

FLEEING HOMOPHOBIA

QUESTIONNAIRE

European Research Project

FLEEING HOMOPHOBIA, SEEKING SAFETY IN EUROPE,

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

Introduction

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

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

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

Guidance to the questionnaire

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

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

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

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

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

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

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

Thank you very much!

Best regards,

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General

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

Practical work with asylum cases, representing asylum seekers in courts, counselling asylum seekers, academic experience teaching asylum subject at Mykolas Romeris University.

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

Our own practical experience with three cases reported in the questionnaire, legislation, information obtained officially from the government representatives (Migration Department to the Ministry of Interior, Foreigners' Registration Centre), courts and other NGOs.

Frequency of LGBTI asylum claims

1) Statistics on LGBTI asylum seekers

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

No

Yes. Please provide us with a copy/translation.

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

No

Yes. Please provide us with a copy/translation.

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

No

Yes. Please provide us with a copy/translation.

- 2) If no national statistics are available, could you tell us how many asylum claims based on persecution for reasons of actual or perceived (imputed) sexual orientation and/or gender

identity you know of in your country? Please explain the basis of your answer (published case law, lawyer network, LGBTI community, other NGOs, newspaper reviews, intuition) and indicate the time frame.

According to the information provided by the Migration Department there were only three known asylum claims based on persecution on account of sexual orientation in Lithuania since 1997 (when 1951 Refugee Convention entered into force in Lithuania). The same three cases are known to the administration of the Foreigners' Registration Centre and lawyers of Lithuanian Red Cross.

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

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

None

What are the main issues in these cases?

-

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

3 persons in the period of 1997-2011.

What are the main issues in these cases?

First case concerns an asylum seeker from Ukraine who applied for asylum in Lithuania in 2007. In his asylum application he claimed that he was beaten and threatened to be killed by a group of people from organisation acting against homosexuality. When he explained his situation to militia, officers stated that people like him have to be exterminated. The house of asylum seeker was burned and a message "Gay out off Ukraine" was left. Deputies of Ukrainian Parliament also threatened him that if he does not stop protecting rights of homosexuals, accident can happen.

Second case related to an asylum seeker, Iranian national from Kazakhstan, who applied for asylum in Lithuania in 2009. In his asylum application he claimed that on account of his sexual orientation and nationality he was constantly offended and humiliated, did not have opportunities to find a job, was discriminated, threatened, beaten and almost raped. He applied to militia, but his claim was never considered.

Third case is of an asylum seeker from Russia who applied for asylum in Lithuania in 2010. He claimed that he was persecuted on account of his sexual orientation, threatened, beaten, fired and falsely accused. He was also a member of organization working for LGBT rights and felt being persecuted because of this membership. On several occasions he applied to militia, however, his claims were never taken seriously.

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?

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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?

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e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

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

1 Ukraine (1 asylum seeker)
2 Kazakhstan (1 asylum seeker)
3 Russia (1 asylum seeker)
4
5
6
7
8
9
10

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

No

Yes. Please explain.

-

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)

Asylum seekers whose claims for asylum were based on persecution on account of sexual orientation have never been granted asylum in Lithuania, therefore, the answer cannot be supported by particular decisions of the Migration Department. However, in the few negative decisions Migration Department acknowledges that people who base their asylum application on the facts of persecution for the reason of sexual orientation could be considered as a social group.

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

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subsidiary protection? On which basis?

If asylum seeker fails to prove that he was individually persecuted for the reason of sexual orientation, he could be granted subsidiary protection on the ground that his human rights and fundamental freedoms were violated.

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.

No, because humanitarian residence permits no longer exist, there is only a possibility to suspend deportation, but it also does not cover given situations. The only provision that may have some relevance depending on individual circumstances of the case is paragraph 10 of Art. 40(1) of the Aliens' Law of 2004, which provides for a possibility to issue a temporary residence permit for victims of trafficking if they cooperate with the law enforcement bodies or courts in cases against trafficking in human beings.

b) other grounds (discretionary leave)?

No

Yes. Please quantify and explain.

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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.

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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.

While there is no specific NGO that would combine the expertise in asylum and also LGBTI issues, NGOs specialising in providing legal assistance to asylum seekers have been supporting individual LGBTI asylum seekers. Lithuanian Red Cross lawyers provide legal counselling and other legal assistance to asylum seekers, including LGBTI asylum seekers. On the other hand, LGBTI NGOs do not specialise in asylum issues, but they have been supporting those few cases of LGBTI asylum seekers in Lithuania, as well as implementing a few projects on integration of refugees (e.g. Association of Tolerant Youth).

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

Stereotypes.

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

Mainly they are based on volunteer work, but a few staff is also employed.

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

No Yes. Which organisation(s)?

Association of Tolerant Youth is a member of ILGYO (International Lesbian and Gay Youth Organisation); Lithuanian Gay League 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?

Lithuanian Red Cross employs lawyers to work with asylum seekers and they do work with UNHCR, as well as cooperated in concrete cases reported in this questionnaire with LGBTI NGOs.

For example, asylum seeker from Ukraine was beaten in Foreigners' Registration Centre and feeling insecure left the Centre. Initially the Lithuanian Gay League accommodated the beaten asylum seeker in the hotel for two nights. Later the person himself and the Lithuanian Gay League approached the Lithuanian Red Cross asking for assistance with accommodation. Lithuanian Red Cross agreed with another non-governmental organization Vilnius Caritas and proposed accommodation in the organization Vilnius Caritas common lodging-house. But the asylum seeker did not come to the proposed common lodging-house and in a couple days information has been received that the asylum seeker has left Lithuania.

In another example, Association of Tolerant Youth transferred an e-mail of an asylum seeker from Kazakhstan addressed to this Association and Lithuanian Gay League to Lithuanian Red Cross lawyers and discussed over the phone how could the problems of the asylum seeker referred in an e-mail be solved.

e) Do they have contact with the government?

No Yes. In what form?

Association of Tolerant Youth implements projects funded by the Government, as well as approaches relevant institutions once individual problems occur.

10) Special training for NGOs

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

No Yes

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

No Yes

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

No Yes

11) Lawyers' expertise on LGBTI

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

No Yes

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

No Yes. Please provide the web address of the network

There are very few lawyers in general specialising in asylum matters. The only two lawyers who dealt with practical cases reported in this questionnaire have certain expertise in LGBTI asylum cases.

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

No

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

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Policy, legislation, case law

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

There are only a few provisions in the by-laws that could be relevant for LGBTI issues. E.g. Paragraph 66(1) of the Order on Examination of the Asylum Claims approved by the Minister of Interior transposes Art. 9(2)(f) of the EU Qualification Directive stating that acts against the sex of the person may be considered persecution. It also transposes Art. 10(1)(d) of the Qualification Directive concerning definition of a social group. It provides inter alia that a particular social group could be formed on the basis of a particular sexual orientation. For the purpose of this provision, sexual orientation does not cover actions, which would be considered crimes under the laws of the Member States.

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

No Yes

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

According to the Migration Department even though national guidelines do not exist, the Department uses UNHCR guidelines and other international sources when needed.

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

No

Yes. Please describe them.

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

No

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

LGBTI asylum seeker from Ukraine left Lithuania before the decision of the Migration Department was taken.

LGBTI asylum seeker from Kazakhstan appealed negative decision of the Migration Department to Vilnius District Administrative Court, but then terminated the case and left Lithuania.

LGBTI asylum seeker from Russia received negative decision of the Migration Department, but left Lithuania without submitting an appeal.

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.

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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 case officer may inquire asylum seeker if he deems necessary and appropriate, otherwise it comes to light only if the asylum seeker reveals himself. No special identification methods exist.

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

No. Please go to question 19.

Yes. Please answer questions 18A and 18B.

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>

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

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

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

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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)?

During the interview asylum seekers are asked if they were members of any organisations. If they declare the membership of certain organisation then can be asked to provide supporting evidences. LGBTI asylum seekers during the interview also are asked how the society (e.g. family members, employers, assumed persecutors) could perceive their sexual orientation. According to the Migration Department, asylum seekers would not be required to provide supporting evidence for their sexual orientation, unless they mislead the officials in examination of the claim, delay such examination or substantive inconsistencies are established between the facts provided by him, which are of material importance for granting asylum. However, evidence might be required in the case of transsexuals and intersexuals.

Decisions and/or case law. Good/bad practices

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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?

This would only be required if the asylum seeker misleads the authorities, delays the examination of the claim or provides material inconsistent statements in the claim.

b) What does the examination include?

No such cases so far, thus not possible to answer the question.

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

No such cases so far, thus not possible to answer the question.

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

No such cases so far, thus not possible to answer the question.

Decisions and/or case law. Good/bad practices

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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 such cases so far, thus not possible to answer the question.

b) What does the examination include?

No such cases so far, thus not possible to answer the question.

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

No such cases so far, thus not possible to answer the question.

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

No such cases so far, thus not possible to answer the question.

Decisions and/or case law. Good/bad practices

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22) Are explicit questions asked about sexual activities?

No

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

During the interview asylum seekers are asked why other society members could recognise them as LGBTIs. Different questions about sexual activities are not asked, but could be asked if case officer deems it necessary and/or appropriate.

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

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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.

There is a general question about belonging to a particular organization.

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

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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

Question could not be answered precisely, because no such information was collected so far.

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.

There is a special unit on COI in the main institution responsible for asylum - the Migration Department. However the staff of this unit has never been trained on investigating LGBTI issues in the context of COI and do not collect LGBTI specific country of origin information, unless needed for an individual case on ad hoc basis.

National researchers' report is included in the asylum case and is not secret, so available for LGBTIs and their legal representatives to get acquainted with. COI report was included in the case of asylum seeker from Kazakhstan. It included COI on human rights situation, possibility to use

internal flight alternative and guarantees of the rights of the returned asylum seekers, ethnical composition, situation of Catholics, discrimination of people for the reason of sexual orientation, the practice of other EU member states concerning internal flight alternative. COI was collected from various international resources (Human Rights Watch, U.S. Department of State, Minority Rights Group International, Danish Immigration Service, Immigration and Refugee Board of Canada).

There are also reports on safe third countries and safe countries of origin (however Migration Department claims no safe country of origin lists are applied) prepared annually by the Ministry of Interior in cooperation with the Ministry of Foreign Affairs and other state institutions. However these reports are made secret, thus not accessible to the authors of this Questionnaire

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

No

Yes. Could you describe this information?

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

No

Yes

a) Can the expert draft a report? No Yes

b) How is the expert paid for?

There is no practice of communicating with an independent COI experts and authors of this Questionnaire are unfamiliar with independent COI experts in the country.

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

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

In case of asylum seeker from Kazakhstan Migration Department took negative decision, ignoring facts of gay discrimination in Kazakhstan, gay persecution in workplace and education institutions, facts that gay organisations in Kazakhstan are not registered and militia does not protect gay rights.

In case of asylum seeker from Russia, COI report was not included and there were no references to any COI in the negative decision.

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 few cases this question was not considered.

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.

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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.

In the few cases examples known to the authors this was not found.

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

No practice in this respect.

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

No

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

There have been no such cases, thus question cannot be answered.

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

Generally it would be required that these laws are actually enforced. Worthwhile noting that there have been no practical cases in this respect, but the Migration Department states that criminalisation in the COO would be considered as persecution in the meaning of an asylum claim.

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?

In two examined cases the actions of non-state actors were considered to be hooliganism, but not persecution for the reason of sexual orientation. Migration Department in both decisions also stated that asylum seekers failed to use state protection as either they had not applied for it or did not continue communication with militia for the cases to be solved.

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

No asylum claims were submitted by lesbian or transgender/intersex persons.

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

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

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

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

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

Asylum seekers were from Ukraine, Kazakhstan and Russia - countries, which do not criminalise homosexuality, homosexual acts (and/or transgender identity) under criminal laws.

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

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

In two cases asylum seekers claimed that they had applied to militia seeking to protect their rights, however, militia usually did not take any action or even expressed homophobic views stating that homosexuals have to be exterminated. However, Migration Department required evidences that asylum seekers have applied to state authorities and that those were unable or unwilling to protect.

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

In the COI report On human rights situation in the Republic of Kazakhstan COI shows that protection generally would not be available for LGBTIs, however, Migration Department pays more attention to the facts how active asylum seeker was to protect his rights, if he applied to authorities or organisations or not. COI is sometimes considered selectively. In the case of an asylum seeker from Russia COI report was not included in the case and there were no references to the COI in the decision.

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?

Decision makers in decisions did not discuss if this fact could contribute to a homophobic atmosphere as criminal sanctions against LGBTIs were not enforced in those few cases.

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?

Possibility to use internal relocation alternative was determined in the decision not to grant asylum to asylum seeker from Kazakhstan. The Migration Department stating that asylum seeker could internally relocate based his argument on the COI, stating that freedom of movement is respected in Kazakhstan and gays feel comparatively safe in Astana, Almata, Karaganda, Aktau, Atyrau, Ust-Kamenogorsk, Pavlodar. Bars, clubs, other entertainment is available for gays in those cities. Psychological and material support is available for gays who found themselves in the street or were sexually abused.

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

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

There is no evidence from the cases analysed that such reasoning was involved.

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...)?

Asylum seeker from Ukraine in his asylum application claimed that he was beaten and threatened to be killed by the group of people from organisation acting against homosexuality. After he explained his situation to militia, officers stated that people like him have to be exterminated. The house of asylum seeker was burned and a message "Gay out off Ukraine" was left. Deputies of the Ukrainian Parliament also threatened him that if he does not stop protecting rights of homosexuals, accident can happen.

Asylum seeker from Kazakhstan in his asylum application claimed that by reason of his sexual orientation and nationality he was constantly offended and humiliated, did not have opportunities to find a job, was discriminated, threatened, beaten and almost raped. He applied to the militia, but his claim was never considered, explaining that people like him have to be exterminated.

Asylum seeker from Russia in his asylum application claimed that he was threatened by employer, militia, neighbours. Militia demanded to stop his activities in organisation working to protect LGBTI rights and threatened to start a case of paedophilia against him. He was attacked and beaten once by the neighbours. After getting involved in the organisation working for LGBTI rights he often felt as if being under surveillance.

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?

None of the mentioned experiences were recognised as persecution or serious harm. Asylum seekers from Kazakhstan and Russia received negative decisions of the Migration Department.

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).

Authors of the Questionnaire cannot describe such differences as asylum seekers were only men.

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

No Yes. Please give examples.

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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.

LGBTI asylum seekers from Kazakhstan and Russia were refused to be granted refugee status because the harm/persecution they have experienced was considered to be not serious. The incidents against asylum seekers were considered as hooliganism. Asylum seekers did not effectively use state protection - either did not apply for it to state institutions or international organisations or did not further communicate with institutions for the cases to be solved. Mentioned asylum seekers were refused to be granted subsidiary protection because the Migration Department while examining the cases did not determine the facts that in case of return to the countries of origin asylums seekers would face torture, cruel, inhuman or degrading treatment or there would be a threat that their human rights and fundamental freedoms would be violated. In case of asylum seeker from Kazakhstan, additional arguments were possibility to use internal flight alternative and lack of credibility of the asylum seeker.

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.

There is no evidence from the cases analysed that such reasoning was used.

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

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

No

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

There is only one provision in this respect in paragraph 66(1) of the Order on Examination of the Asylum Claims approved by the Minister of Interior. This provision transposes namely Art. 10(1)(d) of the Qualification Directive concerning definition of a social group. It provides inter alia that a particular social group could be formed on the basis of a particular sexual orientation. For the

purpose of this provision, sexual orientation does not cover actions, which would be considered crimes under the laws of the Member States. There is no differentiation between L, G and B applicants, as they are not even explicitly mentioned.

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?

No.

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

-

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

No Yes

According to the Migration Department it is enough if one of the conditions is fulfilled, they do not apply cummulatively.

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

The by-laws (Order on Examination of Asylum Claims) transpose the wording of the Qualification Directive, but does not provide for any details in this respect. It provides in paragraph 66(1) that "gender related aspects" may be considered, but do not in itself form a presumption of applying the grounds of persecution.

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.

n/a

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

The legislation explicitly mentions vulnerable persons, however LGBTI asylum seekers are not included among them.

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?

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

No

Yes. Is such a preference usually recognised? No Yes

To a certain extent only (with regard to gender only), as well as depending on possibilities, as interpreters of the language of an asylum seeker may be very few and not necessary of the different gender. In one case in the Foreigners' Registration Centre when interview was carried out, gay asylum seeker was interviewed by a women, because the administration of the center was of the opinion that male interviewer might be biased.

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

There were no cases when this was requested, thus it is difficult to respond to this question. The interviewers are in principle all Lithuanians, thus not coming from the ethnic community of the asylum seeker. It is also believed that with regard to interpreters it would very much depend on the possibilities to have another interpreter available, because depending on the language there are generally few interpreters available.

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

No. Please go to question 56.

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

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

There was only training by UNHCR on gender based persecution in autumn 2009 in Tallinn (Estonia), where case officers from the Migration Department took part.

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?

n/a

55D) Are judges included in these trainings?

No Yes

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

Ah hoc

55F) Who does the training?

The one on gender based persecution was organised by UNHCR.

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.

The only exception is for unaccompanied minors seeking asylum.

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

No Yes. Please explain.

-

Articles 29-31 Procedures Directive: Safe countries

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

No. Please go to question 60.

Yes. Please answer questions 59A and B.

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

No

Yes. Please give the names of these countries.

The Migration Department claims that safe country of origin lists are not used. However, the legislation provides for a possibility to draft reports on safe countries of origin by the Ministry of Interior together with the Ministry of Foreign Affairs. If such lists indeed would exist, it would not

be possible to ascertain the provisions of it because they would be made secret and not accessible to the public.

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

No Yes. Please explain.

n/a

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.

-

Reception Directive⁶

Article 17 Reception Directive: Reception

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>

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?

In a few known cases the problems were caused by other inhabitants of the Foreigners' Registration Centre and were related to humiliating behaviour vis-a-vis LGBTI asylum seeker.

Asylum seeker from Ukraine, accommodated in the Foreigners' Registration Center, was beaten and received further threats from the other asylum seekers.

Asylum seeker from Kazakhstan complained about the fear that muslim asylum seekers will recognise his sexual orientation.

62B) Are the authorities aware of these problems?

- No Yes. How do they react?

In one known case they allowed to stay in different premises than other persons.

After the incident the beaten asylum seeker from Ukraine called to the police, but the police did not react with due attention. Because of insecurity the homosexual asylum seeker left the Foreigners' Registration Center. The administration of the centre makes an effort to accommodate LGBTI asylum seekers separately, however possibilities for that are sometimes limited due to physical capacities of the centre and distribution of asylum seekers to different floors in the premises (Christian asylum seekers on one floor, muslim-on the other). Thus if an asylum seeker is muslim, but because of sexual orientation could not stay with muslims, he would be offered accommodation in a floor of Christian asylum seekers. But it is not clear in such a case if he would be well received among Christians while being a muslim and so on.

62C) Does a complaints mechanism exist?

- No
 Yes. Is it effective? No Yes

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

- No
 Yes. Please explain

But not guaranteed by the state. Possible if asylum seeker has come to Lithuania legally and has a place to stay in private on his own.

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

No

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

Articles 17 and 15 Reception Directive: Transgenders/ intersex

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

No Yes

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

a) during the asylum procedure

No Yes

b) after they are granted asylum?

No Yes

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

No Yes

Any other issues

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

Intolerance in the society generally towards foreigners and LGBTI persons in particular irrespective of whether they are asylum seekers or not.

According to the Article 79 of the Law on the Legal Status of Aliens asylum seeker may be accommodated in the Foreigners' Registration Center or in his own residence place. However, in both cases an asylum seeker can face certain troubles. Firstly, there is no separate building for vulnerable groups of asylum seekers, such as single women or homosexuals, and it is complicated for the police and administrative officers of the Foreigners' Registration Center to ensure security in

the common building. Secondly, the alternative to be accommodated in his own residence place for asylum seeker is allowed, only if he has entered into the Republic of Lithuania legally, and in this case the state does not provide him with any kind of financial support.

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

In the case of gay asylum seeker, the administration of the Foreigners' Registration Centre offered him a female interviewer, as it was believed that male interviewer might be biased and follow stereotypes. Also, Lithuania has good legislation concerning the possibility to change person's sex, however this is a good practice to a certain extent only, since this legislation does not have implementing by laws, thus in reality is not enforced.

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

The following issues might be of relevance to the situation of LGBTI asylum seekers in Lithuania:

1. Lithuanian society is quite homophobic vis-a-vis foreigners of certain nationalities, as well as LGBTI persons even if they are not asylum seekers. Lack of tolerance towards LGBTI persons is evidenced e.g. by scandals surrounding the Gay Parade in May 2010 whereby two parliamentarians openly expressed their homophobic views against LGBTI persons.
2. Current Government of Lithuania is rather conservative and propagates strong traditional family values. This resulted in amendments to the legislation in 2009 (e.g. restrictions on the mass media and educational institutions concerning publication and demonstration of "non-traditional" behaviours, which was criticized by the international community), including, but not limited to the Law on the Protection of Minors against the Detrimental Effect of Public Information of 14 July 2009 (which prohibited demonstration of information, which propagates homosexual, bisexual or poligamic relations - para. 14 of Art. 4(1), amended after heavy international criticism and now relates to prohibition of information which propagates sexual relations); Law on Public Information, pending amendments to the Code on Administrative Offences, where it is proposed to introduce administrative liability for "public propagation of homosexual relations" in the amount of 580-2900 euro.
3. Even though Lithuania has lost a case in the European Court of Human Rights (*L v. Lithuania*) in 2007, because the person who changed identity could not correspondingly properly change identity documents, the Law on Change of Sex is still not adopted and the decision of the Strasbourg court not yet implemented. This case was the first of this type from Central and Eastern Europe. In fact the right to change sex is provided by the Civil Code of Lithuania (Art. 2.27), but implementing legislation does not yet exist.

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.