



LGBTIQ applicants in asylum systems

The information presented in this fact sheet is extracted from the [Asylum Report 2024](#) and covers developments in 2023 and early 2024. Direct link to the section: <https://euaa.europa.eu/asylum-report-2024/44-providing-protection-and-support-applicants-diverse-sogiesc>

Lesbian, gay, bisexual, trans-gender, intersex and queer (LGBTIQ) persons can face discrimination, persecution and violence in their country of origin as many countries throughout the world still criminalising certain sexual expressions. Sexual orientation, gender identity or expression, and sex characteristics (SOGIESC) may also impact the journey through transit countries in the pursuit of safety. These aspects can also have an impact on an asylum applicant's experience in the destination country, and it should be ensured that effective protection is provided in a suitable manner for the specific context and in full respect of fundamental rights and human dignity.

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 2024

In 2023, national authorities made strides in improving asylum and reception systems for applicants with diverse SOGIESC. Courts stepped in and overturned several negative decisions on asylum claims to ensure protection for this profile of applicants.

- The European Parliament published a study which examines the progress made over the past 3 years with the implementation of the European Commission's LGBTIQ equality strategy. The study compared the key actions proposed with the key actions that have been taken until November 2023, including the protection of LGBTIQ applicants in the context of CEAS.
- UNHCR published a stock-taking report on its progress in the protection of LGBTIQ people in situations of forced displacement since its 2021 roundtable. The report analyses capacity development, access to the asylum procedure, safe data collection, resettlement and complementary pathways, outreach and community engagement, health and other services, economic inclusion and organisational leadership.¹

On the occasion of Europride 2023, the EUAA published two fact sheets on LGBTIQ applicants, highlighting recent **developments** at the EU and national levels and **jurisprudence** related to this profile of applicants.

1. Developments at the national level

- Building on its previous strategy, Malta launched its third LGBTIQ Equality Strategy and Action Plan 2023-2027. The 2018-2022 action plan achieved many results, including an information leaflet on Maltese legislation related to LGBTIQ equality and asylum procedures which is available in six languages, amendments to the Procedural Standards for Granting and Withdrawing International Protection Regulations (S.L.420.07) which extends protection to those at risk of persecution on the grounds of their gender expression and sex characteristics, and the ministry's SOGIESC Unit trained 30 staff members and 120 security and administrative personnel working for the Agency for the Welfare of Asylum Seekers (AWAS).²
- The federal government in Germany launched a new funding programme with EUR 20 million available for 2023. The programme aims to ensure that counselling during the asylum procedure, which is voluntary, is independent of the authorities,³ includes legal advice for LGBTIQ persons, victims of torture and other vulnerable groups seeking protection and better identifies vulnerable applicants who have special needs in the asylum procedure or for their accommodation because of their age, SOGIESC, disability, serious mental or physical issues, for example as a result of torture or the experiences of war and conflict in their home country.

- As part of its LGBTIQ inclusion work, the Organisation for Economic Cooperation and Development (OECD) published a first country review on Germany. The report includes an overview of measures which have been taken in reception facilities of federal states to ensure the safety of LGBTIQ applicants.⁴
- Civil society organisations and academia were active in raising awareness and providing support and information to applicants with diverse SOGIESC. Ghent University in Belgium, in collaboration with NANSEN, published a practical guide which focuses on the meaning and implications of a gender-sensitive asylum procedure. The guide is accompanied by a thematic tool with legal, academic and policy information that can be used in gender-related procedures for international protection.⁵
- OII Europe published a flyer with information on the specific needs of intersex refugees and asylum seekers. It also presents a list of recommendations on current migration policies.⁶
- The Italian Ministry of the Interior published a [handbook](#)¹ on vulnerabilities which makes recommendations to ensure specialised training on SOGIESC for reception staff and safe and adequate reception and assistance measures.⁷
- A report from the Irish Department of Children, Equality, Disability, Integration and Youth made several recommendations to improve support to LGBTIQ applicants in accommodation centres in Ireland. The recommendations included updating house rules, training staff on SOGIESC-related issues and making a dedicated support worker available to LGBTIQ residents.⁸
- Greek NGO Fenix raised concerns about the policy to house SOGIESC with non-SOGIESC asylum applicants under the same roof and warned about the lack of safety and impact on their mental health. Similarly, it observed that dedicated areas for SOGIESC-specific housing within the camps could further result in isolation and stigmatisation of this group of applicants since they would be more visibly exposed.⁹

2. Case law related to SOGIESC applicants

- The Federal Administrative Court in Austria [overturned](#) a negative decision and granted refugee protection to an Afghan national who had applied for international protection on the grounds that his sexual orientation would not be tolerated in Afghanistan. The court consulted recent COI reports and concluded that the LGBTIQ community in Afghanistan was already subjected to significant societal violence before the Taliban takeover and there had been reports of unlawful killings and physical attacks directed at the LGBTIQ community.

¹ The Department of the Civil Liberties and Immigration developed the handbook in collaboration with the National Commission for Asylum, Department of Public Security, Ministry of Health, the EUAA, European Commission, Frontex, UNHCR, the IOM, UNICEF, Italian Red Cross, Italian Coast Guard, Central Service for the Management of SAI and other stakeholders.

- In Germany, regional courts decided on several cases of LGBTIQ based on consultations of recent COI reports. The Administrative Court of Leipzig **overturned** a negative decision and an Iraqi national, who applied for international protection on the grounds of being homosexual, was granted refugee protection. The court referred to recent COI and found that homosexuals in Iraq were subjected to human rights violations and discrimination.
- The Regional Administrative Court of Darmstadt granted international protection to a homosexual man from **Iran**, the regional administrative court of Cottbus granted protection to a homosexual **Algerian** applicant, and the regional administrative court of Hamburg granted refugee status to homosexual applicants from **Ghana** and **Guinea**, **noting** that LGBTIQ applicants were at serious risk of physical or psychological violence and being persecuted by both state and non-state actors if returned to their country of origin.
- The Regional Court of Saarland granted refugee status to a woman from **Morocco** on grounds of her sexual orientation. The court based its decision on COI which showed that homosexuality is punishable by Article 489 of the Penal Code with a prison sentence and fine, and this is actually applied in practice. Therefore the court considered the woman to be a member of a particular social group who would be at considerable risk of prosecution and punishment if returned to her home country.
- The Regional Administrative Court of Halle **granted** refugee status to a homosexual Georgian national, finding that the Georgian authorities were unwilling or unable to effectively protect LGBTIQ persons.
- The CNDA in France **granted** refugee protection to an Iranian national due to the risk of persecution by the national authorities and the applicant's father if returned to Iran due to his sexual orientation. The court recalled that homosexuality was criminalised in Iran and could be punished by flogging, detention and the death penalty and that the persecution was not carried out solely by the national authorities but also by individuals (through honour crimes) and health institutions (with forced gender reassignment surgery and conversion therapy).
- The CNDA **granted** refugee protection to an applicant from Uganda, noting the promulgation of the national Ugandan Anti-Homosexuality Act of May 2023. The court referred to COI which established that homosexual individuals were already at risk of persecution before the act was adopted. In addition, the CNDA held that homosexual persons constituted a particular social group and granted refugee status to LGBTIQ applicants from **Burundi** and **Myanmar**.
- The Administrative Court of Latvia **annulled** an expulsion order against a homosexual applicant from Iran whose second subsequent application had been accepted for an examination in substance. Based on COI, the court noted that there was a real risk of being exposed to inhuman or degrading treatment.

Credibility assessments

Credibility assessments play a key role in determining whether to grant international protection to LGBTIQ applicants and courts scrutinised practices to ensure that persecution based on SOGIESC is accurately assessed.

- An applicant from the Democratic Republic of the Congo appealed against a decision refusing international protection, arguing that, according to updated COI on LGBTIQ rights in her country, she would be forced to live her sexual orientation in a hidden manner. However, the Administrative Tribunal in Luxembourg **confirmed** the negative decision since the court found that the applicant's story lacked credibility and plausibility due to the contradictory versions of her statements. In addition, the claims were not subject to serious conditions originating from non-private actors but perpetuated by private actors.
- The Court of the Hague **rejected** the appeal of a Nigerian woman due to a lack of credibility of her claims based on sexual orientation. According to the court, the applicant's assertions were inconsistent and vague, which undermined her credibility and prevented her from persuading the court that she was eligible for asylum. The asylum claim was thus rejected by the court as being unfounded.
- The Council for Alien Law Litigation (CALL) in Belgium **annulled** an inadmissible decision which rejected a subsequent application lodged by an Iraqi national who claimed to be a homosexual only in his fifth request and submitted evidence for this claim in his ninth subsequent application. The council stated that it cannot be inferred that an applicant lacks credibility from the fact that he did not immediately declare that he was homosexual in his initial application and showed reluctance to disclose intimate details about his life. The council also pointed out that homosexual orientation should not be proved, but that it was sufficient to believe that it was plausible.
- In Italy, the Tribunal of Salerno **granted** refugee protection to an applicant from Senegal, finding his claims about persecution due to sexual orientation to be credible. According to the court, the applicant made an effort to substantiate his statements, it considered the application to be coherent and it found that it was plausible that the applicant was reticent to report his sexual orientation during the first hearing as he had become aware of his sexual orientation only once arrived in Italy.

Procedural guarantees

Other court decisions reiterated that determining authorities must conduct procedures in a way that enables applicants to exercise their rights efficiently, including during the personal interview.

- The Tallinn Administrative Court of Estonia **annulled** a decision of the Police and Border Guard Service (PBG) concerning a Russian transgender applicant from Crimea on the grounds of numerous procedural shortcomings. The court ordered the authorities to reconsider the applicant's case after it found that they had failed to: indicate the factual and legal basis for their decision, assess the special procedural needs of the applicant, present their reasoning and draw logical conclusions from COI, assess the risk of persecution by private individuals besides the risk of persecution by the state

authorities, assess the grounds for the application cumulatively (transgender identity, citizenship and political opinion), and assess the risk of persecution upon a return without downplaying this factor on the basis that the applicant could conceal his political opinions. Moreover, the court ruled that the mere fact of filling in a statement of vulnerability may not be sufficient to assess the special procedural needs of an LGBTIQ person diagnosed with depression.

- The same court in Estonia also **annulled** a PBGB decision due to procedural violations in a case of a Russian transgender man diagnosed with autism and ADHD. The court noted that the PBGB had failed to conduct an appropriate assessment of the applicant's special needs and to provide him with the necessary support during the proceedings.
- A national of Sierra Leone had applied for international protection on the grounds of his sexual orientation but received a negative decision. The Administrative Court of Athens in Greece **held** that the 17th Independent Appeals Committee had failed to assess the statements and evidence on the medical condition of the applicant suffering from schizophrenia. The court also noted that the committee had not addressed the applicant's claims about deficiencies with interpretation during his personal interview with the Regional Asylum Office.

3. Country of origin information

A topic of increased interest in 2023 was COI on the LGBTIQ community.

The Asylum Research Centre published a series of query responses that presented COI on the situation and treatment of LGBTIQ persons in [Egypt](#), [Tunisia](#) and [Uganda](#).¹⁰ In addition, Asylos published reports on the treatment of homosexual men and their relatives in [Kenya](#)¹¹ and on the situation of homosexual people in [Togo](#).¹²

Country of origin information (COI) plays an important role in the assessment of LGBTIQ asylum applications in EU+ countries and it is frequently used as evidence in first and second instance procedures. In 2023, the EUAA updated its [COI Research Guide on LGBTIQ](#) to assist practitioners.



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](#).

For more information, please contact: asylum.report@euaa.europa.eu

Sources

Please see [Sources on Asylum 2024](#) for the full list of over 1,300 references which were consulted for the Asylum Report 2024.

¹ United Nations High Commissioner for Refugees. (June 2023). [Protecting LGBTIQ+ people in situations of forced displacement: A Stocktaking on UNHCR progress since the 2021 Roundtable](#).

² Human Rights Directorate. [LGBTIQ+ Equality strategy and action plan 2023-2027](#).

³ [Gesetz zur Beschleunigung der Asylgerichtsverfahren und Asylverfahren](#) [Law to accelerate asylum court procedures and asylum procedures], January 1, 2023.

⁴ Organisation for Economic Cooperation and Development. (2023). [The Road to LGBTI+ Inclusion in Germany: Progress at the Federal and Länder Levels](#).

⁵ NANSEN, the Belgian refugee council. [Input to the Asylum Report 2024](#); ANSEN, the Belgian refugee council. (September 2023). [Guide Pratique pour les avocat/es Procédures de Protection Internationale Liées au Genre Violences sexuelles ou basées sur le genre, orientation sexuelle et identité de genre](#) [Practical Guides for Lawyers International Protection Procedures Liées au Genre Sexual Violence or Based on the Genre, Sexual Orientation and Genre Identity]; NANSEN, the Belgian refugee council. (February 2023). [Nassen Tool 2023-2, Demandes de protection internationale liées au genre: Une bibliographie](#) [Nassen Tool 2023-2, Gender-related applications for international protection: a bibliography].

⁶ OII Europe. (2022, December 7). [OII Europe Intersex Refugees & Asylum Seekers Flyer](#).

⁷ Ministry of the Interior | Ministero dell'Interno. (2023, June 21). [Accoglienza: on line il vademecum per la rilevazione, il referral e la presa in carico delle persone portatrici di vulnerabilità](#) [Reception: the handbook for the detection, referral and taking charge of vulnerable people is online].

⁸ Department of Children, Equality, Disability, Integration & Youth | An Roinn Leanaí, Comhionannais, Míchumais, Lánpháirtíochta agus Óige. (2023, September 12). [LGBTI+ people living in International Protection Accommodation Services \(IPAS\) accommodation: Best practices and lived experiences](#).

⁹ Fenix. (2023, May 17). [No Safe Place: SOGIESC Asylum Seekers & Reception Conditions Policies](#).

¹⁰ Asylum Research Centre. (August 2023). [Egypt: Query response on the situation and treatment of the LGBTIQ+ community](#); Asylum Research Centre. (August 2023). [Tunisia: Query response on the situation and treatment of the LGBTIQ+ community](#).

¹¹ Asylos. (May 2023). [Kenya: The treatment of homosexual men and their relatives](#).

¹² Asylos. (October 2023). [Togo: The situation of homosexual people](#).