



LGBTIQ applicants in asylum systems

The information presented in this fact sheet is extracted from the [Asylum Report 2023](#).
Direct link to the section: <https://euaa.europa.eu/asylum-report-2023/54-seeking-protection-and-receiving-support-reception-applicants-diverse-sogiesc>

Lesbian, gay, bisexual, trans-gender, intersex and queer (LGBTIQ) persons can face discrimination, persecution and violence in their country of origin, with many countries throughout the world still criminalising certain sexual expressions. Asylum claims based on sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) have increased in recent years.¹

Within the Common European Asylum System (CEAS), common standards for LGBTIQ asylum applicants are defined in the recast Qualification Directive, the recast Asylum Procedures Directive and the recast Reception Conditions Directive. When the application is approved, LGBTIQ applicants are generally granted international protection under the qualification of being a “member of a particular social group”.





Key developments extracted from the Asylum Report 2023

- The Urban Agenda for the EU Partnership on Inclusion of Migrants and Refugees followed up on its new action plan for 2021-2022 and delivered recommendations for all seven action areas related to: specific concerns of LGBTIQ migrants, access to health care, treatment of mental health concerns, the role of art and culture in integration, evidence-based policymaking in cities, financial instruments to be used for integration by cities and children in migration.²

Changes to legislation, policies and practices

- A legislative proposal was adopted in Germany to include asylum procedure counselling which is independent from the authorities and allows special legal aid for the LGBTIQ community and applicants with special needs.
- The German BAMF reviewed its internal instructions and clarified some aspects of cases lodged by LGBTIQ applicants. When examining the risks, it must be assumed that the applicant would be able to openly live their sexual orientation or gender identity in the country of origin. Specially-trained case officers for gender-specific persecution were informed and sensitised on applying the amended instructions.³ The Higher Administrative Court of Baden-Württemberg underlined the importance of this approach. It noted that the fact that the applicant could avoid persecution by secretly living his homosexuality by holding back or even renouncing a sex life must be considered irrelevant because the wording of the recast Qualification Directive does not differentiate between clandestine and non-clandestine conduct. Homosexuality is an identity-forming part of the applicant's personality, which would expose him to degrading living conditions due to his sexual orientation.
- Some EU+ countries amended their safe country of origin lists to better protect LGBTIQ applicants. For example, in the Netherlands, Armenia⁴ and Trinidad and Tobago⁵ were maintained on the list of safe countries for asylum applicants – with the exception of LGBTIQ applicants.
- In addition, new risk groups of applicants from Egypt were defined in the Netherlands in February 2022 based on a report from the Ministry of Foreign Affairs. The risk groups include LGBTIQ persons.⁶
- In Malta, however, aditus strongly criticised the presence of a number of countries on the safe country list because they discriminate and criminalise LGBTIQ individuals. The organisation pointed out that this practice undermines the proper safeguards at second instance for these individuals who are fleeing persecution on the basis of their sexual orientation and gender identity, especially in cases where the first instance decision rejects the application as manifestly unfounded.⁷ The organisation proposed an amendment to legislation to ensure that countries that criminalise LGBTIQ communities should not be assessed as safe countries of origin and launched the #Safe4All legal

initiative.⁸ The International Protection Agency stated that all procedural guarantees apply within the accelerated procedure.

- In June 2022, the first Performance Update by the IND in the Netherlands indicated longer processing times and more time spent on training staff for cases involving LGBTIQ applicants or religious converts.⁹

The asylum procedure and reception

- French authorities made more than 200 reception places available for vulnerable LGBTIQ applicants in 2022.
- The AIDA report for Germany expressed concerns over the situation of LGBTIQ applicants in collective reception centres, citing several reports which document harassment and attacks.¹⁰
- The Organisation Intersex International Europe highlighted the specific needs of intersex applicants in reception, especially in ensuring access to health care without discrimination.¹¹
- A group of 37 NGOs sent a joint letter to the Greek authorities to share their observations on the difficulties faced by LGBTIQ applicants in the asylum procedure and in reception, and made recommendations to improve the situation. For example, the organisations found several examples of stereotypical questions in interview transcripts that do not seem to respect European and Greek standards, which suggest that case officers had not received adequate training on assessing applications based on sexual orientation.¹²
- UNHCR intervened as a third party before the ECtHR in the case of [M.I. v Switzerland](#). In its submission, UNHCR underlined that denying refugee status by compelling individuals to conceal their sexual orientation or gender identity may have a serious impact on both mental and physical health and could lead to an unbearable situation amounting to persecution.¹³
- The NGO QueerBase analysed CJEU and national case law to expose biases that some national authorities may still have towards LGBTIQ refugees, including an expectation that LGBTIQ applicants should live and express their sexual orientation openly. The analysis underlines earlier judgments from the CJEU and the Austrian Constitutional Court that the form of expression of one's sexual orientation in the host country or in the country of origin is not a relevant factor. The decisive element is whether an LGBTIQ applicant could live openly in their country of origin without a risk of persecution.¹⁴
- The Cyprus Refugee Council observed inconsistencies in the approach to the assessment of applications based on sexual orientation or gender identity. For example, the organisation noted that, while case officers used the suggested DSSH (difference, stigma, shame, harm) model during interviews, they often used closed questions instead of open ones.¹⁵

Country of origin information

- Civil society organisations play a key role in producing COI from the ground. In 2022, some COI publications focused on the situation of LGBTIQ individuals in their country of origin, for example the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)'s annual report on the human rights situation of LGBTIQ people. Equal Ground and the Centre for International Human Rights of Northwestern Pritzker School of Law produced a report on the [Violations by Sri Lanka of the Civil and Political Rights of the Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning/Queer \(LGBTIQ\)](#), which was showcased at the 135th Session of the Human Rights Committee.¹⁶
- NANSSEN analysed the Commissioner General for Refugees and Stateless Persons' COI on LGBTIQ in Jordan and noted discrepancies between the sources used and the conclusions drawn in decisions on asylum applications.¹⁷

Training and handbooks

- The EUAA updated [practical guidance](#) and developed a [training module](#) on applicants with diverse SOGIESC.
- The Swedish Network of Refugees Support (FARR) updated its handbook, Good Advice, which has special sections on how asylum is assessed for women, children, LGBTIQ applicants, religious converts and people who have been subjected to torture. Translations of the handbook are available in Arabic, Farsi and Russian.¹⁸
- Norway produced a new country of origin information (COI) report on the situation of [LGBTIQ individuals](#)¹⁹ in Iran.
- In Belgium, the civil society organisation NANSSEN organised a workshop on several dimensions of special needs, including LGBTIQ applicants, applicants with disabilities, applicants with health issues and victims of torture.²⁰

For examples of case law concerning LGBTQI applicants, please refer to “Jurisprudence on LGBTQI applicants in international protection”, [Fact Sheet No 21](#).

To search for more developments by topic, country or year, consult the [National Asylum Developments Database](#).

To read more case law related to asylum, consult the [EUAA Case Law Database](#).

Sources

Please see [Sources on Asylum 2023](#) for the full list of over 1,300 references which were consulted for the Asylum Report 2022.

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