

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 have been working with LGBTI refugees since 1972. My profession is legal adviser.

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

Mostly own cases but also other information e.g. from NGOs and the Swedish Migration Board.

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.

In 2002 the Swedish Migration Board made a survey about how many asylum claims they handle during one year (most of their information comes from RFSL). The result was about 250-300 GLBT refugees every year. The report is only available in Swedish language. Around 50 % of GLBT asylum seekers gets permission to stay.

The answers in this questionnaire are based on the cases I have been in contact with personally or have information about. Every year I come in contact with about 50-60 new cases and then there are cases from other years. It means that totally for 2010 I know about 80 cases.

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

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

About 20-25 % of the 80 cases are lesbians. Some years ago it was only 10 %. One explanation is that lesbians often have more difficulties to escape from their country. Some have been forced to marry and can get no passport without the permission from their husband. Others have problems to find money for a ticket.

What are the main issues in these cases?

They have problems in their home country because of their sexual orientation.

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

About 75 % of the 80 cases mentioned above is gay.

What are the main issues in these cases?

They have problems in their home country because of their sexual orientation.

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

No

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

I don't separate the numbers of bisexuals because the reason to apply for asylum is that they have problems when they have sex or other contact with people of the same sex.

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?

During 2010 totally 6 cases (3 mtf and 3 ftm). 4 of these cases are couples (2 couples x 2 persons). These 4 persons come from Russia and the other two from Syria. During 2011 3-4 persons have

already contacted RFSL and asked for help. All of them were from Russia. So far I don't know much about their stories (some of them are still living in Russia).

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 Iraq (15 cases, only gays)
- 2 Mongolia (6 cases, 3 lesbian)
- 3 Ethiopia (5 cases, 2 lesbian)
- 4 Iran (4 cases, 1 lesbian)
- 5 Libya (4 cases, only gays)
- 6 Kenya (3 cases, only lesbian)
- 7 Uganda (3 cases, only gays)
- 8 Nigeria (2 cases, only gays)
- 9 Syria (2 cases, only gays)
- 10 Burundi (2 cases, only gays)

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.

A few people contact RFSL and want to know about the rules. They are not "ready" to tell the Migration Board about the sexual orientation or gender identity and the problems they had for that reason in their home country.

Another thing is that many GLBT refugees from the beginning haven't told the Migration Board about their sexual orientation or gender identity and they do that very late in the refugee process.

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)

The decisions refer only to the applicable regulations and which stated that persecution based on sexual orientation covered by the Geneva Convention. Later the decision said that the applicants meet the Convention definition of refugee. The decision never says that all lesbians in Pakistan or gay men in Iraq are member of a particular group.

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

subsidiary protection? On which basis?

It is also possible to get permission in Sweden because of "humanitarian grounds". This definition is used if they are not sure about the story the refugee told the Migration Board but they accept the sexual orientation and if the situation in the home country is hard for GLBT (e.g. Iraq).

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.

See above.

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.

The last years we have had some boys. e.g. one boy was 16 when he arrived to Sweden without his parents. Last year we had boys from Sri Lanka, Syria, Mongolia and Iraq. The legal age of consent is 15 in Sweden

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.

RFSL is the only NGO specialised in LGBT refugees but we cooperate with other NGOs e.g. Amnesty International, Red Cross, Save our Children, Refugee Committee, Caritas and others. These NGOs often recommend GLBT refugee to contact RFSL. Also the Swedish Lutheran Church supports many GLBT refugees.

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

These NGOs do a good job but often they do not have the same knowledge as RFSL about the situation for GLBT in the country where the refugees come from. And they also do not have so much general information about what it means to be an GLBT person.

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

They have employed staff but also sometimes volunteers (e.g. Red Cross).

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

No Yes. Which organisation(s)?

Amnesty International, Red Cross, Caritas, Save our children.

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

No Yes. In what form?

The staff is often lawyers. All the NGOs mentioned above meet every 6 weeks (not during summer time) and discuss common problems and experiences. In this meeting also RFSL is taking part. Also the UNHCR office in Stockholm (which covers the nordic and baltic countries) used to take part in these meetings.

e) Do they have contact with the government?

No Yes. In what form?

All NGOs working with refugees meet the government 1-2 times a year.

10) Special training for NGOs

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

No Yes

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

No Yes

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

No Yes

11) Lawyers' expertise on LGBTI

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

No Yes

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

No Yes. Please provide the web address of the network

There are no special networks for GBT asylum cases, but in the meeting mentioned above we also discuss refugee 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.)

They do not get this information from the Migration Board or other authorities. RFSL has made a leaflet about this in 10 different language (you can find them at our website www.rfsl.se). The language is Swedish, English, French, Spanish, Russian, Arabic, Dari, Sorani, Somalian and Persian.(the most common languages for the refugees in Sweden).

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 Migration Board has 3 documents (some sort of guidelines) about GLBT refugees: 1 about how to handle an application if the refugee tells about problems because of his or her sexual orientation, 1 is about the situation for GLBT in Iraq and 1 is about how to look at GLBT refugees in general. All 3 are many pages in Swedish.

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.

They are not used in LGBTI claims. In the Handbook from 2002 is written that it can also be used for transgender people, but at that time we had very few transgender asylum seekers.

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.

They always make an individual examination of asylum grounds. Most of the GLBT refugees from Iraq get permission to stay but we also have examples of rejected applications. Only if you came from Somalia (Mogadishu), then it is enough to have been living there and they grant asylum.

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.

The highest court that can make leading or binding decisions has never made such a decision about GLBT asylum.

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?

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>

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?

In a few cases the Migration Board writes that they think the refugee is not telling the truth about some details and if so, they don't believe anything of the story, that the person is GLBT. The Migration Board has a handbook about different items and in the chapter about GLBT refugees it's written that in most cases they shall accept the sexual orientation. Gender identity is not mentioned in this chapter.

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

An asylum seeker waited 9 months to tell about his sexual orientation. After that the decision maker rejected the application for asylum on the ground that he was not credible. And because he was not credible the decision maker considered that he was not gay. In other cases they have justified their views on the fact that the asylum seeker was not aware of organizations for LGBTI.

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

None.

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)?

Sometimes it's written in the decision that the refugee is a member of RFSL but this is not written as an evidence.

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?

b) What does the examination include?

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

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

Decisions and/or case law. Good/bad practices

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

No

Yes

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

Sometimes the refugee has a document from a medical doctor and they want to use this as evidence.

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.

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.

The question is mostly about whether the person visits GLBT places (and how often), has a boy- or girlfriend etc.

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

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

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

No Yes

The Migration Board has a special unit that collects information about different items (e.g. the situation for christians in Iraq or the military rules in Ethiopia). Most of this material is from official sources (reports from the Swedish embassy, other embassies like the Home Office and a few NGOs. Most of the information is available at Migration Boards website (www.migrationsverket.se) and is called Lifos.

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.

See above. They try to publish information about GLBTs, but there is a report that criticizes the poor information about the situation of GLBTs:

Elina Grandin and Anna-Maria Sörberg, 'Unknown people, The vulnerability of sexual and gender identity minorities and the Swedish Migration Board's country of origin information system' ('Okänt folk, Om förståelse av genusproblematiker och utsatthet på grunden sexuell läggning och könsidentitet i Migrationsverkets landinformation'), Migrationsverket, January 2010.

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

No

Yes. Could you describe this information?

Most of the material is published at Lifos (see above). The Migration Board sometimes makes investigative trips. The reports from such a trip sometimes (but not always) include some information about the situation for GLBTI. Often the conclusion is that there are no problems for GLBTI. RFSL have often criticized the Migration Board that they only have contact with "official" people, not GLBTI people.

As an example I quote the report from a investigative trip to Lebanon, Syria and the Kurd-governed provinces in northern Iraq between 19 April and 6 May 2009. Here the Migration Board write the following (Lifos 21201 page 6):

LGBT persons

According to our sources homosexuality has nothing to do with honour-thinking and family honour. It is not dishonourable for the family to have a homosexual child or sibling. It is for religious, social and cultural reasons that people in some circles reject homosexuality and condemn it. In Lebanon the public has more or less accepted homosexuality (at least in the big cities). According to our sources no one has been killed in either Lebanon, Syria or the Kurd-governed provinces on account of their homosexuality.

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

No

Yes

a) Can the expert draft a report? No Yes

b) How is the expert paid for?

The expert is not paid by the Migration Board. Often the expert is RFSL and the information we have here.

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

It depends a little on which sources have been used, but if there is an official report from eg. the UK Home Office that report has higher weight.

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

Mostly they are only looking at the penal code and if it is forbidden to be gay or lesbian. But even if it is forbidden they look at the situation inside the country. E.g. in Burundi they have made a decision that the new penal code never has been used and therefore there is no risk for the asylum seeker upon return to Burundi.

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.

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.

E.g. in Iran it is possible to change sex and the application from transsexual refugees is rejected because we have very little information about the real situation. Also for lesbians we have the same problem, many lesbians are forced to marry a man in their home country and there is a lack of understanding for this situation.

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.

Especially talking about honour-related violence - the information about problems for heterosexuals is used also for lesbians. See also answer to question 28.

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

If a GLBT person had contact with other GLBTs and this situation is known by people from the same country and they report it back to the home country and the family there. E.g. one gay men took part in the Stockholm Pride and a picture from the parade was published in a newspaper. Another person from the same country (Iraq) recognized him and informed his family in Bagdad. Another example: One lesbian from an African country had a girl-friend in Sweden and this information was known in Kenya. In all cases they have been granted asylum.

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

It is a common problem for many refugees from muslim countries. There are a guidelines that say that these circumstances shall not be negative when they take a decision. But the problem is that the decision makers not always accept these guidelines. Furthermore, these guidelines are only binding for the Migration Board and not for the Court.

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

It's difficult to answer this question with yes or no because the Migration Board always make an individual assessment. But if the criminal laws use the word "sodomy" instead of "homosexual" it's possible that this assessment will be granted asylum. In some penal codes the word "homosexual" or "lesbian" is not used, but instead the Penal code uses words like "sodomy" or "against the nature". In the practice of these laws it's not always clear what the national penal code means with "sodomy" (not necessarily homosexuality).

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?

It's not so common but it happens mostly if the refugees are from muslim countries and in risk of persecution from the family and the police are not able to protect her/him. We have had some cases especially from Iraq that were granted asylum because the family threatened to kill the asylum seeker (both gay and lesbian).

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

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

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

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

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

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.

In a case from Iraq it was written that the asylum seeker did not try to get protection from the authorities.

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.

It's common when the asylum seekers are from countries in the former Soviet Union (Kazakhstan, Kirgizistan) and Mongolia.

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?

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?

Asylum seekers from Iraq (central and south part of the country) are considered to settle in northern Iraq (KRG).

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

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

The decision was based on an assessment that the refugee was able to settle in Iraq without the risk of continuing persecution.

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...)?

It's difficult to describe every persecution for all the cases, it will take too long time and too many pages. But all examples given in the question I can recognize in the cases I have worked with.

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?

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).

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.

In the cases I have been in contact with there is always some form of persecution. In some cases there can ALSO be some form of discrimination, e.g. transsexual people who have problems with medical treatment.

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.

Sometimes they use this argument indirectly "you have not been open before" or "no one knows about you sexual orientation" and then they conclude that there is no risk for persecution if the asylum seeker returned to the home country.

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?

The aliens law from 2006 does not mention this explicitly but in the legislative history the government had written a lot of what it means to belong to a particular social group and then explained that GLB can "belong to a particular social group". There are no differences between L, G and B.

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

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

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

In practice transgender people has granted asylum.

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

No Yes

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

In the legislation transgender is not mentioned but in practice they are considered to be a social group (see also the Handbook from 2002).

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

Procedures Directive⁴, 2005/85

Article 13 Procedures Directive: The interview

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

No

Yes. Is such a preference usually recognised? No Yes

54) Can asylum seekers express a preference for an interviewer and/or interpreter who is not a member of their own ethnic community?

No

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

Yes. Is such a preference usually recognised? No Yes

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?

The Migration Board has about 4000 employees. About 10 % of them has visited a training about heteronormativity. Most of these employees are NOT officers or decision makers. The training is voluntary and we have got a lot of reports that people are sleeping during the training or say that they don't agree with the teachers opinion etc. So the quality is doubtful and we can hardly see any effect in the decisions made by the Migration Board.

55B) Is the training:

- Obligatory No Yes. For whom?

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

55C) Who has access to this training?

55D) Are judges included in these trainings?

No Yes

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

55F) Who does the training?

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

No Yes

Article 23-3,4 Procedures Directive: Accelerated procedure

57) Does your country have accelerated asylum procedures?

No

Yes. Is an exception made for claims of LGBTI asylum seekers?

No Yes. Please explain.

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

No Yes. Please explain.

Articles 29-31 Procedures Directive: Safe countries

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

No. Please go to question 60.

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.

RFSL has asked Sweden to take a decision in a case that Dublin Regulation says that Lithuania shall make a decision, but so far no decision has been taken in this case.

The asylum seeker was a transgender person. She has never been to Lithuania (but had a visa from this country). We tried to argue that she couldn't get a fair treatment in Lithuania because of the country's homophobic/transphobic opinion. In the decision the Migration Board only wrote that by the Dublin regulation the asylum case should be dealt by Lithuania. They never discussed our argument about the the risk of an unfair treatment.

Family Reunification Directive⁵, Council Directive 2003/86/EC

Article 10 Family Reunification Directive: Family members

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

No. Please go to question 62.

Yes. Please answer question 61A.

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

No Yes. Please explain under which circumstances.

If it's about a relationship that is considered to be serious and have lasted for four months.

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?

Often from people from the same country as the asylum seeker.

⁵ Family Reunification Directive:

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

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

62B) Are the authorities aware of these problems?

No Yes. How do they react?

Not always aware but if the asylum seeker speak with the Migration Board they try to find another refugee camp or at least another apartment. Some asylum seekers want to stay in a single room (often there are 6 persons in a 3 rooms flat) but this is often difficult to meet this wish (there are very few single rooms available). Sometimes it can be possible for transgender asylum seekers.

62C) Does a complaints mechanism exist?

No

Yes. Is it effective? No Yes

If I understand the question right it's only about the problems during the asylum procedure. If you have problems eg with the people at the refugee camp, you can ask the Migration Board for another one, but if they refuse your application you can't complain in this case. It's only if your asylum case is rejected, you can apply to the court.

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

No

Yes. Please explain

Everyone is allowed to stay in private accommodation, if they can find such a place. But the Migration Board never pays the rent for the accommodation, so the asylum seekers have to finance the rent by private money.

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

No

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

Articles 17 and 15 Reception Directive: Transgenders/ intersex

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

No Yes

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

a) during the asylum procedure

No Yes

b) after they are granted asylum?

No Yes

Talking about hormones and sex change the answer is no. The reason for this is that all refugees normally only have the right to medical treatment in emergency cases (if you don't get the treatment you will die). Even if you feel bad it's not possible. Especially the sex change operations are surrounded by many rules (also for people living in Sweden) and you don't have the right for operation only because you want it.

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?

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.

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.