

# FLEEING HOMOPHOBIA

## QUESTIONNAIRE

European Research Project

FLEEING HOMOPHOBIA, SEEKING SAFETY IN EUROPE,

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

### Introduction

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

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

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

### Guidance to the questionnaire

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

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

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

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

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

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

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

Thank you very much!

Best regards,

Sabine Jansen, COC Netherlands

Thomas Spijkerboer, VU University Amsterdam

---

**General**

---

Name: Seraina Nufer

Telephone number: 031 370 75 75

E-mail address:

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

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

***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.

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

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

No numbers available

What are the main issues in these cases?

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

No numbers available

What are the main issues in these cases?

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?

d) Did you find transgender asylum cases?

No

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

What are the main issues in these cases?

e) Did you find intersex asylum cases?

No

Yes. What are the main issues in these cases?

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

1 Cameroon

2 Iran

3 Kosovo

4 Arabic countries

5 other African countries

6 Eastern Europe

7 countries of the former Soviet Union

8 Comment: no known order according to quantity; countries according to an analysis of the jurisprudence of 2007: Martin Bertschi, Die asylrechtliche Behandlung der Verfolgung wegen Homosexualität, ASYL 4/07.

9

10

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

No

Yes. Please explain.

6) When asylum/ protection is granted to LGBTI asylum seekers, is this generally:

refugee status based on membership of a particular social group? (If so, what is the description of the particular social group, e.g. lesbian women in Pakistan)

homosexuals (gays/lesbians) in a particular country

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

subsidiary protection? On which basis?

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

a) humanitarian grounds?

No

Yes. Please quantify and explain.

b) other grounds (discretionary leave)?

No

Yes. Please quantify and explain.

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

No

Yes. Please quantify and explain.

### ***Expertise, Support***

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

No

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

Queeramnesty accompanies and supports LGBTI asylum seekers in Switzerland. Volunteers accompany them to appointments with authorities (asylum interviews,...), offer consultation (but not legal advice), help with social networking, put them in touch with psychologists, legal advisory services, other NGOs. They also undertake campaigns for public awareness raising.

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

- Difficulties for asylum seekers to out themselves in the asylum procedure, partly because of interpreters from the same country/cultural background.  
- Difficulties to reach the asylum seekers: difficulties for asylum seekers to openly talk with them or make phone calls in the reception centers if there are other asylum seekers from the same country/cultural background there.

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

Volunteers only

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

No  Yes. Which organisation(s)?

Amnesty International

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

No  Yes. In what form?

But they put asylum seekers in touch with NGOs providing legal advice.

e) Do they have contact with the government?

No  Yes. In what form?

The responsible person of the Federal Office for Migration for the topic of gender-related persecution is aware of the existence of Queeramnesty and there has been contact between the two institutions regarding a possible cooperation for training for officials.

10) Special training for NGOs

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

No  Yes

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

No  Yes

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

No  Yes

11) Lawyers' expertise on LGBTI

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

No  Yes

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

No  Yes. Please provide the web address of the network

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

No

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

Queeramnesty puts up leaflets in reception centers.

---

**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

Manual the Federal Office for Migration, 1.3 and 3. II. e. German:

[http://www.bfm.admin.ch/content/dam/data/migration/asyl\\_schutz\\_vor\\_verfolgung/asylverfahren/handbuch\\_asylverfahren/handbuch\\_deutsch/kap\\_j\\_2-0108.pdf](http://www.bfm.admin.ch/content/dam/data/migration/asyl_schutz_vor_verfolgung/asylverfahren/handbuch_asylverfahren/handbuch_deutsch/kap_j_2-0108.pdf), French:

[http://www.bfm.admin.ch/content/dam/data/migration/asyl\\_schutz\\_vor\\_verfolgung/asylverfahren/handbuch\\_asylverfahren/handbuch\\_franzoesisch/chap\\_j\\_2-0108.pdf](http://www.bfm.admin.ch/content/dam/data/migration/asyl_schutz_vor_verfolgung/asylverfahren/handbuch_asylverfahren/handbuch_franzoesisch/chap_j_2-0108.pdf)

English summary:

1.3. Persecution because of a certain sexual behavior can be classified as persecution for belonging to a certain social group.

3. II. e. Mere discrimination of LGBT persons is considered as not intense enough, but disadvantages because of the sexual orientation which is considered as particularly condemnable in the country of origin can be considered persecution in the sense of the Asylum Act.

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.

See the manual described above.

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.

OSAR has no knowledge of this.

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.

Please see the following publications on jurisprudence:

- Carola Reetz, Homosexuelle haben keine Chance auf Asyl, Plädoyer 6/2009, S. 26-28,

<http://www.amnesty.ch/de/themen/weitere/lgbt/dok/2010/queer-refugees-in-der-schweiz/ueber-queer-refugees-in-der-schweiz/fachartikel-carola-reetz-homosexuelle-haben-keine-chance-auf-asyl.-plaedoyer-6-2009-s.-26-28>

- Martin Bertschi, Die asylrechtliche Behandlung der Verfolgung wegen Homosexualität, ASYL 4/07 (mentioned above)



16) Did you find any references to the Yogyakarta Principles<sup>1</sup> and/or to UNHCR's Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity<sup>2</sup> in decisions or case law?

No

Yes. Please specify where you found these references.

---

### **Qualification Directive<sup>3</sup>, Council Directive 2004/83/EC**

---

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

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

Comment: The Qualification, Procedure and Reception Conditions Directives are not binding for Switzerland as a non-EU country

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?

Sometimes the authorities argue that the applicant does not know the relevant legal provisions in his/her country of origin; or LGBTI organizations. It is also difficult to prove one's sexual orientation, especially if someone has not yet had a relationship etc.

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

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

see 18A)

---

<sup>1</sup> Yogyakarta Principles: <http://www.yogyakartaprinciples.org/>

<sup>2</sup> UNHCR Guidance Note: <http://www.unhcr.org/refworld/docid/48abd5660.html>

<sup>3</sup> Qualification Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

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)?

Statements from other people, but those are often considered as "courtesy letters" that do not prove anything. Also membership of LGBTI organisations or declarations by such organisations, for example to prove the participation in a demonstration or other event.

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?

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.

No knowledge of specific cases, but general information from Queeramnesty.

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

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 authorities have researchers; their COI and training modalities are not publicly accessible. It is not known exactly what the training covers, but it is assumed that this is also an issue. OSAR also has a COI investigating unit that covers also LGBTI issues.

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

No

Yes. Could you describe this information?

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

No

Yes

a) Can the expert draft a report?  No  Yes

b) How is the expert paid for?

OSAR's COI unit researches and makes reports upon request. The experts are paid by the lawyer and subsequently by the applicant. If the applicant wins the case, all costs are reimbursed by the state. If he/she loses, the costs are only very rarely reimbursed (free legal aid is hardly ever granted in asylum cases).

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

This depends on the case/information in the report.

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

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

- No  
 Yes. Please give examples.

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.

No concrete examples, but this is a general problem.

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

- No  Yes. Please describe the examples.

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

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

- No  
 Yes. Please explain with decisions and/or case law. Good/bad practices

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

- No  
 Yes. Please explain with decisions and/or case law. Good/bad practices

It is a general difficulty that applicants are afraid to mention their sexual orientation and do so only later in the procedure; this sometimes affects the credibility as assessed by the authorities.

**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

?

**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?

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.

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

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

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

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

39) Do your decision makers and courts acknowledge that the existence of criminal sanctions against LGBTIs, even if not enforced, contribute to a homophobic atmosphere in which persecution by state and/ or non-state actors can flourish?

No

Yes. Could you give examples?

***Article 8 Qualification Directive: Internal relocation***

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

No. Please go to question 41.

Yes. Please answer questions 40A and 40B.

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

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

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

The policy of the Federal Office for Migration is that it cannot be expected of someone to return to his/her country of origin and hide his/her sexuality. However, there still seem to have been some decision that are contrary to this policy.

***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...)?

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?

As in the general definition of a refugee, they have to be serious disadvantages: physical, mental, restriction of freedom. Mere discrimination is not enough.

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.

As mentioned above, mere discrimination is considered not enough if it does not amount to a disadvantage in the sense of the Geneva Convention refugee definition.

**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.

See comment above 40B)

**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?

Not known if there are differences between L, G, B applicants

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).

No explicit policy known.

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?

***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 Directive<sup>4</sup>, 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

If gender-related reasons for seeking asylum are brought forward.

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

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.

---

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

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

The Federal Office for Migration provides internal trainings for its officials; the exact modalities of this are not known. OSAR also provides trainings on different topics relating asylum law and practice, for example in December 2010 on gender-related persecution. Queeramnesty and OSAR are planning a training on LGBTI persecution in 2012. These trainings are intended for lawyers, NGO staff, but also state officials and judges and other interested individuals.

55B) Is the training:

- Obligatory  No  Yes. For whom?

Unknown if the Federal Office for Migration's training is obligatory. OSAR's trainings are not obligatory.

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

55C) Who has access to this training?

see 55A)

55D) Are judges included in these trainings?

No  Yes

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

OSAR: only sporadic (see 55A)). Federal Office for Migration: unknown

55F) Who does the training?

see 55A)

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.

? For the Swiss authorities' safe countries list see:

[http://www.ejpd.admin.ch/content/dam/data/migration/asyl\\_schutz\\_vor\\_verfolgung/asylverfahren/weitere\\_themen/safe-countries-d.pdf](http://www.ejpd.admin.ch/content/dam/data/migration/asyl_schutz_vor_verfolgung/asylverfahren/weitere_themen/safe-countries-d.pdf)

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 Directive<sup>5</sup>, Council Directive 2003/86/EC**

---

**Article 10 Family Reunification Directive: Family members**

---

<sup>5</sup> Family Reunification Directive:

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

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

No. Please go to question 62.

Yes. Please answer question 61A.

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

No  Yes. Please explain under which circumstances.

---

## Reception Directive<sup>6</sup>

---

### *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?

62B) Are the authorities aware of these problems?

No  Yes. How do they react?

62C) Does a complaints mechanism exist?

No

Yes. Is it effective?  No  Yes

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

No

Yes. Please explain

---

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

No, generally not. Sometimes informal agreements can be reached directly with the responsible person from the center to live in private accommodation and regularly report to the center. But this is generally not possible in the reception centers of the Federal Office for Migration (where the asylum seekers are accommodated during the first weeks of the procedure).

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

No

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

**Articles 17 and 15 Reception Directive: Transgender/ intersex**

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

No  Yes

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

a) during the asylum procedure

No  Yes

b) after they are granted asylum?

No  Yes

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

No  Yes

---

**Any other issues**

---

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

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.