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icon for sexual orientation and 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.1348 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 QD 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. 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.1349

On the same issue, 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.1350

In 2022, French authorities made more than 200 reception places available for vulnerable LGBTIQ applicants. The Maltese civil society organisation, aditus foundation, launched the #Safe4All legal initiative for the protection of LGBTIQ asylum seekers. The organisation proposed an amendment to legislation to ensure that countries that criminalise LGBTIQ communities should not be assessed as safe countries of origin.1351

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.1352

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.1353

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.1354

The civil society organisation NANSEN analysed the CGRS COI on LGBTIQ in Jordan, noting discrepancies between the sources used and the conclusions drawn in decisions on asylum applications.1355

The Organisation Intersex International Europe highlighted the specific needs of intersex applicants in reception, especially in ensuring access to health care without discrimination.1356

The French CNDA delivered two significant judgments and granted international protection to an applicant from Iraq and another from Tunisia based on their sexual orientation. In both cases, the court recognised that members of the LGBTIQ community formed a particular social group.

The Dutch Council of State referred a case back to the lower court, as it did not adequately consider the report, "LGBTI Asylum Support". The lower court took the report into account, but it did not clarify what classification it attached to the report. If it was considered to be an expert report, the authorities could deviate from its findings only with due justification.

The Irish High Court confirmed IPAT's rejection of an applicant from Nigeria who claimed to be perceived as homosexual. The court agreed that the claim was coherent and consistent with country of origin information and not implausible, but it lacked specificity and detail. His answers regarding his travel were implausible, vague and evasive, so the court doubted his credibility and confirmed that the benefit of doubt could not be applied in his favour.

The court also confirmed IPAT's negative credibility finding for an applicant from Zimbabwe, who stated that his two brothers were arrested for being gay, and a few days later the applicant's mother received an arrest warrant stating that the applicant was wanted by the police based on his perceived sexual orientation. The court noted concerns related to the authenticity of the arrest warrant and inconsistencies in his overall claim. The court ruled on several other cases related to the credibility assessment of applicants claiming international protection based on sexual orientation, for example, for applicants from Georgia and Pakistan.

The Belgian CALL concluded that vulnerabilities were not adequately assessed in the authorisation to stay (a national form of protection) of a minor who revealed his sexual orientation during the procedure. The approach of the nuclear family members should have been considered in a nuanced manner. In addition, the court found that the authorities did not adequately consider country of origin information and the specific situation of members of the LGBTIQ community.

The Brussels Labour Tribunal ordered Fedasil to provide suitable accommodation in a medium- or small-scale facility for an applicant who was assessed to be particularly vulnerable due to his sexual orientation and multiple traumatic experiences. The applicant was at first accommodated in a collective centre, sharing a room with persons who were hostile against the LGBTIQ community. He was then re-allocated to another large collective centre, without consideration for the medical recommendations from the doctor who confirmed his PTSD and suicidal state. The applicant had an anxiety attack in the new facility and had to be hospitalised.

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