and issued by the psychiatrists of the Cordelia Foundation. The OIN sometimes requests an “expert opinion” even in clear-cut cases when no doubts arise regarding to applicant's credibility (e.g. when the applicant has been living together with his same-sex partner for several months in Hungary and this fact could have easily been checked). In such cases the OIN could and should have considered sufficient factual evidence instead of a lengthy psychological examination of dubious liability. The OIN seems to refrain from this practice only in case of transgender persons or gay men who look or behave in a very effeminate manner.

The OIN claims that in administrative procedures - such as the asylum procedure - Act CXL of 2004 on the General Rules of Administrative Procedures and Services requires that the authority obtain an expert's opinion in the absence of suitable expertise. The OIN was not able to estimate the ratio of the cases where it requested such an expert's opinion.

The OIN stated that the use of external experts is only permitted with the consent of the applicant.

b) What does the examination include?

The "examination" is usually limited to a simple discussion between the "expert" and the applicant. In some cases the medical expert used Rorschach and Szondi psychological tests. A psychiatrist of the Cordelia Foundation also used the Rorschach test in at least one case.

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

Although the examinations, according to the Hungarian Helsinki Committee's experience, do not contain any seriously inhuman element, the experience can still be emotionally painful and degrading for those who had suffered persecution on the grounds of their sexual orientation.

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

The expert's opinion is one among different pieces of evidence, but the OIN appears to attach significant weight to it.

Decisions and/or case law. Good/bad practices

Homo- and bisexuality are not considered as a mental disease or disorder. Medical/psychological scientific literature and practices from most European countries undoubtedly confirm that there is no need to use medical or psychological expertise in establishing sexual orientation. The professionalism of such examinations can also be easily challenged by looking at some of the "expert's opinions" which for example confuse sexual orientation with gender identity (e.g. arguing that the person is not lesbian as she has a "strong feminine sexuality" or not gay as he has "a masculine sexual orientation and an appropriate identification of his sex" – see questions 18A and 19). The use of this type of evidence in LGBTI cases therefore constitutes a bad practice of questionable reliability and scientific foundation.

An outstanding example of this bad practice is the above mentioned case of the 16-year-old Iranian gay asylum seeker (see question 19) considered by a forensic "expert" as heterosexual, while the psychiatrist of the Cordelia Foundation confirmed his homosexuality. Unable to decide the case, decision-making authority asked for a third expert's opinion. This psychologist stated that it was impossible to determine the sexual orientation of an adolescent at this young age when personality

is still in process of formation. This took about half-a-year, entailed significant costs for the asylum authority and finally the applicant was recognised as refugee.

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?

No experience.

b) What does the examination include?

No experience.

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

No experience, but very unlikely.

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

No experience.

Decisions and/or case law. Good/bad practices

In the framework of the present research it has not been possible to consult any transgender asylum-seeker or access any case file. However, from one case known to the HHC it seems that the OIN does not request medical/psychological "proof" in such cases (as no doubt arises regarding the fact that the applicant is a transgender person).

22) Are explicit questions asked about sexual activities?

No

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

It is a widespread practice that the authorities ask about the "history" of sexual orientation, and characteristics of the relationships, e.g. when the applicant has realised his/her gay orientation, when he/she has had the first gay relationship, how the partners got to know each other, how long the relationship lasted, whether the partners lived together, how many partners the applicant has had, etc.

In the case of an Algerian applicant the officer asked if the applicant knew of any homosexual family members.

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

Applicants are usually questioned about whether people in their social environment were aware of their gay orientation, whether they revealed or hid their sexual orientation when asked, if they had frequented gay clubs or were members of gay associations.

One interesting example can be found in the case of a Tunisian applicant: the OIN's decision refers to the applicant's dressing style as feminine and cites the fact that he wears make-up. In addition, the decision refers to the applicant as "homosexual disposing a passive role". Otherwise, it seems that "humiliating" questions about stereotypical LGBTI conducts are generally not asked during the interviews.

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.

Applicants are usually questioned about whether people in their social environment were aware of their gay orientation, whether they revealed or hid their sexual orientation when asked, if they had frequented gay clubs or were members of gay associations.

In a previously mentioned case (see answer to question 19) an Albanian applicant was member of a gay association in his country of origin. His report on the activities of the organisation was very detailed. Nevertheless, the OIN officer asked the applicant whether he had had any contact with similar organisations or if he had been active in this field after leaving Albania. In this particular case, the acknowledgement of the applicant's involvement in the gay scene and the LGBTI community was certainly considered as strong supporting evidence.

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

Being married or having children significantly reduces the applicant's chances to be deemed credible. Among the reviewed cases, only one example was found in which an applicant had an existing marriage and a child born after the applicant had recognised her lesbian orientation. In this case the Office of Immigration and Nationality stated that the woman could not have lived together and be married to a man if she had been indeed homosexual.

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 OIN's specialised COI unit provides information to asylum officers on a regular basis. If a decision of the OIN is challenged before the court, the applicant may use COI provided by different sources and the court may take the information into consideration when deciding the case.

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.

The quality of country information used in asylum procedures at the first instance has significantly improved in recent years. The COI research unit of the OIN usually produces high-quality COI materials, even though the HHC often witnesses problems (e.g. inconsistency, lack of accuracy or bias) in actually using or quoting these materials in asylum decisions. The HHC does not know about any LGBTI-specific problems in this respect.

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

No

Yes. Could you describe this information?

None of the cases reviewed contained explicit reference to special protection of LGBTI individuals by the police or law enforcement agencies. Instead, general reference could be found to the police in a given country to work reliably and grant necessary protection for those in need. The COI usually examines the eventual protection provided by the police and other state actors in a broader sense, however it seldom deals with other, more specific characteristics of law enforcement agencies, e.g. whether they are homophobic.

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 possibility exists, but there is no funding scheme for such services. The HHC has a COI expert who upon request may prepare a COI report without any specific fee.

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

The court may take into account a COI report presented by the applicant's legal representative but it is not obliged to do so. Similarly, the court is not obliged to take into consideration the COI compiled by the OIN either. The court is free to independently judge the weight of each piece of evidence and it happens from time to time that the court questions the OIN's conclusion on COI based on its own materials or those presented by the applicant.

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

The COI is generally accepted and trusted by the authorities and the court, no LGBTI-specific differences in this respect.

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.

In the files reviewed for the present report no example was found that the authority or the court tried to find out why COI was not available in a specific 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.

In most cases the asylum authority examines whether criminal sanctions are in force against LGBTI people in the country of origin, as a potential form of persecution. The opposite (i.e. criminal sanctions against LGBTI do not exist or are not executed) may strengthen the authority's understanding that the applicant would not to face persecution.

There is a remarkable example where the existence of criminal sanctions against LGBTI in the applicant's country of origin was not sufficient to convince the authority about the need for

protection. In the case of an Algerian applicant, the OIN stated that “even if criminal sanctions against homosexuals or homosexual behaviour are in force, the sexual orientation can be practised in a hidden, discreet way, which prevents the eventual attacks.”

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.

COI researchers apparently strive to find LGBTI-specific COI, but there is not enough information to establish general practices.

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

A young man had left his country of origin (in Asia) to study abroad and only then realised his homosexuality. Upon completion of his studies, he turned back to his country of origin, where he suffered persecution, forcing the applicant to leave his home. He was granted asylum in Hungary.

In all the other cases the applicants alleged that persecution on the grounds of their sexual orientation began after their homosexuality became known in the country of origin and while residing there.

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

Late coming-out definitely constitutes a strong negative factor in credibility assessment. The Office of Immigration and Nationality often mentions that the applicant must reveal all the circumstances and reasons of her/his flight and rarely accepts the justification often presented by asylum-seekers that they were afraid to reveal their sexual orientation since it was not tolerated in the country of

origin. In some rare cases it has happened though that the authority accepted this justification sympathetically and granted protection.

Article 6 Qualification Directive: Persecution by the state

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

No. Please go to question 37.

Yes. Proceed with question 36A.

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

The case law is not consistent. Whenever the OIN questions the applicant’s credibility, the authority orders the return even in spite of the existence of criminal law provisions in force in the country of origin. On the other hand, when the applicant is deemed credible, the OIN may grant asylum or other type of protection despite the absence of any criminal law provision on homosexuality, as long as the claimant faces serious discrimination or attacks by non-state actors or individuals.

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?

1. An Algerian asylum seeker’s workplace was burned down as a reprisal against homosexuals, his best friend was shot, and the applicant had also received serious threats. Due to his lifestyle it was evident that the applicant could not avoid the serious punishment prescribed by his country’s Criminal Code, which penalises homosexuality. These two circumstances (i.e. penalisation of homosexuality and a serious individual threat to the applicant) proved the well-foundedness of the fear of persecution.

2. Another Algerian asylum seeker revealed his homosexual orientation to a colleague who informed an extremist Salafist terrorist group about this fact. The applicant received serious threats, was caught and forced to "deny" his sexual orientation. The penalisation of homosexuality and the serious individual threat to the applicant together proved the well-foundedness of the fear of persecution.

3. In another court decision it was pointed out that if the Ivorian applicant's behaviour ("hugging in an intimate manner" in late night hours) drew the attention of people being hostile to homosexuality and the fact that local authorities deemed this action confronting the morals was in conformity with the laws of the country. The court thus "approved" the reactions of the public and the Ivorian authorities and it also considered that the applicant could not demonstrate with sufficient evidence that he had faced direct persecution. The judge also noted that the applicant had not stated his unwillingness to avail himself of the protection of his country of origin.

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

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

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

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

No. Please go to question 39

Yes. Proceed with questions 38A, B and C.

See 38A

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.

No consistent pattern could be extracted from the examined cases. However, the argument that the applicant is to first seek protection from the police/law enforcement authorities prior to leave the country is often used by Hungarian asylum authorities.

Positive decision do not contain justification, therefore the examination of the above issue is limited to rejections.

1. In most cases, in addition to eventual penal provisions, the approach of the police and authorities to homosexuality was also observed.

2. In the case of an Algerian applicant, the Hungarian authorities, despite acknowledging that the penal law in Algeria punishes homosexual acts, stated that LGB people can live a relatively normal life if they behave discreetly, because the society does not forcibly condemn homosexuals. The OIN considered the Algerian situation with regard to homosexuals not to be serious enough, did not find direct persecution in this specific case and sent the applicant back to his country of origin.

3. Another Algerian applicant was asked during the asylum interview whether the criminal code penalises homosexuality (to what he responded positively) and whether he had turned to the police to seek protection (which he could not do because he would have been arrested). The applicant was finally granted asylum.

4. In the case of a Liberian woman (see answers to questions 3 and 18A), the authority was informed through COI that the penal law in Liberia punishes homosexual acts. During the procedure, the applicant's credibility was questioned and a psychological "expert opinion" concluded that the applicant was heterosexual. Consequently, the woman was sent back to her country of origin. During the interviews the applicant was asked if she had tried to seek protection from the authorities. The fact that she did not turn to the police because homosexuality is prohibited in Liberia was not raised later during the procedure. The decision states that "[e]ven if the applicant was a lesbian if she does not make this fact public she does not have to fear the consequences thereof".

5. In the case of a Tunisian asylum seeker, despite acknowledging that homosexuality is illegal in Tunisia and gays and lesbians are discriminated against, the OIN did not deem the applicant credible due to contradictory statements not directly linked to his sexual orientation, and ordered his return to Tunisia. (The applicant submitted a motion for judicial review and is in alien policing detention awaiting the court's decision at the time of completing this questionnaire. The Hungarian Helsinki Committee provides him with legal representation.)

6. In another case of an asylum seeker from Iran, it was not deemed necessary that the applicant would have sought protection from the Iranian authorities after it was acknowledged that homosexuality is severely punished by law.

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.

The practice of the OIN is not consistent. No specific cases were found on this particular issue. The authority usually confines itself to ask questions or get information from the COI reports concerning the existence of criminal provisions sanctioning homosexuality and how these provisions are executed. In general, the authority asks whether the applicant could count on the assistance or protection of the police but does not investigate the eventual homophobic character of the police. However, it seems that not only legal or official facts are considered but practical attributes are also taken into consideration.

See also answer to the question 38A.

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

If the country of origin information shows that protection from the authorities is generally available and no reference was detected that the police or law enforcement authorities would be homophobic, the Hungarian asylum authority requires that the applicant seeks protection from them.

1. In two cases concerning Nepali asylum seekers the OIN stated that state protection would be available for the applicants against persecutory acts by non-state agents and it presumed that they could have availed themselves of it.

2. In a case of a Mongolian asylum seeker the final judicial decision presumed that the applicant could have sought protection from the local authorities, in spite of the applicant's declaration of having been submitted to a 72-hour arrest as a result of having reported to the police an attack against him and his partner. The police officers allegedly laughed at the applicant's complaint, without initiating the appropriate procedure against the perpetrators. The court decided against the applicant and in line with the OIN's conclusion regarding the availability of internal protection, as "LGBT organisations were available in Mongolia", and without using further COI.

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?

The mere existence of criminal sanctions against LGBTI persons, even when not enforced, is often accepted by the immigration authority as evidence that the persecution of LGBTI people may occur.

In some cases regarding countries where criminal sanctions against LGBTI are present, their enforcement and the social attitude towards LGBTI individuals are considered on a case-by-case basis.

In a controversial decision involving an Algerian asylum seeker the authority considered that, although the penal code punishes homosexual acts, these provisions are not enforced, thus the applicant would be able to carry out a “normal” life by keeping a low profile and thus he could prevent being discriminated against or persecuted. The court ordered the applicant’s return to his country of origin.

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?

The internal relocation alternative argument has been repeatedly raised in several asylum cases. The authority usually argues that homosexuality is better accepted in larger cities than in smaller towns in the same country. The applicants are often asked during their interviews whether they had considered moving to another part of their home country. Yet, the availability of an internal protection alternative has not been used in the decisions available as an argument for rejection.

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

The authority only mentioned in some cases that in larger cities homosexuality is more tolerated, but this issue was not discussed in details.

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...)?

Most of LGBTI asylum seekers arriving in Hungary faced physical violence inflicted by the police and/or other state authorities. One applicant was raped by a prosecutor (to whom he turned for help), in other cases the asylum seekers faced execution or stoning. Some of the applicants were rejected by family and/or friends, while others lost their job, or were incarcerated by the state or by their tribe. Some applicants reported they had been harassed by non-state actors including terrorist groups.

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?

Since positive decisions do not contain justification, it is difficult to identify which experiences are recognised as persecution or serious harm. Nevertheless, it seems that rape and physical violence are definitely considered to be forms of persecution. Negative decisions are often based on the mere lack of credibility, therefore they usually do not examine whether the alleged treatment qualifies as persecution or serious harm. It appears that “mere” discrimination against LGBTI persons, if no direct physical attack has taken place, is not a sufficient ground for protection.

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).

No specific patterns could be traced in the limited number (and types – only LGB) of cases.

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.

In some of the decisions issued by the administrative authority the “discretion requirement” was raised and the applicant was “advised” to behave in a more reserved manner (i.e. in line with general mores and social expectations). No further references could be found.

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.

1. In a case of an Algerian national, the applicant reported that one of the reasons why he left Algeria was his homosexuality. He affirmed that the society is not open to LGB people but nevertheless admitted that he had never been harassed as a result of his sexual orientation, which he used to hide. The authority considered that the applicant was not able to demonstrate the likelihood of being directly persecuted and thus denied protection.

2. In another case, a Tunisian asylum seeker reported that he had been repeatedly harassed, sentenced to prison on several occasions (where he was tortured), attacked in the street (including an attempt of rape) and had his money stolen. He had been forced to leave home because his family had never accepted his homosexuality; his brother once tried to stab him with a knife. Based on the COI available, the asylum authority acknowledged that homosexuality is illegal in Tunisia and homosexuals are discriminated against by their communities; it nevertheless noted that an “indecent assault” is punished in the same manner in the case of perpetrators of the same or different sex. The authority concluded that discrimination against homosexuals in Tunisia does not amount to persecution in the terms of the Geneva Convention, thus international protection was not necessary in this particular case. The decision also questioned the applicant’s credibility, even though the minor contradictions found in his declarations were not related to his sexual orientation or the treatment received as a consequence of his homosexuality.

3. In the case of a Mongolian asylum seeker, the applicant reported having been ostracised by the community and repudiated by his family. When reporting to the police an incident of violence of which he was victim, the police launched a procedure against the applicant rather than against the perpetrators of the aggression. Although he had moved to another city, the harassment did not cease. In its judgment, the Metropolitan Court declared that homosexuality is not a ground for persecution in the sense of the Geneva Convention and the applicant did not succeed to demonstrate having suffered any persecution. The court also suggested that the applicant should have sought protection from local authorities and LGBTI organisations, and finally stated that smaller atrocities and discriminatory incidents may eventually occur in any country without amounting to persecution.

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.

According to the Hungarian Helsinki Committee's experience, decision-makers use this argument from time to time.

1. In the case of an Algerian applicant, the OIN stated that "even if criminal sanctions against homosexuals or homosexual behaviour are in force, the sexual orientation can be practised in a hidden, discreet way, which prevents eventual attacks". It is worth noting that even the existence of criminal sanctions has not been an obstacle to refuse granting protection.

2. In another case concerning a Liberian woman the authority questioned her homosexuality and affirmed that even if the applicant was a lesbian, if she did not make her sexual orientation public she could avoid the consequences of her behaviour.

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?

Section 64 (2) of the Asylum Act explicitly states that 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 or gender identity. The provision does not distinguish between L, G, B groups.

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).

Section 64 (2) of the Asylum Act explicitly states that 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 or 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

Hungarian law applies "OR" in this respect.

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

The concept is not explicitly mentioned in the Hungarian legislation; however, Section 64 (2) of the Asylum Act clearly states that 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 or gender identity.

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

Hungarian legislation does not consider LGBTI asylum seekers as a “vulnerable group” or a “group having special needs”.

As for the practice, LGBTI asylum seekers may be in some cases treated as vulnerable persons. In case of an Albanian gay asylum seeker the asylum officer registered that the person concerned was vulnerable and had special needs, in order to instruct the social workers of the refugee camp to accommodate him in the building reserved for families rather than the accommodation reserved for single men. This practice is in line with a statement of the Office of Immigration and Nationality affirming that LGBTI asylum seekers upon request can be placed in “secure accommodation” within refugee reception centres.

Procedures Directive⁴, 2005/85

Article 13 Procedures Directive: The interview

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

No

Yes. Is such a preference usually recognised? No Yes

According to Section 66 (2) of the Government Decree 301/2007 (XI. 9.) on the execution of Act LXXX of 2007 on asylum, the asylum authority shall appoint a decision-maker and an interpreter of the same sex as the applicant, if the applicant so requests and if it does not represent an obstacle to the procedure. Section 66 (3) of the same document stipulates that if the claim is based on gender-related persecution or degrading treatment the appointment of a same-sex officer is mandatory

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

(without reference to obstacle to the procedure). There is no similar specific rule with regard to interpreters, however it should be noted that for some languages there is a serious lack of interpreters in Hungary. For example, while Somalis have constituted a large group of asylum seekers in Hungary in recent years, only one Somali-Hungarian interpreter is available in the country.

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

Yes, but it is the asylum officer who decides which interpreter to use. There is no information about the actual impact of such requests.

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

No. Please go to question 56.

The OIN does not consider necessary to participate in a training due to the low number of applications on the ground of sexual orientation or gender identity.

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.

According to the information of the Office of Immigration and Nationality a list of “safe countries of origin” is not used. However, the experience of the HHC indicates that a certain group of countries or regions may be “strategically” considered safe (in the form of an informal or internal list).

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.

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.

Since 1 January 2009, lesbian and gay couples are entitled to officially register their partnership, which provides them with similar rights to those of heterosexual married couples in many aspects, but not all (there is no right to joint adoption, for example). Hungarian nationals, as well as nationals of the European Economic Area are entitled to family reunification with their same-sex partner, provided that their partnership is officially registered with Hungarian or another EU country's authorities. Third-country nationals (including refugees) are excluded from this right (their right to reunion with their partner is limited to married couples).

Reception Directive⁶

⁵ Family Reunification Directive:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>

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

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?

Some LGBTI asylum seekers or recognised refugees reported harassment and ill-treatment by police officers (guards) at alien policing jails, fellow refugees/detainees or other officers (such as controllers of the National Railway). There are no specific arrangements for the detention/accommodation of LGBTI asylum seekers and some gay clients of the Hungarian Helsinki Committee (who were later recognised as refugees by the OIN) reported degrading treatment during their stay in alien police detention (e.g. degrading remarks and physical assaults by jail guards, they had to shower separately from the other detainees when there was no more hot water, etc.). It is very likely that an openly gay or transgender asylum seeker would face similar problems in alien police detentions anywhere in the country. Two refugees reported to have been particularly exposed to such practices while in detention in the Nyírbátor alien policing jail or when trying to “interact” with Hungarian society (travelling by train, entering a music club, etc.). The risk of suffering discrimination or harassment on multiple grounds is high in these cases (e.g. gay and Arab and feminine look and dark skin, etc.). No such problems were reported in relation to the asylum officers of the OIN; some of HHC’s LGBTI clients talked very positively about their attitude during the asylum interviews.

62B) Are the authorities aware of these problems?

- No Yes. How do they react?

The OIN reported that in recent years most of the LGBTI applicants have lived in private accommodation in Budapest during the asylum process. The authorities allege to respect the needs of those who stayed in refugee camps or immigration detention to the extent possible. In order to prevent eventual conflicts between gay asylum seekers in reception centres, authorities (social workers) tried to find appropriate solutions to separate these applicants from some others (e.g. Muslim single men). Whenever an asylum seeker feels that his/her accommodation is not secure, he/she may ask to be placed elsewhere. The authorities, according to the OIN, fulfil the request immediately.

According to information provided by the Police, there is no possibility to detain LGBTI asylum seekers in separate jails/cells.

62C) Does a complaints mechanism exist?

No

Yes. Is it effective? No Yes

Asylum seekers may file a complaint to the duty officers, their superiors or (in case of immigration detention) to the public prosecutor's office. They can also turn to a representative of the Hungarian Helsinki Committee who regularly visits detention and accommodation facilities. However, in recent years complaints of this nature have been rare. While the HHC during its monitoring visits receives from time to time claims of ill-treatment (particularly in the Nyírbátor alien policing jail), detainees seem to be afraid to file a formal complaint, fearing reprisals.

The HHC is not provided with official statistics but, based on its long-standing experience, the existing complaint mechanism can be considered as weak and ineffective, e.g. some cases are ruled exclusively on the basis of the confession of the personnel of the detention facility.

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

No

Yes. Please explain

The possibility of private accommodation is available if the applicant can afford it. However, since 2010 the proportion of detained asylum seekers is on the rise, and a significant proportion of them remain in alien policing detention during the entire procedure.

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

In the reception centres social workers try to find appropriate solutions for this challenge to the extent possible, i.e. if necessary and enough place is available. In detention centres no possibility of separate accommodation exists.

There is no official practice or obligation to notify asylum seekers of this possibility. The information is provided on an *ad hoc* basis, presumably in cases where the personnel deem to be important to relocate a particular asylum seeker separately or as result of a complaint.

Articles 17 and 15 Reception Directive: Transgender/ 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

The Hungarian Police Headquarters has encountered only one such case in recent years (an intersex person was intercepted by the police). The officers could not decide whether to detain the person in a male or female facility. The police chief instructed to chose this person in accordance with the results of the requested medical examination and the person's own choice. It appears that the case was properly solved on an *ad hoc* basis, and given the extremely low number of known intersex persons (among asylum-seekers and immigration detainees), there is no policy or guidance on this issue.

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

a) during the asylum procedure

No Yes

No information is available (in lack of any experience). No specific legal regulations apply.

b) after they are granted asylum?

No Yes

No information is available (in lack of any experience). Recognised refugees have access free-of-charge to a number of health care services, even if they are not entitled to social security under general rules, for two years following the recognition of their status. No specific legal regulations apply for transgender/intersex persons.

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?

The main problems identified in connection with LGBTI asylum cases are the following:

- Lack of consistency in decision-making (the appreciation of individual cases largely depends on the officer in charge, the provisions are applied in different ways for similar cases and no specific guidelines are applied).
- The use of medical/psychological “expert’s opinions” in order to establish sexual orientation (an unscientific, costly and questionable method).
- The immigration detention of LGBTI (mainly gay) asylum-seekers together with other detainees, and the occurrence of degrading treatment in alien policing jails.

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

- Some clients of the HHC reported that the asylum officer in charge in their case had a positive and sympathetic attitude during the asylum interviews.
- The Asylum Act explicitly states that 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 or gender identity.

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.