

FLEEING HOMOPHOBIA

QUESTIONNAIRE

European Research Project

FLEEING HOMOPHOBIA, SEEKING SAFETY IN EUROPE,

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

Introduction

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

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

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

Guidance to the questionnaire

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

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

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

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

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

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

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

Thank you very much!

Best regards,

Sabine Jansen, COC Netherlands

Thomas Spijkerboer, VU University Amsterdam

General

Name: Katarína Fajnorová
Telephone number: 00421-903 791 365
E-mail address: fajnorova@hrl.sk

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

I have been working as a lawyer with The Human Rights League, an NGO providing legal counselling and legal representation to asylum seekers and other third country nationals in Slovakia since 2005. I have been providing the legal counselling also to recognised refugees and subsidiary protection holders on various legal issues, including the family reunification process. Our organisation has had experience with three out of four identified LGBTI asylum seekers in Slovakia, representing them in the asylum procedure.

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

As the basis for my research served in particular:

- the experience of my colleagues with LGBTI asylum cases and the files of these cases stored in the archive of our organisation,
- interviews with the representatives of the Migration office of the Ministry of Interior of the Slovakia Republic,
- interview with the representatives of the UNHCR office in Bratislava,
- consultations with NGOs providing legal counselling to asylum seekers,
- applicable domestic legislation and existing case-law.

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.

Since 2004 there have been four LGBTI asylum seekers in the territory of the Slovak republic, which I was able to identify:

- one transgender case (the asylum procedure was not successful and he was denied international protection);

- a bisexual asylum seeker who was granted asylum based on his sexual orientation;

- a homosexual couple - two gays lodged an asylum application in Slovakia, however within a few months they were both transferred to another EU country based on the Dublin II regulation as this country was found responsible for examining their asylum applications and for issuing decisions.

As there are no official neither unofficial statistics on LGBTI asylum seekers in Slovakia, I gathered the information based on the previous experience of the NGO I work for - The Human Rights League (the lawyers of this NGO were representing three out of above mentioned four LGBTI asylum seekers) and from the Head of the Procedural department of the Migration office of the Ministry of Interior, who collected the information from the decision-makers deciding individual cases.

IMPORTANT NOTE: The number of identified LGBTI asylum seekers for the purposes of this report should not be regarded as a reliable statistical data.

One interpreter from the Persian language mentioned to me in an informal discussion that he also remembers a case of a homosexual asylum seeker from Iran who lodged an asylum application in Slovakia in 2002 or 2003. However, allegedly this asylum seeker left Slovakia immediately after lodging the application (his asylum procedure was therefore stopped), most probably to an EU country - this case happened before Slovakia entered the EU. This case shows that possibly there were also some other LGBTI asylum cases in Slovakia in the past, but as there are no statistics, it is hard to quantify exactly the LGBTI asylum cases in Slovakia.

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

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

0

What are the main issues in these cases?

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

2

What are the main issues in these cases?

Two asylum seekers coming from a strictly Islamic country (application lodged in 2008); they arrived together from the country of origin as a couple; they claimed asylum because of the fear of persecution for their sexual orientation; after lodging the asylum application they had their interview before the decision-maker of Migration office; they both claimed they had been detained various times and tortured (by flogging) in their country of origin ; they were forced to sign a promise that in case of repeated behaviour which is prohibited by Islamic law, they can be punished by 10 years imprisonment or even the death penalty; being affraid of such a penalty, they decided to leave for Europe with the help of an association of homosexuals. They submitted the asylum application in Slovakia, however as the Migration office found out they had valid visas to another EU country and based on the Dublin II Regulation this country accepted its responsibility, their asylum application was rejected as inadmissible and they were transferred to the responsible country for the consideration of their asylum applications.

REMARK: In order to protect the applicants from being recognised, I prefer not to mention some of the details of the story, such as the country of origin or the country which they were transferred to.

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?

The only LGBTI recognised refugee in Slovakia, who lodged the application in 2004, was (found to be) bisexual. He left the camp/facility for accommodating asylum seekers and his asylum procedure was stopped; he was caught by the police when trying to illegally cross the border to the neighbouring EU country; after being caught, he lodged his second asylum application; he again illegally left Slovakia and he was returned to Slovakia from another EU country based on the Dublin procedure. Actually, he claimed his sexual orientation as being the reason of his asylum application only after being returned, in the repeated asylum procedure. When he lodged the

application for the first time, as the reason he stated the armed conflict in his country of origin; as the reason of the second asylum application he claimed the bad economic and social situation in his country of origin.

Therefore, this case is also the example that asylum seekers are sometimes reluctant to admit their sexual orientation before the state authorities of the country of asylum. This applicant actually wanted to seek asylum in another Western European country, and therefore only after finding out this was impossible once his application was lodged in Slovakia (because of the Dublin procedure), he finally decided to admit his sexual orientation as a reason for his persecution in the country of origin to Slovak state authorities.

Brief description of the reason for lodging asylum application: The Applicant claimed to be a homosexual, already having previous sexual experience with males. He was forced to get married by his parents, was divorced and had children in the country of origin. During the marriage he maintained also secret sexual relations with men. Allegedly his wife initiated the divorce after finding out her husband was homosexual. After his sexual orientation was revealed to his wife, family and friends, all of them repelled him, which forced him to flee. As he was convinced that also in another Arabic country he would be unable to maintain open homosexual relations, he decided to leave for Europe. His country of destination was a Western European country, however he was caught by the police in the territory of Slovakia.

Besides homosexuality he also had serious psychological and psychiatric problems, including schizophrenia, suicidal behaviour and abuse of alcohol. He was hospitalised for some period at the psychiatric hospital in Slovakia. He was examined by various experts in the hospital and later on the Migration office also requested two expert opinions - one of the ordinary psychiatrist and one from a sexuologist.

The first instance asylum procedure is an administrative procedure and the Migration office (deciding on the asylum application) is the administrative body. Based on § 36 of the Act on Administrative Procedure (Act No. 71/1967), saying "If for the expert consideration of the facts which are important for the decision the expert's opinion is necessary, the administrative body will appoint the expert", the Migration office can decide on the appointment of the expert. In the decision of its appointment the Migration office describes briefly the relevant facts of the cases and requires the expert to make the necessary examination and provide the responses to the questions stated in the decision. The expert's opinion is then used as evidence in the asylum case and sometimes can be crucial for the decision. The Migration office only requests the responses to certain questions which the decision-maker considers to be necessary for the proper consideration of the case; the method applied for an expert examination depends on the expert himself.

The questions raised by the Migration office in the present case of the asylum seeker claiming to be homosexual for the psychiatric expert opinion were the following ones:

- 1) What kind of psychiatric disease is it and what are the symptoms?
- 2) Is it a permanent disease?
- 3) Is it possible to cure this disease? If yes, how, which methods should be applied?
- 4) Could this person be dangerous to the community? If yes, how and why?
- 5) Can the applicant perceive his disease and control his behaviour?
- 6) Does the danger of suicidal behaviour persist, or are these suicidal attempts only simulated?
- 7) To what extent is the applicant alcohol addicted and is there a need for anti-alcoholic treatment?
- 8) Is the applicant homosexual or is he only simulating his different sexual orientation?
- 9) Other findings of the expert, which could be important for the complex consideration of the case.

The response of the appointed expert to the question no. 8 was the following: "I do not see the reason why the homosexuality should be simulated by the applicant; as he feared the revelation of his sexual orientation at home, he also used a false name to hide and his marriage collapsed because of his sexual relationship with a male. In case of doubts, contact the expert in sexuology". Based on this response, the Migration office appointed the sexuologist and asked him these questions:

- 1) What kind of sexual disorder is it in the present case and how is it manifested?
- 2) Is it a permanent disorder in the present case?
- 3) Isn't it possible that the applicant only simulates proclaimed sexual orientation?
- 4) Is he dangerous to the community and if yes, how and why?
- 5) Other findings of the expert, which could be important for the complex consideration of the case.

The sexuologist applied the method of Penile plethysmography (PPG), also called "phallometry" which is based on using the plethysmograph (applied to penis) that measures changes of blood flow in the penis whilst the applicant watches the series of erotic photographs/pictures changing every few seconds. The plethysmograph is able to measure also slight changes in the sexual excitement of the penis. Based on the examination, the responses of the sexuologist were the following ones:

- 1) Based on the methodology of the examination, which provides very low possibility of incorrect/false positive findings, it is highly probable that the applicant is bisexual with very remarkable allotment of homosexual component in the method of satisfying his sexual instinct.
- 2) Applicant's sexual orientation is permanent.
- 3) Once the PPG examination is valid, the sexual orientation cannot be simulated.
- 4) The applicant is not dangerous to the community just because of his sexual orientation, however he could become a dangerous person in case of the continuous abuse of alcohol, as the syndrom of

alcohol addiction is being developed in his case. The psychiatric findings include increased irritability, impulsivity and suicidal attempts.

Besides the above described evidence, expert opinions and the controversial PPG examination that the applicant underwent, the Migration office decided not to grant him asylum and only stated in the decision that there is an obstacle to his deportation and therefore he should not be deported to his country of origin. The applicant's legal representative lodged the appeal to the regional court for a judicial revision of the decision. The appeal was successful and the judge decided to cancel the first instance administrative decision and to return the case to the Migration office for further examination and for a new decision. The judge explains in the court's decision (10Saz 81/2005):

"During the asylum procedure it was found out that the Applicant fears persecution in case of his return to the country of origin. The expert opinions reveal that the Applicant is a bisexual with very remarkable allotment of homosexual component. The Applicant stated during the asylum interview that he entered into marriage based on the pressure of his family, he married with his cousin and already before closing the marriage he had a male sexual partner. The divorce was initiated by his wife once she found out the Applicant was homosexual. Based on the available country of origin information, as well as the information on Islamic countries in general, the Court can state that this information makes legitimate the conclusion that further stay of the Applicant, as a member of a particular social group, the group of homosexuals, in the country of origin became unbearable for him, and eventually would be unbearable in case of his return to the country of origin."

Based on this argumentation the court concluded that "in the present case asylum should be granted based on § 8 of the Act on Asylum because of the existence of well-founded fear of persecution of the Applicant for the reason of membership of a particular social group".

This decision led the Migration office to issue a positive decision and provide the Applicant with refugee status in Slovakia based on membership of a particular social group.

NOTE: The Applicant claimed to be homosexual, however based on the expert opinion of the sexologist he was found to be bisexual (with very remarkable allotment of the homosexual component), therefore I included him in the response to this question - as a bisexual case.

REMARK: In order to protect the refugee from being recognised in the above description of the case, I decided not to name explicitly his country of origin and some other details, such as the Western European country he was returned to Slovakia from.

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?

One case from 2004 of an asylum seeker who was a transgender (male to female). I can provide only very basic information on this case as I do not have access to the file. The information was acquired during the interview with the Head of the Procedural Department of the Migration office. According to the statement of the Migration office, this transgender asylum seeker was not granted protection because the Applicant did not have fear of persecution for any of the five reasons stated in the Geneva Convention and/or in § 8 of the Asylum Act (Act no. 480/2002 Coll.). Before arriving to Slovakia he lodged an asylum application in various Western European countries, . All his asylum claims were not successful. Allegedly he was only searching for some country or organisation who could pay him a surgery (in order to change his genitals). As he was evaluated by the Migration office as having no asylum reasons, he was not granted international protection. The interviewee from the Migration office also stated that the requests of the asylum seeker were fully respected in the asylum procedure, e.g. he was accommodated in a separate room in the accommodation camp for asylum seekers.

NOTE: All the information provided on this case is based on the interview with the representatives of the Migration office only; the file was not consulted.

REMARK: As in the previous cases, I hide the information on the country of origin. The main reason is that there were very little LGBTI asylum seekers (just those described above) in Slovakia and once the country of origin is revealed each applicant could be identified quite easily.

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 For confidentiality purposes I do not list the three countries of origin.

2

3

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)

As mentioned above, there was only one successful case of an applicant who was granted asylum and he was granted protection because of membership of a particular social group. Actually, the decision of the Migration office does not specify the "particular social group"; the specification can only be derived from the previous Court's decision, where the judge states:

"Based on the available country of origin information, as well as the information on Islamic countries in general, the Court can state that this information makes legitimate the conclusion that further stay of the Applicant, as member of a particular social group, the group of homosexuals, in the country of origin became unbearable for him, and eventually would be unbearable in case of his return to the country of origin."

The Slovak Asylum Act defines in its § 19a (4) e) a "particular social group" as a group "whose group members share innate features or a common background which cannot be changed, or share characteristics or belief which are so significant for their identity or conscience that such a person should not be forced to repudiate it, and is perceived by the surrounding society as being different; depending on the circumstances in the country of origin, a particular social group can also include a group based on the common characteristic of sexual orientation. Such orientation cannot include criminal acts as stated by a special law."

Based on this definition, all asylum seekers claiming asylum for the reason of their sexual orientation should be identified, if granted asylum, as having well-founded fear of persecution because of their membership of a particular social group. The Asylum Act almost literally implemented relevant provisions of the Directive 2004/38/EC.

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

subsidiary protection? On which basis?

7) Do you have any information on LGBTI asylum seekers receiving another form of protection on the basis of national law, such as:

a) humanitarian grounds?

No

Yes. Please quantify and explain.

b) other grounds (discretionary leave)?

No

Yes. Please quantify and explain.

8) Do you have information about LGBTI applicants in your country who are, according to your national law, under the age of consent?

No

Yes. Please quantify and explain.

Expertise, Support

9) Do you know general or specialised NGOs supporting LGBTI asylum seekers in your country?

No

Yes. Provide their name and explain what kind of activities specifically aimed at LGBTI asylum seekers they undertake.

There are only general NGOs providing legal, social, psychological and material support to all asylum seekers, which means including LGBTI asylum seekers. No specialised help is provided to LGBTI asylum seekers. These NGOs provide legal counselling directly in the refugee camps (accommodation facilities of the Migration office for asylum seekers) and they have also social workers working directly in the camps and psychologists regularly visiting the camps.

There are three NGOs in Slovakia providing help to asylum seekers:

The Human Rights League - specialised in providing legal counselling and legal representation

The Slovak Humanitarian Council - providing legal, social and psychological help to asylum seekers in the western part of Slovakia

The Goodwill Society - providing legal, social and psychological help to asylum seekers in the eastern part of Slovakia

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

Lack of finances

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

They employ staff; marginally they use the work of volunteers

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

No Yes. Which organisation(s)?

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

No Yes. In what form?

They employ lawyers; they also have contracts with attorneys; and they implement UNHCR projects; however this is general cooperation and there are no special projects on LGBTI issues, as there have been hardly any LGBTI asylum seekers in Slovakia. In case of increase of the LGBTI asylum cases, for sure more attention would be dedicated to LGBTI issues and some new specialised projects would be initiated, however with the very low number of LGBTI asylum seekers in the previous years and with no LGBTI asylum seekers at the moment, specialisation in LGBTI issues is not feasible.

e) Do they have contact with the government?

No Yes. In what form?

Mainly in the form of cooperation with the administrative bodies, such as the Migration office and the Aliens and Border Police. Besides the cooperation in concrete cases, NGOs annotate legislative proposals; organise trainings for policemen, decision-makers and other GO staff; as well as conferences and discussions on different legal topics and identified problems; NGOs are also involved in advocacy efforts towards the government in order to achieve improvement in various areas of migration.

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

Actually, as there are so little LGBTI asylum cases, it is not possible to focus on or acquire 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.)

The only way how they can be informed is through consultation with a legal counsellor. In case of foreigners who are already asylum seekers, once they have an interview with the decision-maker of the Migration office who asks a variety of personal questions, also the sexual orientation of the asylum seeker can be revealed in relation to applicant's problems in the country of origin and the decision-maker should consider also these problems, although they differ from those claimed by the applicant as relevant for the asylum application. However, there has not been any targeted campaign addressed to potential LGBTI asylum seekers providing them with specialised information in form of leaflets or booklets.

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

The only provision specifically addressing LGB asylum seekers is the definition of a "particular social group" contained in the Asylum Act.

§ 19a (4) e) defines "particular social group" as a group "whose group members share innate features or a common background which cannot be changed, or share characteristics or belief which are so significant for their identity or conscience that such a person should not be forced to repudiate it, and is perceived by the surrounding society as being different; depending on the circumstances in the country of origin, a particular social group can also include a group based on the common characteristic of sexual orientation. Such orientation cannot include criminal acts as stated by a special law."

Original text in Slovak language:

"skupina tvorí určitú sociálnu skupinu najmä vtedy, ak príslušníci skupiny zdieľajú vrodené charakteristické črty alebo spoločný pôvod, ktoré nemožno zmeniť, alebo zdieľajú charakteristiku alebo presvedčenie, ktoré sú tak závažné pre ich identitu alebo svedomie, že daná osoba by nemala byť nútená, aby sa ich zriekla a okolitou spoločnosťou je vnímaná ako odlišná; v závislosti od okolností v krajine pôvodu, určitá sociálna skupina môže predstavovať skupinu založenú na spoločnej charakteristickej črte sexuálnej orientácie, pričom túto orientáciu nemožno chápať tak, že zahŕňa činy považované za trestné podľa osobitného predpisu"

Based on the information provided by the Head of the Procedural department of the Migration office, there are no guidelines or internal instructions on LGBTI asylum seekers.

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

No Yes

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

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

No

Yes. Please describe them.

The response of the Head of the Procedural department of the Migration office was that each asylum case must be considered strictly individually.

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

No

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

16) Did you find any references to the Yogyakarta Principles¹ and/or to UNHCR's Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity² in decisions or case law?

No

Yes. Please specify where you found these references.

Qualification Directive³, Council Directive 2004/83/EC

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

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

An expert opinion is required in order to establish sexual orientation and/or gender identity of the asylum applicant. As to the sexual orientation, a sexuological examination is required. The method how the examination will be conducted is selected by the expert. In the case described above, the PPG examination was conducted. However, as this was only one case and the examination was realised in 2005, it cannot be concluded that PPG examination would be realised also in other LGB asylum cases and that this is a common practice. The Head of the Procedural department of the Migration office also claimed that the examination is always conducted with the consent of the asylum seeker and he has the right to refuse the examination. However, it is questionable if the asylum would be granted in case the asylum seeker refuses to undergo such an examination. Besides the expert opinion, the decision-makers also take into account the statements and general manifestation of the applicant during the asylum interview and during the whole asylum procedure.

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?

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

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

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)?

As described above, the expert opinion is required. As to other evidence, every kind of supporting evidence is helpful and welcomed in the asylum cases, however it is not required.

Decisions and/or case law. Good/bad practices

20) Is medical/ psychological/ psychiatric/ sexological evidence requested or accepted in proving the sexual orientation?

No

Yes

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

Doctor of medicine; psychiatrist; sexologist in cases of LGB asylum seekers; potentially also a psychologist as a consultant

b) What does the examination include?

In depth interview and in case of LGB asylum seekers the sexologist's examination can include also a PPG examination (as described in the case above).

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

A PPG examination could be evaluated as a degrading element

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

Such an opinion can be crucial for the asylum decision.

Decisions and/or case law. Good/bad practices

The only case - described above

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

No

Yes

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

It is hard to say as there were no previous cases

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.

Specific questions related to sexual orientation can be asked during the asylum interview. The Deputy Head of the Procedural department stated during the interview for the purposes of this research that firstly the LGBTI asylum seeker is asked to speak freely about his problems and sexual orientation; then the decision-maker asks concrete additional questions, which can include explicit questions about sexual activities. However, the formulation of these questions depends on the decision-maker himself; a list with specific questions on sexual activities of LGBTI asylum seekers does not exist. Usually, the questions will be more general and will not include direct questions, such as the description of sexual intercourse. The asylum interview questionnaire of the cases described above included such questions as: when and how the applicant found out he was

homosexual; if the family and community knew about his sexual orientation; if any of applicant's partners or friends had been persecuted because of sexual orientation and how; how the policemen became aware of his homosexuality; what was the position of his family towards his sexual orientation; did he maintain personal contacts with persons of the same sexual orientation in the country of origin; did he manifest publicly his orientation; etc.

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

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.

E.g. questions regarding how the asylum seeker is trying to make homosexual friends in the country of asylum or regarding the membership and activities in LGBTI associations can be asked.

No relevant decisions and/or case-law.

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

The only applicant who was granted asylum in Slovakia because of sexual orientation was previously married in the country of origin and had four children.

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

In general, the issue of LGBTI asylum seekers is very marginal in Slovakia, as there were so little cases until now. Besides existing COI units in Slovakia, at governmental as well as NGO level, no special COI research on the position of LGBTI asylum seekers is conducted and published, and therefore such special COI is not effectively accessible to decision-makers, asylum judges or

lawyers. In any future cases of LGBTI asylum seekers specific COI query responses would have to be conducted for each individual case.

27) Does your country have national COI researchers?

No. Please go to question 29

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

Please give details.

COI is provided to the decision-makers by the Department of documentation and foreign cooperation of the Migration office. Currently four active COI researchers are employed who work mostly on elaborating COI query responses for individual cases. They do not have any specialisation - neither territorial (focused on the country or region) nor thematic (focused on special COI issues). There are also COI researchers at the two regional courts (in Bratislava and Kosice), which are the only two courts in Slovakia making judicial revision of the administrative asylum decisions (appeal level). However there are just two COI researchers at each court, therefore no space for specialisation either.

National COI researchers, or the majority of them, took part in one or more COI trainings conducted by the professional COI trainer from ACCORD or the European COI Training Network, however all these trainings were general COI trainings. A training in investigating LGBTI issues has never been conducted.

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

No

Yes. Could you describe this information?

In general, national COI reports provide only independent information translated from the reports of well-known COI sources (such as the US Department of State, the UK Home Office, Human Rights Watch, Amnesty International, etc.) and do not make conclusions on the availability of state protection for individual asylum seekers. It is then up to the decision-maker to take this conclusion based on the objective information provided by the COI researcher. However, in general, it happens that the researcher translates e.g. from the position paper of UNHCR or Operational Guidance Note of UK Home Office that there is a state protection for a concrete group of people available in a concrete country - however it is then clearly provided in the COI report where this statement comes from (source of the information) and then it is just COI and not the conclusion of the COI researcher himself. There are however E.G. UK Home office operational guidance notes on Iran

stating e.g. that "if an individual does establish that the Iranian authorities are aware of his sexual activities, or there is a real risk that they would become aware of such activities, the applicant would on return face a real risk of persecution and should therefore be granted refugee status". Such a "COI" can also have a negative impact on the decision in the asylum case, if the decision maker comes to the conclusion that the asylum seeker used to hide his sexual orientation and therefore did not become known to the state authorities and therefore was not and/or would not be exposed to persecution.

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?

It depends on who is the expert. E.g. there is one NGO - The Human Rights League - having a COI unit conducting COI research and providing objective COI reports free of charge to every interested subject of the asylum procedure, both to the government and to legal representatives.

In case any other COI expert is consulted, the way of payment can vary from case to case, however I have no information that other experts would be contacted in asylum cases with the purpose of providing COI. Ususally the legal representative uses only the COI provided by national COI researchers (COI in the asylum file), by the COI unit of the Human Rights League or COI which the legal representative searches all by himself.

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

Every COI report used as evidence in the asylum case and the weight attached to the report depends on the decision-maker and may vary depending on the individual case and the availability of any other evidence. However, in general COI is a crucial evidence in every asylum case.

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

There is no special COI concerning the position of LGBTI, however the importance attached to such information, as already mentioned above, can vary from case to case depending on the content of the information, the source of such COI, the availability or on the other hand non-availability of other important evidence in the concrete case, etc. But, just like every other piece of evidence, such COI must be properly examined and considered by the decision-maker or judge. Actually, the case of the bisexual asylum seeker (described above) is the case when the Applicant claimed persecution

from non-state actors (his family and close community) however he also claimed not to be able to publically reveal his sexual orientation and being thus forced to maintain his sexual relations with males in hiding both in the country of origin, and in other Arabic countries. He claimed that he escaped to Europe because there had been no possibility for him to live a normal homosexual life in any Muslim country. Therefore in this case (no possibility to compare as this is the single case) the Court in its decision and also the Migration office evaluated not only COI on the country of origin, but also the general COI on "the countries of the Arabic world" and what "Islamic law" says about homosexuality. The court's decision (10Saz 81/2005) states, following COI:

"According to Islamic law homosexuality is not only a sin, but above all a crime. Homosexuality is considered by all the branches of Islamic teachings and legislation as an immoral and sick abnormality and is unlawful. Their approaches vary just in the matter of a sanction. (...)"

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.

Generally speaking, the absence of COI on the concrete case, including the absence of the reports of persecution, should not lead to the presumption that such a persecution does not exist. However, if there is no other evidence in the case and there are no reports on persecution in the country of origin at all, this could lead to a negative decision in the asylum procedure, based on the conclusion that asylum seeker is not credible. However, there were no such LGBTI asylum cases. The authorities actually consider or should consider the reasons why COI is absent. Probably it is not the case in all asylum cases. E.g. when the legal representative of the asylum seeker provides an explanation why the COI on the persecution of LGBTIs in the concrete country is absent, the decision maker and/or the judge must deal with such information provided by the legal representative or the asylum seeker. Of course, the decision maker and/or judge should also on his own initiative consider the reasons for the absence of COI on a concrete topic (in this case the persecution of LGBTIs), however I cannot conclude that they really do it in all the cases when COI is absent. It could be concluded that although the reason(s) why the COI is absent should have been considered in every case, in practice it depends on the individual decision-maker and/or judge whether he will or will not make the proper investigation on the absence of COI in a concrete case.

32) Sometimes a lack of information on lesbian/ bisexual/ trans/ intersex people or a lack of criminal sanctions against same-sex conduct by women or against trans/intersex individuals is regarded as a lack of evidence of persecution. Did you find examples of this?

No Yes. Please describe the examples.

In general, the existence of criminal sanctions imposed in the country of origin for a concrete conduct, is not obligatory. If there is evidence on other types of persecution, either by state or non-state actors of persecution, this should be satisfactory for granting asylum. But if the concrete conduct is criminalised in the country of origin and there are sanctions against it in the Penal Code of that country, this fact surely can be decisive for the result of the asylum procedure.

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

There have not been such cases in Slovakia until now.

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

No

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

The only case of a recognised bisexual refugee in Slovakia is a person who revealed his sexual orientation in a repeated asylum procedure, and was then granted asylum.

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

There have been very little LGBTI cases in Slovakia and therefore it is not possible to make any conclusions in this regard. However, when considering the practice of the Migration office in general, they also take into account the actual enforcement of the criminal law provisions in practice and there have been cases when they came to the conclusion that mere existence of the criminal law provisions, when there was a COI available which stated that these provisions are not applied in practice, was not sufficient.

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?

There was just one case (described above) and he claimed both state and non-state persecution

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

Hard to say, because there has been just one transgender case in Slovakia.

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?

The only example again can be the above described case of the bisexual asylum seeker. The asylum seeker was not persecuted for his homosexual orientation before fleeing from the country of origin, however he was condemned by his family and community and he feared persecution from religious extremists (non-state actors) as well as the police (state actors). He claimed not to feel safe at all in the Arabic world because of his sexual orientation. The court and the Migration office evaluated not just the risk of persecution upon his return in form of potential criminal sanctions, but the overall homophobic atmosphere in the country of origin and in the Arabic countries in general.

Article 8 Qualification Directive: Internal relocation

40) Has an internal relocation alternative been held available for LGBTI asylum seekers?

- No. Please go to question 41.
 Yes. Please answer questions 40A and 40B.

40A) Could you give examples of reasoning to consider places or situations in the country of origin a good relocation alternative?

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

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

Article 9 Qualification Directive: Acts of persecution

41) Could you describe what kind of persecution or serious harm LGBTI asylum seekers who fled to your country experienced in their country of origin (physical violence, (“corrective”) rape or other sexual violence, detention, other criminal penalties, execution, honour killings, medical abuse (as a “cure”), harassment, threats, blackmail, intimidation, forced marriages, other psychological violence, no access to education, health care, housing, welfare, employment, judiciary, and so on...)?

- condemnation by family, friends and community;
 - psychological violence;
 - detention;
 - criminal penalties (flogging);
 - financial penalties;
 - ransom (to avoid detention)

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?

In the only successful LGB case decided in Slovakia, the potential risk upon return to the country of origin was found to be sufficient by the court for the grant of asylum, although previous experiences of the asylum seeker were not evaluated as persecution as such. Moreover, in the negative decision (on not granting asylum) the Migration office explicitly said that "The Applicant was not persecuted in the country of origin by no means, because he kept secret his sexual orientation, but in case of his return his life or personal freedom would be exposed to danger because of his sexual orientation, and for this reason the Applicant should not be deported to the country of origin...". (After the appeal court's decision he was granted asylum)

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).

There have not been lesbian, bisexual, transgender or intersex women asylum seekers in Slovakia seeking asylum for their sexual orientation or gender identity.

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

No Yes. Please give examples.

Article 9 Qualification Directive: Discrimination /persecution

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

No

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

Article 9-1-a,b, f /10-1-d Qualification Directive: Discretion (upon return)

44) Decision makers sometimes argue that LGBTI people will not be persecuted as long as they act discreetly or hide their sexual orientation or gender identity to avoid persecution ('go home and be discrete'). Do the asylum authorities in your country use this reasoning?

No

Yes. Could you provide further information and describe decisions and/or case law in which this happens? Good and bad practices.

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?

According to § 19a (4) e) of the Asylum Act "depending on the circumstances in the country of origin, a particular social group can also include a group based on the common characteristic of sexual orientation", therefore there should not be differences in recognising L, G or B applicants as members of a particular social group, however as there is an absence of practice, it is hard to give response to this question.

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 such policy exists in Slovakia.

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

Both requirements should be met. The definition of a particular social group in Slovak Asylum Act, § 19a (4) e) is the following:

- a group "whose group members share innate features or a common background which cannot be changed, or share characteristics or belief which are so significant for their identity or conscience that such a person should not be forced to repudiate it, AND is perceived by the surrounding society as being different"

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

"Gender related aspects" are not taken into consideration in the Asylum Act. It should be also mentioned here that there is an incorrect translation of the word "gender" in the official translation of the directive into Slovak language (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:SK:HTML>) and "gender related aspects" are translated as "aspects related to sex", which means there is a confusion of the words "gender" and "sex". Most probably the last sentence of Article 10 (1) d) is not implemented into national legislation because the meaning and consequently the application of this provision was not clear to the legislator. Also the interview with the UNHCR Slovak office's representatives revealed that the meaning and possible use of this sentence is unclear to them as well; they are not aware of the fact that this sentence could be applicable in relation to gender identity issues.

Article 11-1-e, 14 Qualification Directive: Cessation/Withdrawal of asylum status

49) Do you have examples of LGBTI asylum seekers whose asylum status was withdrawn, because the credibility of their lesbian, gay, bisexual orientation or gender identity was doubted later on?

No

Yes. What was the reason?

50) Do you have examples of LGBTI asylum seekers whose asylum status was withdrawn, because their lesbian, gay, bisexual orientation or gender identity had changed?

No

Yes. What was the reason?

51) Are there cases in which asylum status was withdrawn because the position of LGBTIs in the country of origin had improved?

No

Yes. Please give examples.

If the answer to questions 49 and/or 51 was yes:

51A) Did the authorities examine whether the person involved could still be at risk in the country of origin for being a perceived LGBTI?

No Yes. Please give details.

Article 20-3 Qualification Directive: Vulnerable persons

52) Are LGBTI asylum seekers considered part of a 'vulnerable group' or a 'group having special needs' in your national legislation/policy/practice?

No

Yes. Please give details

There is no such legislation or policy document, however we could say that in practice LGBTI asylum seekers are considered to be part of a "group having special needs". Also the Head of the Procedural department of the Migration office and his deputy expressed this opinion and said that the personality of the asylum seeker and his or her personal circumstances and special needs are always to be considered e.g. with regards to the accommodation, special medical or psychological needs, etc.

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

§ 6 (4) of the Asylum Act states the following:

"When there are grounds worth special consideration the Ministry shall, taking into account its possibilities, arrange the interview and its interpreting by a person of the same sex as the applicant. The Ministry shall arrange the interview being conducted by a person capable of considering the personal circumstances of the applicant, including his or her origin, sex and age."

Based on the interview with the representatives of the Migration office, the Migration office, taking into account its possibilities, tries to comply with the request of the asylum seeker concerning the interpretation, as regards to the sex and/or nationality or ethnicity. However, special requests of the asylum seeker can be a problem to comply with as there is a very limited choice of interpreters from

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

exotic languages in Slovakia. There is also the provision of § 18 (2) in the Asylum Act stating that: "The party to the procedure may call in another interpreter of his/her own choice at his/her own costs to the procedure."

To conclude we can say that in practice the Applicant in general can ask for the interviewer and/or interpreter satisfying his/her request, however whether such interviewer or interpreter will really be provided for depends on the practical possibilities of the Migration office (availability of decision-makers) and on the limited number of the interpreters in Slovakia (interpreters from abroad are used very rarely for interpretation at the Migration office due to the lack of finances; interpreters living abroad would be used mostly in cases when the interpreter from a concrete exotic language is not available in Slovakia at all, then for example a teleconference call could be organised for the interview for the purpose of the interpretation).

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

They can express such preference, however, as stated above, satisfying such a request can be problematic in cases of exotic languages because of the lack of interpreters in Slovakia. The law does not prescribe that such a preference of the Applicant should be fulfilled, therefore such a request of the Applicant is not binding for the Migration office.

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.

As "accelerated procedures" in Slovakia can be designated the asylum procedure in which the asylum application is rejected as obviously unfounded (§ 12 of the Asylum Act) and the asylum procedure in which the asylum application is rejected as inadmissible because asylum seeker comes from a safe third country (§ 11 (1) b) of the Asylum Act). In these cases the time period in which the Migration office has to issue a decision is shortened to 60 days (in practice it can be much shorter, even less than two weeks).

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.

Ghana, Kenya, Mauritius, Seychelles (according to the information provided on the website of International Lesbian, Gay, Bisexual, Trans and Intersex Association ILGA male to male relationships are not legal in these four countries). The list of "safe countries of origin" is contained in the government Regulation no. 716/2002 Coll. providing the list of safe third countries and safe countries of origin, which should be regularly revised and updated (last update was done in 2006, with effectivity since 1st January 2007). The above listed four countries, in which male to male relationships are criminalized, are included in the list of "safe countries of origin"- § 2 of the Regulation

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

No Yes. Please explain.

Article 27, 36 Procedures Directive: Dublin Regulation

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

No

Yes. Please give details.

Family Reunification Directive⁵, Council Directive 2003/86/EC

Article 10 Family Reunification Directive: Family members

61) Does your country recognise same-sex marriage or same-sex partnership for nationals?

No. Please go to question 62.

Yes. Please answer question 61A.

⁵ Family Reunification Directive:

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

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

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?

REMARK: I have not found information about any such problems, however I have not spoken directly with former LGBTI asylum seekers as we do not maintain contact with them any more. Therefore the information provided in this regard is obtained from the Migration office, UNHCR and lawyers of the former LGBTI asylum seekers, which stated that they did not monitor any such problems during the asylum procedure. Currently there are no LGBTI asylum seekers in Slovakia I could speak to about their potential problems in the accommodation centres.

62B) Are the authorities aware of these problems?

No Yes. How do they react?

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

All asylum seekers have the right to be accommodated in the accommodation centres of the Migration office (refugee camps). In case they want to live outside these facilities, they have the right to apply for permission to live outside the camp to the Migration office based on § 22 (3) of the Asylum Act, which provides the following:

"The Ministry may permit the applicant to stay outside of the accommodation camp upon a written request if

a) he/she is capable of covering all his/her expenses related to the stay out of the accommodation camp of his/her own funds or

b) a citizen of the Slovak Republic with a permanent residence on the territory of the Slovak Republic or an alien with a residence permit on the territory of the Slovak Republic submits a written solemn declaration that he/she shall facilitate the accommodation of the applicant and cover all expenses relating to the applicant's stay on the territory of the Slovak Republic."

Therefore, if the applicant wants to live outside the camp he must be able to cover all his expenses.

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?

Here I would like to provide some explanation on the above questions no. 64, 65 and 66

Question no. 64:

When placing asylum seekers in the accommodation centres the Migration office should take into account the provision of the Asylum Act - § 39 (2), which states the following:

"When placing an alien in an asylum facility the Ministry shall consider his/her age, health, and relatives, religious, ethnic and national specific features. Men shall be placed separately from women, minors from adults while taking into account family ties. Transfers of aliens from one asylum facility to another shall only be executed in the necessary cases."

Based on this provision, usually asylum seekers of the same nationality, ethnicity and religion are placed together in a room. However, also personal circumstances and particularities of each case should be considered, therefore every asylum seeker can request a placement, separate from other asylum seekers from the same country of origin and/or of the same religion. Whether this request of the asylum seeker is satisfied or not will depend on the capacity and possibilities of the accommodation centre.

Question no. 65:

Usually males are placed with males and females with females. In case of transgender or intersex asylum seekers, there are no special legal provisions related to the conditions of the placement of such applicants. There is one closed quarantine camp in Slovakia where males and females are placed separately (in different sections) and two open accommodation centres - one for men and one primarily for women, children and families. The transgender or intersex asylum seeker could theoretically select one of these two camps, however whether his/her request is satisfied or not this will depend on the decision of the Migration office as there is no legal provision prescribing such a placement.

Question no. 66:

The law does not provide for special health treatment or support for transgender or intersex asylum seekers, however if the psychologist or social worker in the camp or a decision-maker finds out there is such a need and asks the Migration office for a special medical treatment, this treatment can be provided to the asylum seeker. Such a treatment could be provided based on § 22 (5) of the Asylum Act, which provides the following:

"In the course of the asylum procedure, the applicant shall be provided with urgent health care. In the cases requiring special attention, if based on an individual examination of the applicant's health condition there are determined special needs for health care, the Ministry shall pay, on behalf of the applicant, the costs of its provision exceeding the limit under the first sentence."

Such a treatment should be however considered to be necessary and it would not include e.g. the surgery in order to change the sex of the asylum seeker. There was also one transgender asylum case described above in 2004 when the asylum seeker's requirement for such an operation was not found to be a legitimate request under the provision of § 22 (5).

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

As there have been so little LGBTI asylum cases, there are no developed good practices until now in Slovakia.

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

The current situation shows that LGBTI asylum seekers are a very marginal issue in the discussion on asylum and migration in Slovakia and this topic is neither emphasized by the state authorities nor by the UNHCR and/or NGOs. The Head of the UNHCR Slovak office stated he did not see the need to dedicate special attention to LGBTI asylum seekers in Slovakia due to the low number of such asylum seekers. UNHCR also organises trainings on various topics for the decision-makers of the Migration office, however the topic of LGBTIs has not been included in the training programme until now and there are no plans to include it in the future. The only activity of the UNHCR in this regard in the last years was the participation in the EU monitoring on how the EU directives' provisions related to LGBTI asylum seekers were implemented in Slovakia (such a survey was conducted by UHNCR in 2010). The UNHCR Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity is not translated into Slovak language and the UNHCR office in Bratislava does not see the need to make such a translation at the moment.

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.