

Seeking refuge without harassment, detention or return to a “safe country”

ILGA Europe Briefing on LGBTI Refugees and Asylum February 2016

What are LGBTI asylum seekers?

A significant number of people applying for asylum in EU Member States are lesbian, gay, bisexual, trans or intersex (LGBTI). Some of them flee persecution unrelated to their sexual orientation or gender identity (e.g. their political activity) while others are at risk of persecution precisely because of their sexual orientation or gender identity. In both cases, their sexual orientation or gender identity can be a ground for protection under the Refugee Convention¹ and under EU asylum law², depending on the situation in their home country and on their case.

On top of that, LGBTI asylum seekers are often at risk of additional danger during their journey and upon arrival in the country where they seek asylum, which can take the form of harassment, exclusion, sexual violence, or other forms of violence. Often but not always, they qualify as vulnerable persons with specific needs in terms of legal assistance, reception conditions, healthcare, etc.

The current situation: the refugee—management—crisis

In 2015, the numbers of asylum seekers arriving in Europe increased exponentially. Many reports showed how minorities, including LGBTI people, were being specifically targeted in ongoing conflicts. Most of the asylum seekers travelled through Turkey, Greece and the Balkans, to seek asylum in Germany and Sweden, among other Member States. A significant number of these asylum seekers are LGBTI people.³ During their journey and upon arrival, they face additional risks in the form of harassment, exclusion, sexual violence, or other forms of violence.

The current refugee situation is not unprecedented, yet Member States have reacted by closing their borders and often leaving refugees in very difficult situations. Instead of building on the existing starting points of the common European asylum system, most Member States

¹ Convention Relating to the Status of Refugees, 28 July 1951, <http://www.refworld.org/docid/3be01b964.html>.

² In EU law, the 2011 Qualification Directive elaborates who is eligible for protection in the EU. For more information on EU asylum law, see http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm.

³ Unfortunately, the EU and its Member States gather and disclose very little official data on the number of asylum applications on the ground of sexual orientation or gender identity, which has been [criticized by the Fundamental Rights Agency](#). However, the available data and the reports of LGBTI and asylum organisations witnessing increasing numbers of LGBTI asylum seekers do indicate alarming numbers. E.g. the number of asylum applications on the ground of sexual orientation [in Belgium](#) increased from 376 applications in 2009 to 1.070 in 2014.

retreated to blaming each other and try to keep refugees off their ground. The current situation and political debates show clearly that the attempts to build a common EU asylum system have not led to a satisfactory situation on the ground, both in general and in particular for LGBTI asylum seekers.

The current political climate in the EU and most of its Member States is one of rejection and fear, calling for measures to stop “these people” from coming without addressing the root causes. In this context, the European Commission proposed to adopt an EU-wide [list](#) of “safe countries of origin” and to collaborate intensely with Turkey. The [Dutch government](#) and the [European Commission](#) even proposed to qualify Turkey as a “safe third country” and send thousands of people back from Greece to Turkey by boat. These measures will not provide a durable solution and would even put millions of people at risk in our neighbouring countries. Moreover, they will have a disproportionate negative impact on LGBTI asylum seekers, both in the Member States and outside.

In the following sections, we will set out which human rights violations LGBTI asylum seekers are undergoing and why the proposed measures and the collaboration with Turkey will only make this worse.

Human rights violations in reception and detention centres

LGBTI asylum seekers run additional risks and have specific needs in terms of legal assistance and reception conditions. In the current situation, they have very limited access to such services. That is why refugee and LGBTI activists across the region are attempting to respond to their needs, at the best of their abilities.

UNHCR’s report from December 2015, its very first [global report](#) on LGBTI asylum issues, clearly showed that LGBTI people are subject to severe social exclusion and violence in reception centres, and especially in camp settings (like European policymakers now want to set up in Turkey). Indeed, the increasing reports of bullying, abuse and harassment of LGBTI people in reception centres and detention centres can no longer be ignored. In the [Netherlands](#), our member organisation COC alarmed the authorities after testimonies by Iraqi and Syrian LGBTI people who were being threatened to be beaten up or raped in reception centres. Very recently, the National Human Rights Institution [reported](#) on the horrible experiences lived by LGBTI people in the main emergency camp *Heumensoord*. The authorities finally recognised the problems and started to create safe places for them in Amsterdam and Rotterdam. In [Germany](#), equally shocking stories of LGBTI people being attacked and harassed in reception centres arose, which caused NGOs and local authorities to create safe havens in Berlin and in Nuremberg.

In the UK, a [cross-party parliamentary inquiry](#) criticised the abuse, bullying and harassment of LGBTI people in immigration detention centres. Trans people in particular have been the victim of harassment, including threats, verbal violence and physical violence. A [recent independent inquiry](#) recommended steps to improve treatment of LGBTI asylum seekers. The UK charity UKLGIG has also warned that the needs of transgender asylum seekers are [woefully neglected](#) and their needs require [specific attention](#).

Fast-track procedures and “safe countries” are more dangerous for LGBTI people

The European Commission recently proposed a list of “safe countries of origin” and the Dutch government considers qualifying Turkey as a “safe third country”, which would allow for the forced return to Turkey of asylum seekers that entered the EU through Turkey. In its recent Communication on the State of Play of the European Agenda on Migration, the Commission itself even encouraged Member States to introduce the controversial mechanism of “safe third countries” and to apply it also to countries that have not ratified the Geneva Convention without geographical reservation, thereby clearly alluding to Turkey.⁴ However, both mechanisms are controversial and will have a disproportionate negative impact on LGBTI claims.

Such measures shift the burden of proof from the authorities to the asylum seeker and accelerate the procedure, leaving very little time for LGBTI asylum seekers to come forth with the real motive of their flight. This has proven very challenging to many, due to lived experiences of stigma and shame. Thus, these mechanisms entail the risk that people in need of protection are not identified, a particularly great risk in the case of asylum claims by LGBTI people, which tend to be complex and delicate by their nature.

In addition, several “safe countries” on existing lists used by EU Member States actually criminalise sexual orientation or gender identity and apply long-term imprisonment to same-sex couples. They cannot be considered as safe countries for LGBTI applicants.⁵

It is true that the Asylum Procedures Directive (APD) does provide for certain guarantees, stating that rules shall be laid down in national law permitting the applicant to challenge the application of the safe country concept on the grounds that the country is not safe “in his or her particular circumstances” (Art. 36 and Art. 38 APD). However, due to the high burden of proof and the short timeframe, it is quite likely that LGBTI asylum seekers will fall through the cracks when they do not dare to immediately expose their sexual orientation or gender identity, as is often the case.

The case of Turkey

Turkey is one of the countries proposed as a “safe country of origin” by the European Commission’s proposal of 9 September 2015. However, there are grave concerns regarding the respect of fundamental rights of LGBTI people, as expressed in numerous reports.⁶ Other accession countries like Macedonia, Bosnia and Serbia, also featured on the Commission’s

⁴ European Commission, Communication on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, 10 February 2016, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf, p. 18.

⁵ [Fleeing Homophobia Report](#), p. 26.

⁶ See ILGA-Europe’s recent [submission](#) to the Progress Reports on EU Accession, which raised numerous human rights concerns.

proposed list, raise similar concerns, and the Commission itself acknowledged that LGBTI people continue to be persecuted in these countries.

Besides the proposal for a common list of “safe countries of origin”, several Member States and the Commission itself have even suggested to qualify Turkey as a “safe third country”. This would allow for the forced return to Turkey of asylum seekers that entered the EU through Turkey. This is very worrying, as Turkey does not apply the Geneva Refugee Convention to persons coming from non-European countries and only provides for a status of “conditional refugee” to those persons, with very limited rights.⁷ A range of sources, including the [AIDA report on Turkey](#), provide evidence to the fact that the current conditions do not ensure guarantees that their fundamental rights are respected in Turkey. Taking into account the already problematic situation of LGBTI people in Turkey, it is appalling to imagine the situation of thousands of LGBTI asylum seekers forced to stay in Turkey without proper protection and at risk of additional victimisation.

New legislation and policies are not duly implemented on the ground

There have been some positive policy developments in the past few years regarding the protection of LGBTI asylum seekers. EU legislation now obliges EU Member States to recognise sexual orientation and gender identity as a valid ground for protection and to provide adequate reception conditions, legal assistance, etc. This was confirmed by the Court of Justice of the EU in December 2014, in the [A, B and C case](#).

However, this legislation and its transposition by the Member States have not yet led to a satisfactory situation on the ground. Despite new EU legislation being adopted in 2011 and 2013, there is still a huge diversity in the handling of LGBTI asylum claims in the various EU Member States.⁸ Such differences exist also in the field of reception conditions, where the needs are huge in the current context, as showed above.

The main challenges are:

- the relevance of laws in the country of origin criminalising consensual same-sex sexual acts or the expression of non-standard sexual or gender identities;
- the requirement for LGBTI applicants to conceal their sexual orientation or gender identity upon return to the country of origin in order not to “provoke” violence and discrimination;
- the requirement to seek protection from homo- or transphobic state authorities in the country of origin;
- the growing trend of rejections based on non-credibility of the sexual orientation or gender identity itself, in many cases based on stereotypes;
- the problem of late disclosure to the asylum authorities and the increased disbelief that it causes;
- discrimination and violence faced by LGBTI applicants in reception facilities;

⁷ See ECRE’s recent [statement](#), referring among others to the recent reports on Turkey by [AIDA](#), [Amnesty International](#) and [Human Rights Watch](#).

⁸ The main work of reference regarding these diverging practices is the 2011 [Fleeing Homophobia Report](#).

- the lack of complete and reliable human rights information about LGBTIs in countries of origin.

In this regard, the EU asylum agency EASO has recently developed an online [training module](#) and a [research guide](#) on country-of-origin information, giving some guidance to case officers and to researchers on LGBTI issues and on how to treat LGBTI asylum seekers correctly. However, the problems mentioned above show that a more ambitious approach with stronger political and budgetary support is necessary.

UNHCR, in its December 2015 [report](#), also set out how to protect LGBTI asylum seekers and refugees. The report provides for numerous recommendations which can improve the situation of LGBTI asylum seekers, including [comprehensive training tools](#). UNHCR also collaborated with the Council of Europe to develop a [course on asylum](#) for legal practitioners, in the framework of the HELP program. The Council of Europe also envisages further steps to improve the treatment of LGBTI asylum claims.

Various countries, including the [UK](#) and the U.S., have also announced resettlement programmes to allow LGBTI asylum seekers stuck in Lebanon, Jordan and Turkey to be resettled elsewhere. However, the numbers of eligible persons remain very low, and [concerns](#) have been raised as to how their needs are going to be met. Other EU Member States should also resettle vulnerable people, in particular LGBTI people, from the region.

Recommendations

ILGA-Europe urges the EU and its Member States to apply the outmost prudence, as they are not treating asylum claims based on gender, sexual orientation and gender identity as they should. LGBTI asylum seekers generally do not benefit from proper reception conditions and assistance, which reinforces the existing procedural challenges. Especially in procedures based on the concept of “safe country of origin” and “safe third country”, the complexity of such claims is not properly taken into account and people fall through the cracks.

In this context, it is hardly appropriate to consider an expansion of such mechanisms, as the European Commission and several Member States are currently doing. The EU and its Member States must ensure that this concept can never hamper a thorough examination of an individual application where individual circumstances such as sexual orientation or gender identity have particular consequences. It is essential that LGBTI refugees from countries listed as “safe” are protected as required by international human rights obligations and by European asylum law.

Even though the use of the currently proposed list is facultative, it clearly puts political pressure on Member States to apply the concept, without taking the time of designing a mechanism fully in line with existing guarantees.

As long as Member States have not made sure that the necessary guarantees are in place and shocking cases continue to arise, it is near impossible to justify the expansion of the “safe country of origin” mechanism, through a common list.

Relevant sources:

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