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5.4. Seeking protection and receiving support in reception based on sexual orientation, gender identity, gender expression and sex characteristics

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icon for sexual orientation and special needs

As one of the main outputs of the SOGICA project, a comprehensive and comparative analysis was published on international protection based on sexual orientation and gender identity in Germany, Italy and the United Kingdom, extrapolating the findings to a broader, pan-European perspective. The report presents the theoretical and policy framework, the experiences of this profile of applicants throughout the asylum procedure and reception, and emerging trends which impact the grounds for asylum based on sexual orientation and gender identity. It also offers recommendations to address systemic issues and inconsistencies in national asylum systems.[1371]

Even after the formal closing of the SOGICA project, outputs continued to be published throughout 2021 and 2022, focusing on specific aspects, such as the need to better account for sexual orientation and gender identity in human rights law to effectively address related issues in European asylum law,[1372] the notion of family and family rights of applicants claiming asylum on grounds of sexual orientation and gender identity,[1373] improving guidance for decision-makers,[1374] and the impact of social factors outside the legal asylum procedure on the outcome of the procedure.[1375]

Among initiatives of national authorities, the Maltese IPA issued internal guidelines, which were formally adopted in 2020 and implemented in 2021, on interviewing and assessing applications based on sexual orientation and gender identity. The guidelines include a clear policy that the criminalisation of a person’s sexual orientation or gender identity in the country or origin must be automatically considered as persecution.

The Swedish Migration Agency updated its legal position from 2015 on the investigation and assessment of a future risk of persecution for applicants claiming asylum due to sexual orientation or gender identity.1376

The Dutch State Secretary for Justice and Security launched the reassessment of the safe country of origin list, following a judgment by the Council of State related to an applicant claiming asylum based on his sexual orientation and which led to the revision of the overall reassessment process *(see Section 4.3)*.

While several countries were re-affirmed as being generally safe, LGBTIQ applicants from Brazil, Jamaica and Senegal should be exempted from this presumption, and special attention should be paid if the applicant came from Georgia, Ghana, Mongolia, Serbia and Ukraine (since 28 February 2022, Ukraine cannot be considered to be a safe country of origin in general until the moratorium on decisions is maintained).

To improve reception and support for applicants with special needs due to their sexual orientation or gender identity, the Danish organisation LGBT Asylum was granted DKK 2 million (approximately EUR 268,000) for 2022-2025 to provide counselling and social support for LGBTIQ applicants.1377 In Belgium, the first special reception facility was established for LGBTIQ applicants with a total of 14 places in two secret locations in Brussels. The French Ministry of the Interior launched a request for proposals in order to dedicate 200 places in the reception system to vulnerable LGBTIQ applicants and recognised beneficiaries of international protection, to be available early 2022.1378 As part of the reform of the Irish reception system, the IPAS announced the development of a new LGBTIQ resident policy, including accommodation for transgender applicants.1379 In Austria, LGBTIQ applicants are typically accommodated in Vienna, where the NGO Queerbase has been providing support to them since several years.1380

Among court cases related to sexual orientation and gender identity as a ground for asylum, the Belgian CALL confirmed the decision of the CGRS to reject an application when the applicant asked for international protection based on his sexual orientation but could not recall any persons to be attracted to or any situation or memorable event of such attraction. The High Court in Ireland confirmed several negative decisions for a lack of credibility about the sexual orientation of the applicants (see for example here, here and here).

In Italy, the Supreme Court of Cassation annulled the asylum authority’s negative decision based on a lack of credibility and noted that the assessment was grounded in secondary details and stereotyped notions of sexual orientation. The authority had not taken into account the difficulties the applicant had in telling intimate details to substantiate his claim. In another case, the same court reiterated that the applicant’s lack of credibility cannot be deducted from the sole fact that he could not reply to stereotypical questions on homosexuality.

The Genoa tribunal underlined in another case that the applicant’s statements seemed linear, coherent and credible, and the decision on credibility cannot be made only on the fact that he did not immediately share information related to his sexual orientation. The Bologna tribunal also overturned the authority’s decision and granted international protection to an applicant from Senegal. He was threatened by his family due to his sexual orientation and could not rely

on the protection of authorities, as homosexuality is considered a crime in Senegal and is socially condemned.

The French CNDA granted international protection to applicants based on its assessment that homosexual people constituted a particular social group, for example in Brazil, Benin, Zanzibar in Tanzania and Venezuela.

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