

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?

I started to work in the field of asylum, providing legal counselling and representation of asylum seekers, within the NGO Pravno informacijski center za nevladne organizacije (PIC) in Slovenia. After completing a Master in Human Rights law at Central European University, Hungary, I joined the Hungarian Helsinki Committee where I currently work as a legal officer within the refugee programme. My main fields of work are related to the EU's "Dublin system", statelessness, family reunification, detention, as well as gender and LGBTI issues in the asylum field. Regarding the latest, I am currently the focal point for Hungary in an European project on gender and asylum. I also conducted an ad hoc research on determination of sexual orientation in asylum procedures in Central and Eastern Europe. In my free time I still write legal remedies for the asylum seekers arriving in Slovenia, which allows me to stay in contact with the practice there.

The Hungarian Helsinki Committee (HHC) is a non-profit organisation that monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC's main areas of activities are centred on protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system.

Pravno informacijski center nevladnih organizacij (PIC) is a non-governmental and non-profit organisation established in 1997. Its main aim is to support non-governmental organisations, other civil movements and individuals, when they are faced with contradictions and demands of a legal and democratic state and civil society. PIC has been actively engaged in promoting the rights of asylum seekers and refugees by providing legal consultations and representation, and by diverse advocacy activities in this field.

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

1. Information provided by the government (Ministry of Interior): I sent an official request to receive the decisions in cases of LGBTI asylum seekers. The Ministry identified 4 such decisions;
2. Final court decisions can be found on the webpage of the Slovenian courts: http://www.sodisce.si/znanje/sodna_praksa/iskalnik_po_bazah/;
3. Information provided by Pravno-informacijski center za nevladne organizacije (PIC) - NGO providing legal assistance to asylum seekers;
4. Information provided by LEGEBITRA - LGBTI NGO;
5. Independent lawyer Mr. Matevž Krivic, providing legal assistance to asylum seekers;
6. FRA report on Homophobia and discrimination on grounds of sexual orientation in the EU Member States;
7. My own experience.

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, but in reply to my official request they stated that since 2005 there were 4 such decisions.

Yes. Please provide us with a copy/translation.

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

No

Yes. Please provide us with a copy/translation.

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

No

Yes. Please provide us with a copy/translation.

- 2) If no national statistics are available, could you tell us how many asylum claims based on persecution for reasons of actual or perceived (imputed) sexual orientation and/or gender identity you know of in your country? Please explain the basis of your answer (published case law, lawyer network, LGBTI community, other NGOs, newspaper reviews, intuition) and indicate the time frame.

The Ministry of Interior (under which competency falls the Asylum authority) informed me that they do not keep statistics on the grounds of asylum seekers' claims, but that after checking all the

applications they found that since 2005, 4 persons based their claims for asylum on their sexual orientation. I received 4 decisions out of which 2 concerned the same person (he asked for asylum twice) and one concerned 2 persons because the Asylum authority decided to join 2 asylum applications into one procedure (their asylum claims were based on the same factual and legal grounds).

DATA PROTECTION ISSUE:

The joint case is not yet final. Therefore, the court decisions issued in the case are not yet public. I however decided to include this case into the present research, since there are so few LGBTI cases, that inclusion of every single case is justified. The reason for including this case is also the fact that these 2 asylum seekers gave an interview for the on-line magazine where they openly spoke about their life in their country of origin, reasons for fleeing and their asylum procedure in Slovenia. I will however make sure that all personal data will be omitted. Due to this particular situation I also decided not to link country of origins with the cases.

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

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

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What are the main issues in these cases?

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

All the cases are gay cases.

What are the main issues in these cases?

In none of the cases the Asylum authority examined the reasons for protection because they were all rejected on other grounds. Three were rejected in accelerated procedures as manifestly unfounded (two because of the lack of general credibility and one because it was submitted too late) and the fourth one was rejected in a regular procedure as unfounded because of the lack of general credibility of the applicants. I am providing summaries of all these cases later on in the questionnaire.

I believe that at this point it would be useful to provide some explanation on particular characteristics of Slovenian asylum procedure. If the application is rejected as manifestly unfounded, according to well established court practice means that the Asylum authority does not need to examine the criteria for granting protection (Judgments of the Supreme Court in cases I-Up

197/2005 of 16.2.2005, I Up 180/05 of 16.2.2005). Constitutional court also supported this argumentation (Case Up-240/05 of 21 April 2005). This means that when an applicant, for example, presents his false identity, or he/she expresses his/her will to ask for asylum after being some time illegally in Slovenia, or in any other EU country, this, according to the prevailing case-law in Slovenia, is not considered as an element of credibility assessment, but as independent and autonomous grounds for a manifestly ill-founded application.

Even if the application is rejected in a regular procedure, the Slovenian jurisprudence established that the Asylum authority can sometimes avoid examining the objective reasons for protection, if it is of the opinion that the applicant's subjective statements lack credibility (judgment of the Supreme Court, I Up 1552/2005 – 2, of 15 December 2005).

c) Did you find bisexual asylum cases within these asylum claims?

No

Yes. Indicate the number of male and female cases. What are the main issues in these cases?

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d) Did you find transgender asylum cases?

No

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

What are the main issues in these cases?

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e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

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

There were only 4 first instance decisions. Countries of origin were Iran, Bosnia and Herzegovina and Kosovo.

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)

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.

No one from the examined cases received any sort of protection, so I cannot answer this question. Also in none of the cases the Asylum authority arrived to the point to examine which would be the appropriate convention ground because all the cases were rejected without examining reasons for granting protection. However, in one of the cases, the court annulled the Asylum authority's decision and instructed the Asylum authority to examine the circumstances of the case in order to see whether in case the applicant would really face the risk of death penalty in his country of origin (because of his same sex relationship), then the Asylum authority would have to conduct a regular asylum procedure (not the accelerated one) based on the particular social group ground.

subsidiary protection? On which basis?

In one case the reasons for granting subsidiary protection were examined, but were not related to the applicant's claim based on his sexual orientation. The authority examined whether there is indiscriminate violence in situations of international or internal armed conflict in the country. It is important to note that the applicant did not claim anything related to the indiscriminate violence in situation of international or internal armed conflict.

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.

One asylum seeker at the end received permission for tolerated stay,¹ issued by the Police because they could not deport him due to the technical reasons (not due to the possible breach of principle of *non-refoulement*).

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

No

Yes. Please quantify and explain.

Expertise, Support

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

No

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

The NGOs specialised in asylum field exist, but they do not have any activities specifically aimed at LGBTI asylum seekers, due to the fact that LGBTI asylum cases are very rare in Slovenia. The same goes for the LGBTI NGOs that exist, but they do not have special activities aimed at the LGBTI asylum seekers.

NGOs active in the field of asylum:

2 main NGOs active in the field of asylum in Slovenia are (there are some others as well, but those are the most relevant for this research, since they were already in contact with LGBTI asylum seekers):

1. Pravno-informacijski center nevladnih organizacij (PIC) - www.pic.si – UNHCR's implementing partner, is daily present in asylum home,² informing asylum seekers about asylum procedure and their rights and obligations, before they submit their asylum application. PIC also provides legal assistance and counselling to asylum seekers and visits detention centre for foreigners once a week.

¹ An alien who has been granted a temporary stay in the Republic of Slovenia shall have the right to emergency health insurance pursuant to the act governing healthcare and health insurance and basic treatment, while minor alien schoolchildren shall also have the right to basic education.

² In Slovenia there is only one open reception centre situated in Ljubljana (Asylum home) and one detention center for foreigners situated in Postojna.

2. Slovenska filantropija (SF) - www.filantropija.org – providing psycho-social assistance to asylum seekers and refugees. One person is daily present in asylum home and is in contact with majority of asylum seekers accommodated there. SF is also performing custodial services and psychosocial aid to unaccompanied minors. For more information in English you can check: <http://www.filantropija.org/en/filantropija.asp?FolderId=180>

LGBTI NGOs:

Main LGBTI NGOs in Slovenia are:

Škuc LL - <http://www.ljudmila.org/lesbo/>, Škuc Magnus - <http://www.ljudmila.org/siqrd/magnus/>, LEGEBITRA - <http://www.drustvo-legebitra.si/> and Društvo za integracijo homoseksualnosti (DIH) - <http://www.dih.si/>.

According to LEGEBITRA, Škuc LL provided support to 2 LGBTI asylum seekers and the asylum seekers also mentioned this in their interview published in an on-line magazine. When I contacted Škuc LL, they confirmed that they are providing assistance in this particular case, but they refused to provide any further information.

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

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

They employ staff, but also have volunteers.

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

No

Yes. Which organisation(s)?

PIC and SF are supported by UNHCR. Škuc LL is a member of ILGA.

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

No

Yes. In what form?

Škuc LL helped finding a lawyer in one LGBTI case. PIC employs lawyers who provide legal counselling to asylum seekers and is an implementing partner of UNHCR. SF collaborates with PIC when assisting unaccompanied minors.

e) Do they have contact with the government?

No

Yes. In what form?

PIC and SF perform certain projects that are financed by ERF national fund, which is managed by the government. They are also in daily contact with the government's officials, since they are present in Asylum home. Škuc LL also has some project financed by the government (according to their webpage).

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

Such NGOs don't exist.

11) Lawyers' expertise on LGBTI

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

No Yes

We cannot say that lawyers have particular expertise on this issue, since there were only few cases in Slovenia, represented by different lawyers.

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

No Yes. Please provide the web address of the network

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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

In official leaflet that asylum seekers receive from the Government, this is not mentioned. Sometimes PIC at their information session, before submission of the asylum application, informs the asylum seeker about this, but not always.

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

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

There is no special law on LGBTI asylum seekers, but the International Protection Act in Article 27(6) provides: Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Republic of Slovenia.

Yes. Please give English (French/German) translations **and** attach the text in the original language. Are these binding? No Yes

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

No Yes

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

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- 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.

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

No

There are court decisions in the above mentioned cases, but since in none of the cases the reasons for granting protection were examined, they do not fall under the category of leading court decisions on LGBTI asylum.

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

16) Did you find any references to the Yogyakarta Principles³ and/or to UNHCR's Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity⁴ in decisions or case law?

No

Yes. Please specify where you found these references.

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Qualification Directive⁵, Council Directive 2004/83/EC

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

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

In all of the decisions this was mentioned as a fact presented by the applicant and it was later on never assessed by the Asylum authority. From the lawyer's experience the following questions were asked in one case:

1. Since when are you homosexual?

2. Did the woman with whom you were married know about it?

3. Does in your country of origin exist any association of homosexuals and if yes were you a member?

But it should be noted that this is only an initial interview, when the asylum seeker submits his asylum application. If a case is then examined in a regular procedure (not in an accelerated procedure) one or even more interviews will follow and at those interviews more detailed questions are asked.

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?

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

³ Yogyakarta Principles: <http://www.yogyakartaprinciples.org/>

⁴ UNHCR Guidance Note: <http://www.unhcr.org/refworld/docid/48abd5660.html>

⁵ Qualification Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

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

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19) Is supporting evidence required and/or accepted to prove sexual orientation/ gender identity, apart from the declaration of the person concerned?

No.

Yes. What does the supporting evidence include (e.g. witness statements from other people than the applicant, membership of LGBTI organisations, declarations of LGBTI organisations, other)?

Decisions and/or case law. Good/bad practices

In all existing LGBTI cases, reasons for granting protection were not examined and credibility regarding sexual orientation was never assessed and therefore I cannot say whether the supporting evidence would be required in case of doubt. In all the cases general credibility was questioned, not credibility regarding sexual orientation.

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

No

Yes

In all existing LGBTI cases, reasons for granting protection were not examined and credibility regarding sexual orientation was never assessed and therefore I cannot say whether the medical evidence would be required in case of doubt.

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

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b) What does the examination include?

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

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

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Decisions and/or case law. Good/bad practices

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

No

Yes.

No such cases appeared in Slovenia so far.

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

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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

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22) Are explicit questions asked about sexual activities?

No

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

In decisions where it is summarized what the applicants said, I could see statements related to the sexual activities, but since I cannot see the questions, I cannot conclude whether this is something that applicants mentioned on their own, or they were asked about. The applicants explain how, when and with whom they had homosexual relations.

23) Are questions asked about stereotypical LGBTI conduct?

No

Yes. Please describe them.

I cannot answer this question because it is not visible from the decisions, what kind of questions were asked.

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.

At the preliminary interview the asylum seeker was asked if in his country of origin exist a homosexual organization and if he was a member. But this information was never assessed by the Asylum authority because the case was rejected as manifestly unfounded in accelerated procedure because the applicant applied for asylum too late.

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

No.

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

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Article 4-3 Qualification Directive; Article 8-2 Procedures Directive: Country of origin information

26) Do decision makers/ courts /tribunals have effective access to Country of Origin Information (COI) concerning the position of LGBTI asylum seekers?

No

Yes

I cannot say regarding the LGBTI cases, since in the existing cases, the Asylum authority never examined the reasons for protection, and therefore it also never requested any COI information.

27) Does your country have national COI researchers?

No. Please go to question 29

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

Please give details.

The Asylum authority has a COI unit that makes research on existing COI documents. They do not write their own reports, but they search for the relevant reports that already exist.

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

No

Yes. Could you describe this information?

There was no such case in Slovenia where they would examine COI regarding LGBTI situation in the country of origin.

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?

To have an independent COI expert is not a practice in Slovenia and so far it never happened. But in case the applicant would want to pay for an expert like this, he/she could submit his/her report as part of the evidence. The expert fee could not be covered by free legal aid scheme.

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

I cannot say, since it never happened so far.

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

In none of the decisions any COI on position of LGBTI asylum seekers was examined.

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.

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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, but COI on LGBTI was never examined in existing LGBTI cases.

Yes. Please describe the examples.

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33) Sometimes general COI which is not relevant for the situation of the LGBTI concerned is used as a basis for a decision (e.g. information on gay men used wrongly to assess the risk for

lesbians or trans people; information on heterosexual women's status used for lesbians). Did you find examples of this?

No, there were no lesbian or trans people cases.

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

No such case was reported in Slovenia.

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

No such case was reported in Slovenia.

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.

In one case from Iran, the application was rejected as manifestly unfounded because of the lack of general credibility of the applicant. The Asylum authority did not examine the reasons for granting protection.

Summary of the case:

The applicant claimed he was homosexual and if returned to his home country, he would be subjected to inhuman treatment (lashing) and death penalty. He claimed persecution based on the belonging to a particular social group.

His asylum application was rejected as manifestly unfounded in accelerated procedure because in the Asylum authority's opinion, he could not prove his general credibility. The main lacks of credibility according to the Asylum authority were the following:

- The applicant claimed that he had sexual relations with a married man and that his wife knew about them for 2 years and she only reported them to the Police after 2 years. The Asylum authority did not find it credible that a wife could support his husband and applicant's homosexual relationship for two years and only after such a long time reported them to the Police.
- The Asylum authority also found unconvincing the fact that the applicant and his partner for the last year of their relation did not hide it from his partner's wife. The Asylum authority believes that because of the existence of death penalty for same-sex relations in the country of origin and the level of stigmatization that the applicant, of Muslim religion, could be exposed to, the Asylum authority cannot accept his statements as credible.
- The applicant claimed that when he and his partner were arrested by the Police and taken away in a Police car, he managed to escape at the traffic light. The Asylum authority did not find this credible because it would be expected of the Police to take the strictest measures in order to prevent the applicant to escape, since he was arrested for the crime for which the highest penalty is prescribed.
- The applicant was also not found credible because the events he described and his journey to Slovenia did not match time wise.

The administrative court first rejected the appeal, but the Supreme Court annulled the judgment of the Administrative Court (I Up 1435/2005, 15 December 2005 and I Up 28462006, 8 March 2006) because of the following:

- The Asylum authority did not sufficiently examined the circumstances regarding the homosexuality of the applicant and the existence of the death penalty in his country of origin in order to be able to dismiss his claim in an accelerated procedure.
- The Asylum authority should have examined whether the applicant would be really exposed to the death penalty if returned to his country of origin.
- The Asylum authority should have examined whether the death penalty is prescribed only for homosexuals or for any person who engages into same-sex relationship. This is relevant for two reasons. In case the penalty is prescribed only for homosexuals, the applicant would fall under a particular social group and his application should have been examined in a regular procedure. In case the penalty is prescribed to any person, the authority would also have to conduct a regular procedure and examine whether the exclusion clause should be applied in the present case (refugee status cannot be recognized to persons when a reasonable suspicion exists that he has committed a serious non-political crime outside the Republic of Slovenia prior to his admission to the country as a refugee).

His first asylum procedure was discontinued because the applicant left Slovenia. He was returned to Slovenia from Italy under a Dublin procedure, placed to the detention centre for foreigners in order to be removed from the country and only the next day he submitted his second asylum application. His second application was rejected in accelerated procedure as manifestly unfounded because the basic data he provided in his second application (not related to the events of persecution) did not match with the data he provided in his first asylum application and because he applied for asylum only the next day. According to the Asylum authority the asylum seeker's statements were different in his two asylum applications (he used different surnames, once he claimed he was not married and once that he was divorced, he stated differently his profession, firstly he claimed he was not a member of any political party, secondly he claimed he was a member of Ezbulah, he firstly stated he was never punished or detained, in his second application he claimed he was several times in detention on remand, he firstly claimed he has no health problems but in his second application he stated he already had a heart attack, he firstly said that only his father lives in his home country, then he said that also his mother lives there, he firstly stated that no one lives outside his country, then he stated that his 3 half-brothers live abroad, firstly he claimed he only had a driving licence and secondly he presented a photocopy of his passport and some other documents). The Asylum authority was of the opinion that the application was deliberately fraudulent and that the applicant was only abusing the asylum procedure, that he presented false reasons for which he asked for asylum and that his second application for asylum was done only in order to prevent the deportation, since he submitted it only after the removal from the country was ordered. The Asylum authority stated that if he would be really persecuted in his country of origin, he would not leave Slovenia before the final decision in his first asylum procedure and he would ask for asylum immediately when he was handed over by the Italian Police, or at least at the court that hold a hearing regarding his illegal entry.

Asylum seeker requested a hearing where he could explain the differences in his statements, but his request was denied. He also claimed he was under psychological pressure.

His asylum procedure ended with final decision of the Supreme Court of Slovenia (I Up 398/2007, 10 May 2007) rejecting his appeal and confirming the judgment of the Administrative court, which confirmed the negative decision of the Asylum authority.

At the end the applicant was granted a temporary permission to stay on the territory of the Republic of Slovenia (this permission is granted by the Police), but not because of the human rights reasons, but because it was technically impossible to deport the applicant.

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

/

Article 6 Qualification Directive: Persecution by non-state actors

37) Do you have examples of LGBTIs who have suffered or feared persecution or serious harm inflicted upon them by non-state actors?

- No. Please go to question 38,
 Yes. Proceed with questions 37A and 37B.

37A) Did they get protection?

- Yes
 No. Do you know what were the reasons to consider that they did not have a well founded fear of future persecution or serious harm?

In two cases where applicants claimed persecution from non-state actors, the reasons for granting protection were not examined.

One case was rejected as manifestly unfounded in accelerated procedure because the applicant did not ask for asylum in reasonable time and according to the Asylum authority he could not justify why he asked for asylum only after certain time.

Summary of the case:

Asylum seeker's application was rejected as manifestly unfounded under the accelerated procedure. Therefore, the authority did not have to examine the conditions for granting asylum. His asylum application was rejected because he applied for asylum too late and in the opinion of the Asylum authority, if he would be really in danger in his home country, he would apply for asylum at the earliest possible time, when he had the opportunity.⁶ Asylum seeker asked for asylum only in 2009 in Austria (after being deported there from Germany), even though he left his country already in 2005, in 2007 he was deported from Germany back to his country and in 2009 he again left his country and was living for some time in Austria and in Germany. According to the jurisprudence of the Slovenian Supreme Court, asylum seekers should ask for international protection in EU Member States as soon as this is possible, otherwise they risk that their application would be rejected as

⁶ According to the Article 55 of the Act on International protection, the application can be rejected as manifestly unfounded in the accelerated procedure if „the applicant has failed without reasonable cause to make his application earlier, having had opportunity to do so.”

manifestly unfounded in accelerated procedure. However, asylum application should not be rejected merely because the applicant did not apply for asylum in reasonable time. The applicant should be given the opportunity to explain why he did not ask for asylum at the earliest possible time. The applicant was given this opportunity, but according to the Asylum authority he failed to justify why he asked for asylum only after certain time. He said that he tried to ask for asylum already in 2007 in Germany, but they did not want to accept his asylum application and they deported him back to his country of origin, what the Asylum authority did not find credible. When he left his country again, he did not apply for asylum immediately because he did not trust the authorities, due to his bad experience with the German authorities. Slovenian authority rejected this argument as well and concluded that the applicant's economic interests prevailed over the interest of seeking protection. The applicant's appeal was rejected by the Administrative court and later by the Supreme Court (Case I Up 998/2010-11, 18 November 2010) as well. The case is now pending before the Constitutional Court.

NOTE:

Although the case it is not interesting from the LGBTI issues perspective, it is still worth noting that this case is very problematic, since the asylum application was rejected only because it was not submitted in time. This is in my opinion not in compliance with the Procedural Directive, and against the Geneva Convention as well. Only 2 weeks after the Supreme Court's decision, the modifications of the International Protection Act entered into force and now rejecting an asylum application in the accelerated procedure on the sole ground that it was not submitted in a reasonable time is no longer permitted.

In another case the application was rejected in a regular procedure as unfounded because the Asylum Authority did not find the applicants generally credible. The objective reasons for granting protection were never examined, since according to the established judicial practice, the Asylum authority can reject an application in a regular procedure if it is of the opinion that the applicant's subjective statements lack credibility.

Summary of the case (joint case):

The applicants fled their country of origin after the rape and beating incident. In Slovenia they first received a negative decision, against which they appealed. First instance court ruled in their favour, annulled the decision of the Asylum authority and returned the case into new examination to the Asylum authority. The Asylum authority appealed the judgment, but the Supreme Court rejected its appeal and confirmed the judgment of the court of first instance. In the mean time the applicants left Slovenia. They were returned to Slovenia under Dublin and they had to start a new procedure, since

the first one was stopped because of their departure. At the moment they are waiting for the Asylum authority's decision.

The Asylum authority rejected their first claim in a regular procedure as unfounded because of the lack of general credibility of the applicants. The Asylum authority found incoherent the following:

- One applicant claimed that at the time of the event it was December and that the weather was warm, but the Asylum authority is of the opinion that in the country of origin of the applicant winters are very harsh.

- One applicant did not know when exactly the war ended in his country of origin (applicant claimed that he was a teenager at the time of the war and he didn't care about it, besides he is against the war). The Asylum authority was of the opinion that he should have known that, since he is educated and the difference between the dates he stated and the real dates of the war is too big to grant him the benefit of the doubt.

- One applicant firstly stated that he did not report the event to the Police because the Police officers are Muslim and they would beat him up, but at the second hearing he stated that he did not report it to the Police because his uncle was a Policeman and the family would find out (applicant later explained that at the first interview he did not know he should explain everything in such details as to mention that his uncle was a Police officer). The Asylum authority stated that he was told at the beginning of the interview that it is his obligation to give precise and true statements.

- Applicants' statements about the main event are not in accordance, some are even contradictory, but they were never confronted. According to the Asylum authority the confrontation was not needed because each of the applicants was asked additional questions about the statements he gave and each of them still could not explain his statements in a credible way. Their statements did not match regarding the date of the event (neither of the applicants knew exact date of the event, but they stated different periods – only one week difference and it happened already a half a year ago, but the authority found this unacceptable because of the relatively short time distance of the event and regarding its importance). Other un-matching statements the applicants explained referring to the psychological shock that the event caused, but the Asylum authority responded that the applicants did not submit any evidence about their psychological condition.

Because of the non-credibility of the subjective reasons for asylum, authority did not examine objective conditions in the applicants' state, in order to see whether they would require international protection.

Both courts ruled that the Asylum authority violated the rules of the procedure, when it did not give the applicants opportunity to comment on each others' statements regarding the events. Due to the time distance of the events and subjective comprehension of them, the inconsistencies in the applicants' narratives were not of such kind that they could be a basis for assessing the applicants as

generally not credible. The Supreme Court instructed the Asylum authority that they have to assess the circumstances that are legally relevant in order to assess whether the international protection should be granted to the applicants.

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

There were no lesbian or transgender/intersex cases.

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.

I don't have concrete examples in order to answer this question, but all asylum seekers who are claiming persecution from non-state actors are always asked whether they searched for protection by the Police and if they didn't they have to explain why not. I cannot say how this would be assessed by the Asylum authority because so far it never assessed the reasons for persecution in LGBTI cases.

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.

See previous answer.

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.

See previous answer.

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

See previous answer.

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?

This issue never appeared so far.

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.

This issue never appeared so far in a final decision, but the asylum seekers are always asked questions at the interview whether they could move to another part of their country.

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...)?

Rape, threats, physical violence (beatings, lashes), harassment (verbal insults, spitting), discrimination, threat of death penalty.

41A) Which of these experiences have been recognised as persecution or serious harm, and which were found to be insufficient to constitute persecution or discrimination that did amount to persecution?

None, because the reasons for protection were never examined in any of the LGBTI cases.

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 were no female applicants.

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.

This issue never appeared the examined decisions.

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.

Since in above mentioned cases the reasons for protection were never examined, I cannot answer this question.

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 authority 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.

This reasoning was never used so far because no case was examined on the merits. However in one case, the applicant was asked at the interview, why he was not more careful with his homosexual act, since he knew that these acts are criminalized in his country of origin, and why he did not stop with these acts.

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

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

No

Yes. Are there any differences between L, G and B applicants, and if so, what differences? There are no differences mentioned.

The International protection Act in Article 27(6) provides:

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Republic of Slovenia.

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

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

No.

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

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

No

Yes

Both conditions need to be fulfilled.

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

Under acts of persecution are included also acts of a gender-specific nature.

The sentence "*Gender related aspects might be considered, without however creating by themselves a presumption for the applicability of this Article*" from Article 10(1)(d) of the Qualification Directive was not transposed into Slovenian legislation.

For female applicants Article 18 of International Protection Act provides that upon their request, female applicants may be entitled to a female person conducting the procedure and if possible, the female applicant shall be provided with assistance of a female interpreter.

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

Sexual orientation on itself is not a reason to consider the LGBTI persons as part of vulnerable group. The following persons are considered as vulnerable according to the International protection Act (Article 15): children, unaccompanied children, the elderly, pregnant woman, single parents with children, and victims of rape, torture or other forms of psychological, physical or sexual violence. Special needs and vulnerability shall be established on the basis of a needs assessment for each individual applicant, refugee or person under subsidiary protection.

Procedures Directive⁷, 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

The International Protection Act only provides this option to female asylum seekers. Article 18 of International Protection Act provides that upon their request, female applicants may be entitled to a female person conducting the procedure and if possible, the female applicant shall be provided with assistance of a female interpreter.

However in my opinion any asylum seeker can make such a request and if the Asylum authority would find it justified, the request would be granted.

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

⁷ Procedures Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

In one of the LGBTI cases the applicant requested not to have the interpreter from its own ethnic community, but his request was not granted because the Asylum authority wanted to check whether the person really speaks the language of this ethnic community.

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.

/

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 authority use lists of ‘safe countries of origin’?

No. Please go to question 60.

But Slovenian Government declared Croatia as a safe third country.

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 Directive⁸, 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, same sex partnership. Please answer question 61A.

61A) Does your country provide family reunification rights based on same sex relationships for partners of refugees?

- No

Under the Aliens Act registered same-sex partner is not considered as a family member. Reasons for this are as follows:

The Act on the registration of same-sex partnerships, does not equate same-sex partnership with marriage and therefore same-sex partners do not count as family members, since according to the Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, same-sex partner only counts as a family member if the laws of the host country treats registered partnerships as equivalent to marriage. Further on, Family reunification directive leaves discretion to the Member States in order to decide whether to count registered partners as family members. Slovenia did not opt for this option because in this case the refugees would have more rights than citizens of EU or Slovenian citizens.

- Yes. Please explain under which circumstances.

Reception Directive⁹

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.

⁸ Family Reunification Directive:

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

⁹ Reception Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>

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

62A) By whom are these problems caused?

In one case the applicants complained that they were afraid to tell the other asylum seekers that they were gays and that they avoided contact with other asylum seekers. They also complained about attitude of one social worker who told them that homosexuality could be cured. They also complained of the attitude of the security guards of the asylum home and the Police.

62B) Are the authorities aware of these problems?

No

Yes. How do they react?

If someone complains, the authorities try to solve the situation. In case there are problems between asylum seekers, they try to place some of them to another sector of the building in order to prevent conflicts.

62C) Does a complaints mechanism exist?

No

Yes. Is it effective? No Yes

From my experience, in case the problems appear at the asylum home, the authorities are trying to do everything to solve it.

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

No

Yes. Please explain

Private accommodation option exists in following three cases:

1. In exceptional cases the applicant can make a request to be accommodated in another suitable institution, if so required due to the applicant's special needs and if the living conditions in the Asylum Home are not adequate.
2. An applicant can exceptionally be accommodated also at a private address. For this, three conditions have to be met cumulatively: the applicant's identity is established, there are adequate living conditions at the private address and a personal interview has already been performed with the applicant.
3. If private accommodation is required due to reasons of health, or other justified reasons, the applicant can be granted such accommodation even when he does not meet the above mentioned conditions. In this case, the genuine need for such accommodation shall be established by an expert commission established by the Minister of interior. The Commission is formed from the president and 4 members. The president is the director of the asylum home. 3 members need to be employed

by the Ministry of Interior and they are: social worker or psychologist, nurse and a doctor. The fourth member is a representative of the NGOs working in the field of international protection.

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, but only when the problem arises not before.

There is only one asylum home in Slovenia that includes the following sections:

- single men
- single women
- families
- unaccompanied minors

In case there is tension between certain asylum seekers, they can be separated and accommodated at different sections of the building.

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 women's or men's (section of) reception/ accommodation and detention centre?

No

Yes

There was never such a case in Slovenia.

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

There was never such a case in Slovenia.

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 regarding change of name

Changing the name is regulated in the Act on personal name, which provides that the name can be changed only by juvenile and adult **citizens**, which excludes asylum seekers and refugees.

Yes regarding change of sex

There is nothing in the law and operations are carried out on a case by case basis, but in Slovenia sex change is possible and is paid from health insurance. This means that theoretically a refugee who has the same rights to health services as Slovenian citizens can have access to these interventions. Asylum seekers do not have this possibility because they only have access to emergency medical care.

Any other issues

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

/

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

/

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

Although it is maybe too early to conclude based on only 4 LGBTI decisions of the Slovenian Asylum authority, but all these cases go in line with the general problem that is observed in Slovenia. An asylum application can be rejected without examination of the reasons of persecution because the application is not submitted in time, or the applicant is not found credible regarding the issues that have nothing to do with the reasons why he/she is asking for protection. Of course general credibility of the applicant has to be established, but the inconsistencies that the authority uses as a basis for the applicant's lack of credibility are often of such kind that they should not alone form a basis for rejection of someone's credibility and consequently his/her application. This is worrying because an applicant can be sent back to his/her country of origin where he/she was allegedly persecuted, without the existence of the risk of persecution being properly assessed by the Asylum authority.

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.