

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?

Work with the NGO, SEIF where we have a project about LGBTI asylum seekers, worked with asylum cases in NGO for the last 16 years.

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

NGOs, government representatives, own cases, caselaw and lawyers

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.

See enclosed presentation, its manually counted by the Norwegian Directory of Immigration (UDI). There are no statistics for LGBTI asylum cases in the immigration appeal board (UNE), only a database with example cases, Also enclosed is a list from the database about LGBTI asylum cases.

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

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

For 2010 in UDI there were 7 women (5 rejected); from example database from UNE there was only one woman who was rejected

What are the main issues in these cases?

Since the statistics are anonymous, we don't know who is in the statistics, we can only say something out of our experience; and that is that the family or society have found out about their sexual orientation, and therefore have escaped the country, also in some examples together with their political activities.

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

The rest of them. See enclosed statistic.

What are the main issues in these cases?

Since the statistics are anonymous, we don't know who is in the statistics, we can only say something out of our experience; and that is that the family or society have found out about their sexual orientation, and therefore have escaped the country, also in some examples together with their political activities.

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?

1 case from the last ten years.

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?

e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

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

1 This is for 2010, from the example base from UNE and from UDI, see otherwise the comments in the enclosed document and enclosed statistics

1 Iraq and Ethiopia (7)

2 Gambia (5)

3 Nigeria, Kosovo/serbia (3)

4 Russia, Uganda, Zimbabwe, (2)

5 Russia (2)

6 Zambia, Iran, Lybia, Yemen, Burundi, Egypt, Somali,(1)

7

8

9

10

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

No

Yes. Please explain.

We have people who come to our office and tell about their fear when they came to Norway, and with an interpreter from their own country or region, and they did not tell about their sexual orientation because of fear that the interpreter will tspeak about him/her in the exile community in Norway. The fear is that his family, or clan will know about his/her sexual orientation.

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)

Immigration authorities have stated that homosexuals are a member of a particular social group according to the UN Convention of 1951

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.

In 2010 there were 2 persons who got protection on humanitarian grounds, according to our national immigration law § 38. Old immigration law, § 8 2. ledd

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.

Selvhjelp for innvandrere og flyktninger (SEIF) prosjekt "equality": Giving support to the asylum seeker and their lawyers, and also after a final negative from UNE an appeal about the decision can be made on the behalf of the applicant.

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

Small economical funding from the state, which results in capacity problems

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

employed staff

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

No Yes. Which organisation(s)?

The project is run by SEIF and a integrated part of that organization

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

No Yes. In what form?

Cooperate with lawyers

e) Do they have contact with the government?

No Yes. In what form?

Regular meetings with ministry of justice, and also formal and informal meetings with immigration authorities.

10) Special training for NGOs

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

No Yes

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

No Yes

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

No Yes

11) Lawyers' expertise on LGBTI

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

No Yes

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

No Yes. Please provide the web address of the network

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

No

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

They get general information about the procedure of asylum when coming to the camp after the police interview, but there is still a need of better information about sexual orientation.

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

But they are included in the guidelines for gender-based persecution

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.

In the guidelines of the department of justice with regards to gender-based persecution :

The guidelines state that:

”The guidelines are valid for both men and women. The guidelines also include issues that may be relevant in cases of LGBT-persons. ”

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.

We have leading court decisions which are referred to both from UDI and UNE in LGBTI cases, The court decisions are a big problem in these cases because of the following statement:

"The Appeals Court notes that the limitations homosexuals in Iran must endure, with regards to practising their sexual orientation because of social and religious condemnation in society, obviously cannot be regarded as persecution as defined by the UN-convention of 1951 or be considered as grounds for triggering a demand for protection. The Court moreover finds that denying a homosexual foreigner stay in Norway and returning the person to their home country where homosexual practices are punishable by law and lead to social condemnation, cannot be regarded as violating the European Human Rights Convention article 8. "

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?

By the immigration authorities assessment of the applicant's asylum interview / appeal

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

No. Please go to question 19.

Yes. Please answer questions 18A and 18B.

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

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>

1. Especially, when information is given after their first interview. When there is doubt about whether an applicant is a homosexual or not it's hard to convince the immigration authorities to change... When your credibility is being questioned in the first place, it can prove to be an impossibility to convince them.

2. If he/she has been married before.

3. Little information in the asylum interview about his/her sexual orientation and problems they experienced in the home country - due to a lack of confidence in the interpreter

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

The key is to expand the possibility for the applicant to meet before the Immigration Appeals Board. An increase in the possibility of a personal appearance before the board will strengthen the applicant's right to a fair judgment.

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

There are too few cases to state any pattern when it comes to credibility, but the 3 points that we mention in 18 A are the main factors to establish doubt from the immigrations authorities.

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)?

It is not required - but is accepted as a part of the evaluation of the case which the immigration authorities carries out. In many of our cases we use membership and/or confirmation from the national LGBT organisation, LLH, as a part of the documentation.

Decisions and/or case law. Good/bad practices

see enclosurement

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?

It is not requested but statements from doctors - or similar will be accepted as a part of the evaluation of the case.

b) What does the examination include?

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

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

Decisions and/or case law. Good/bad practices

21) Is medical/ psychological/ psychiatric/ sexological evidence requested or accepted in proving the gender identity?

No

Yes

a) Who is considered a 'medical expert' in this respect?

It is not requested but statements from doctors - or similar will be accepted as a part of the evaluation of the case.

b) What does the examination include?

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

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

Decisions and/or case law. Good/bad practices

22) Are explicit questions asked about sexual activities?

No

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

Under the interview they get questions if they have been living out their sexuality in their home country. Also when the case is handled in a board meeting with personal appearance, they are asked

about their sexual activities, both before arrival in Norway and in Norway. Source of information is from own cases.

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

About sexual behaviour, but I will here state that it is no uniform practice. It depends on who of the decision makers leads the boardmeeting.

24) Are questions asked with respect to familiarity with gay scenes or membership of LGBTI groups in the country of origin or in the country where asylum is claimed?

No

Yes. Please describe decisions and/or case law in which such questions were relevant.

25) Did you find cases in which the sexual orientation/ gender identity was not believed because the applicant was married or had children?

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

It will be a part of the evaluation from the immigration authorities side

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 Norwegian LandInfo have reports about different countries which also covers the LGBTI situation.

27) Does your country have national COI researchers?

No. Please go to question 29

Yes. Are they trained in investigating LGBTI issues? No Yes

Please give details.

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

No

Yes. Could you describe this information?

In some of their country reports it is stated that LGBTI people can get state protection. For example in their Ethiopia report, they stated the following:

"In some cases the authorities have given protection in case of abuse against gays, but the authorities do not have the capacity to provide protection on a general plan"

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 such system in Norway. But additional COI information from other sources than LandInfo can be presented, and also given weight.

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

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

LANDINFO statements in court and their statements about the situation for LGBTI will be the main COI which is looked at by the decision makers and judges.

31) Do your decision makers or courts consider the reasons why reports of persecution may be unavailable in some countries?

No

Yes. Please give examples.

There is no uniform practice here, but we had some decisions where the asylum seeker has got a positive decision because there is doubt about of the situation for LGBTI in their home country. Examples here from own cases are asylum seekers from Northern Iraq and Iran.

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 many of the decisions we have received there is stated that there is no documentation that laws against homosexuality have been used. In some Ethiopia cases the appeal board states:
"The Appeals Board remarks that it is not punishable by law in Ethiopia to be a homosexual. It is punishable to perform homosexual acts; not to be a homosexual in itself. Homosexual acts are punishable by imprisonment for a time ranging from ten days to three years, jf. Proclamation No. 414/2004 The criminal code of the federal Democratic Republic of Ethiopia artikkel 629, jf artikkel 106..."

Here they use the law in Ethiopia against the asylum seeker, saying its not illegal to be homosexual, it is only illegal to perform homosexual acts...

In Iran cases they refer to Landinfo who is stating that there is no information that the law against homosexuality has been used.

33) Sometimes general COI which is not relevant for the situation of the LGBTI concerned is used as a basis for a decision (e.g. information on gay men used wrongly to assess the risk for lesbians or trans people; information on heterosexual women's status used for lesbians). Did you find examples of this?

No Yes. Please describe the examples.

Article 5 Qualification Directive; Article 32 Procedures Directive: Coming-out late

34) Does it occur that LGBTIs who have "come out" after leaving the country of origin, are recognised as refugees or as being in need of subsidiary protection?

No

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

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

This is the situation for many of the cases we receive in our office, but again there is here no uniform practice. The question is if they are believed in their statements when they state their sexual orientation and then what risk they will meet in their home country.

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

Yes, but there is here no uniform practice. The main problem is the standard justification for the immigration authorities decisions, both the Norwegian Directory of Immigration (A direct quote - autumn 2010) and the Immigration Appeals Board (indirectly in january of 2011)

”Regarding an evaluation of the risks that the complainant will meet if he returns to Iran, we must look at the socio-cultural framework which exists in iranian society. The Appeals Board presupposes that the complainant will not act in a way which is in conflict with what is socially acceptable. ”

This justification unfortunately is also used in a legally enforceable Appeals Court judgment:

DOKNR/PUBLISERT: LB-2002-1351 - RG-2002-1259 (196-2002)

”The Appeals Court notes that the limitations homosexuals in Iran must endure, with regards to practicing their sexual orientation because of social and religious condemnation in society, obviously cannot be regarded as persecution as defined by the UN-convention of 1951 or be

considered as grounds for triggering a demand for protection. The Court moreover finds that denying a homosexual foreigner to stay in Norway and returning the person to their home country where homosexual practices are punishable by law and leads to social condemnation, cannot be regarded as violating the European Human Rights Convention article 8. ”

This is one of the main problems, that people with LGBTI submissions do not get protection in Norway.

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?

Again there is no uniform practice. See our answer to question 36.

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

But be aware of the very low number of lesbians cases vs gay cases -see stats.

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

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

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

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

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

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

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

38C) Is the requirement to seek protection dependent on country of origin information showing that protection would generally be available for LGBTIs?

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

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?

There is no uniform practice - but in some cases we see that it is a part of the assessments. See answer on question 36

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?

From case nr N11212327 Iraqi case where the appeal board states:

"In any event, the appeal board believed that the complainant could refer to internal flight to the KRG" There, the security situation is better then in other parts of Iraq.

In a Ethiopian case - nrN101901611 The appeal board states:

"She was a mature and resourceful woman who could be expected to live and provide for a place other than in her hometown, for example, in Addis Ababa. Lesbians had no reason to fear persecution in general. There were no circumstances indicating that the petitioner would be particularly vulnerable at the return "

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

Not open but have to live discreet in relocation alternative also, but then the person will not be known as a LGBTI or the persons/family who is considered to be a threat against the person will not reach the person there.

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...)?

Experienced persecution / serious harm:

- * Physical violence
- * Rape
- * blackmail from gangs and/or single persons who know about the persons sexuality
- * Violence from family member
- * Attacks from neighbours
- * forced marriage
- * Death threats

Just to mention some of the experiences the applicants have. But there are also several people who have fled the country before the persecution / serious harm has happened.

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?

There is here no uniform practice in the immigration authorities.

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).

Since the very low number of women LGBTI asylum seekers, we have not seen a big difference in their experienced persecution.

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

No Yes. Please give examples.

Article 9 Qualification Directive: Discrimination /persecution

43) Are LGBTI asylum seekers refused because the harm/ persecution they experienced is labelled as discrimination instead of persecution?

No

Yes. Please give examples. Decisions and/or case law. Good and bad practices.

Latest example from own cases:

Decision from 01.03.11:

Case number DUF: 2007 059077 09: Male Ethiopian.

Been blackmailed, beaten up badly by gangs because of his feminin look and appearance, in the appeal board decision it has been defined as discrimination. Negative because the appeal board states that he can get protection from police in Ethiopia.

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.

Both the the Norwegian Directory of Immigration (A direct quote- autumn 2010) and the Immigration Appeals Board (indirectly in january of 2011)

”Regarding an evaluation of the risks that the complainant will meet if he returns to Iran, we must look at the sociocultural framework which exists in iranian society. The Appeals Board presupposes that the complainant will not act in a way which is in conflict with what is socially acceptable. ”

This justification unfortunately is also used in a legally enforceable Appeals Court judgment:

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This is one of the main problems that people with LGBTI submissions do not get protection in Norway.

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

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

No

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

No difference

46) Does your law or practice recognise explicitly that people who flee because of their gender identity can belong to a particular social group?

No. Does your country have any other policy that provides protection to transgender asylum seekers?

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

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

No Yes

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

There are guidelines from the department of justice with regards to gender-based 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?

People who got protection later applied for family reunion with other sex wife/husband, or marrying to other sex in Norway, they had problems and withdrawal of asylum status

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?

As same reasons above

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.

They will argue since the persons not being LGBTI will not meet problems upon return to home country.

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

There is here again no uniform practice, but in single cases we have seen in their decisions that LGBTI asylum seekers have been considered being in a vulnerable group, but that is not general practice. They can be vulnerable group, but not as a general rule.

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

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

But unfortunately our experience is, that very few use this possibility

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

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

- No. Please go to question 56.
 Yes. Please answer questions 55A, B, C, D, E and F.

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

55B) Is the training:

- Obligatory No Yes. For whom?

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

55C) Who has access to this training?

55D) Are judges included in these trainings?

No Yes

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

55F) Who does the training?

56) Do you have trainings available for interpreters on the appropriate terminology for use with LGBTI asylum seekers?

No Yes

Article 23-3,4 Procedures Directive: Accelerated procedure

57) Does your country have accelerated asylum procedures?

- No
 Yes. Is an exception made for claims of LGBTI asylum seekers?
 No Yes. Please explain.

For asylumseekers from some countries, from which is believed that the applicants do not need protection, for those countries they have a 48 hours procedure, but there is an exception for LGBTI.

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

No Yes. Please explain.

Same line as other "ordinary" asylumseekers

Articles 29-31 Procedures Directive: Safe countries

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

No. Please go to question 60.

Yes. Please answer questions 59A and B.

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

No

Yes. Please give the names of these countries.

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

No Yes. Please explain.

Article 27, 36 Procedures Directive: Dublin Regulation

60) Did you find examples of LGBTI asylum cases in which the European country responsible for examining the asylum application (Dublin Regulation) was not considered a safe country (because of LGBTI aspects of the case)?

No

Yes. Please give details.

Family Reunification Directive⁵, Council Directive 2003/86/EC

Article 10 Family Reunification Directive: Family members

⁵ Family Reunification Directive:

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

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.

Norway recognises same-sex marriage and same-sex partnership and also gives the same right to family reunification as marriage between man and woman

Reception Directive⁶

Article 17 Reception Directive: Reception

62) Do LGBTI asylum-seekers face problems (harassment, ill-treatment etc.) while in reception/ accommodation centres or in immigration detention, based on their sexual orientation/ gender identity?

No. Please go to question 63.

Yes. Please answer questions 62A, B and C.

62A) By whom are these problems caused?

First of all by others from the same country of origin.

62B) Are the authorities aware of these problems?

No Yes. How do they react?

Organizations who worked with LGBTI have informed the authorities. So far there have not been any acts from the government to improve the situation.

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

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

Yes. Please explain

Yes it is voluntary to stay in a reception center. But if you are choosing to stay outside these centers, you will not get any financial support.

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: 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

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?

See note that is enclosed

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

Since there is no uniform practice in the appeal board, we see sometimes good practices, but it depends on the decision maker in each case.

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

We did not find any intersex or trans cases here in Norway. Therefore no answer to question 65 and 66.

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.