

LGBTI people in Asylum Procedure

**Council of Europe Sexual Orientation and
Gender Identity (SOGI) Unit**



Overview

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II. 1. Why LGBTI people may qualify as vulnerable persons in asylum procedure?

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I. CoE SOGI UNIT - Activities



Legislation and Policies

Assistance to member states according to their needs and ability to make changes



Capacity building

Training, resource materials, good practices to member states and other stakeholders



Peer-to-Peer learning

Technical meetings between member states on specific areas of policy making



Coordinating

Secretariat of the GT-ADI-SOGI and the EFPN

Working relationships with all stakeholders

Strategic approach

II. LGBTI people in Asylum Procedure: International and European Standards

Yogyakarta Principles (2006, YP +10 2017)

- Principle 23 - The right to seek asylum

Committee of Ministers Recommendation CM/Rec (2010)5 to member states on measures to combat discrimination based on sexual orientation or gender identity

- Contains specific recommendations on the right to seek asylum

Convention Relating to the Status of Refugees (1951) and its Protocol (1967)

UNHCR Guidelines on international protection no. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (23 October 2012) UNHCR Doc. HCR/GIP/12/09.

- Main source of substantive and procedural guidance on claims involving diverse SOGIESC.

European Convention on Human Rights and the case-law of the European Court of Human Rights

- The ECHR **does not provide for a right to asylum**. But the Member States of the Council of Europe are under the **obligation to secure to everyone** within their jurisdiction, including LGBTI asylum seekers, the respect of the rights guaranteed by the ECHR.

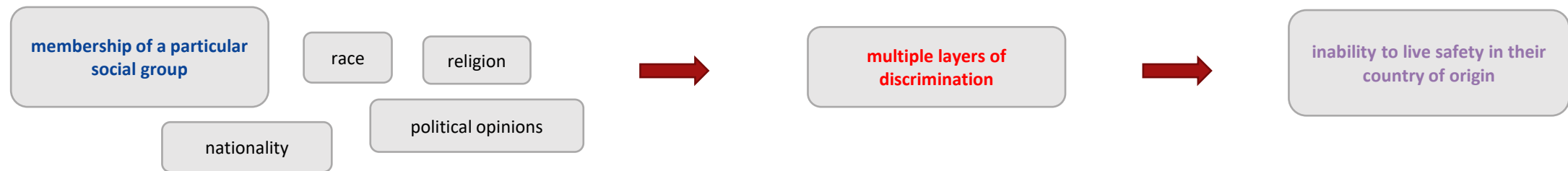
The relevant case-law is collected in [Guide on the case-law of the European Convention on Human Rights – rights of LGBTI persons](#)

II. 1. Why LGBTI people may qualify as vulnerable persons in asylum procedure?

All over the world, LGBTI people experience **serious human rights abuses** and other forms of persecution due to their actual or perceived sexual orientation and/or gender identity

Eg: killings, sexual and gender-based violence, physical attacks, torture, arbitrary detention etc.

LGBTI people flee their countries of origin for reasons unrelated or precisely because of their SOGIESC



- **EU Asylum Procedure Directive** – non-exhaustive **list** of criteria to identifying vulnerable groups (age, gender, SO etc.)
- **CoE ECtHR** – LGBTI people might be identified as **vulnerable** community (*Identoba v. Georgia*, 2015, §72)
 - “authorities should **exercise particular care** in order to **avoid** situations which may **reproduce the plight that forced these persons to flee** in the first place” (*O.M. v. Hungary*, 2016, §. 53).

II. 2. What are the specific needs of LGBTI people in asylum procedure?

**safe space /
no fear to
reveal their
SOGIESC**

eg.: gender of the interviewer / translator, ask about their preferred pronouns

provide access
to **health-care**

eg.: trans and intersex asylum-seekers – psycho – social support, hormone treatment, post-surgical care

placement in
**immigration
detention
facilities /
accommodation
in **reception
centres****



**adequate
reflection** on
individual
circumstances
due to
particular risk
of torture or ill-
treatment

family life

- ❖ staying together
- ❖ interviewed separately
- ❖ stable same-sex couples to be treated as family

provide
information

relevant to their situation and their rights

II. 3. Assessing asylum claims of LGBTI people

❖ Assessing the credibility of the claim

- country of origin information + individual experience (focus on the real risk of persecution the applicant faced)
- maintain an objective approach / no stereotypical conclusion
- use of appropriate terminology / no offensive words
- overall respect human dignity
- by trained actors

❖ Evidence

- SOGIESC characteristics : statement (no documentary / photographic evidence)
- no medical testing
- if country of origin information is lacking: no automatic decision to deny the claim

❖ Effective remedies to contest the decision

- the decision concerning asylum claims must be **adequately motivated** and respectful of the specific **procedural guarantees**
- if that is not the case, the applicant's lawyer should be ready to challenge the decision by way of **effective remedies** available at national level as well as of remedies available at the European level.

INTERVIEWS

- **general circumstances surrounding the application**
- the **applicant's individual experience** (cultural origin, gender, sexual orientation, gender identity or vulnerability)

III. E-learning CoE HELP module: LGBTI people in asylum procedure

[Council of Europe HELP Programme](#) / UNHCR in Strasbourg

Focus: asylum claim **grounded on the actual or perceived SOGIESC**

The modul is part of HELP courses on **Asylum and Human Rights** and on **Fight against Racism, Xenophobia, Homophobia and Transphobia**.

Chapters:

Chapter 1: Introduction

Chapter 2: Legal framework

Chapter 3: Rights of LGBTI asylum-seekers

Chapter 4: LGBTI asylum-seekers and the asylum procedure

Target audience:

- **legal professionals** (e.g. judges, senior court staff, lawyers)
- **asylum authorities**
- **other actors:** border guards, interpreters, staff from reception/detention facilities

The module will be available online in **2023**.



Thank you for your attention!



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