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3.7. Persons with diverse SOGIESC (also referred to as LGBTIQ persons)

COMMON ANALYSIS
Last update: November 2024

This profile refers to persons who are perceived as not conforming to social and religious norms because of their sexual orientation (SO) and/or gender identity and expression (GIE), and sex characteristics (SC), including the treatment of lesbian, gay, bi-sexual or trans-gender, intersex and queer individuals. However, it should be noted that specific information on some of those communities was not available in the COI reports used for the purpose of this guidance.

The analysis below is based on the following EUAA COI report and query: Country Focus 2024, 1.5; COI Update 2024, 3.3. Country Guidance should not be referred to as source of COI.

Step 1: Do the reported acts amount to persecution?

Some acts to which persons with diverse SOGIESC could be exposed are of such severe nature that they would amount to persecution. More specifically, in April 2024, the Iraqi Parliament passed a law criminalising and punishing consensual same-sex relations with a penalty ranging between 10-15 years in prison; ‘promoting homosexuality’ by a minimum of seven years in prison and a fine; and ‘imitating women’ by up to three-year imprisonment. Originally, the law prescribed the death penalty or life imprisonment for same-sex relations. The new anti-LGBTIQ bill did not automatically come into force in the KRI since the bill needs to be first approved by the Kurdistan parliament, following the pending elections.

Both men and women in Iraq face harassment, abuse by family members or state actors, and detention for not conforming to traditional appearance or behaviour that is perceived to match their biological sex. Killings, abductions, torture, and sexual violence against LGBTIQ individuals perpetrated by armed groups, including by law enforcement officers, have taken place.

Step 2: What is the level of risk of persecution?

Considering the recent criminalisation of same-sex relationships as well as the escalation of anti-LGBTIQ sentiments in Iraq, with violence and discrimination against LGBTIQ individuals being described as ‘rampant’, **a well-founded fear of persecution would, in general, be substantiated** for persons with diverse SOGIESC.

It has to be noted that an applicant cannot be expected to conceal their sexual orientation or gender identity to avoid persecution(6
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Step 3: Is there a ground for persecution?

Persecution of individuals under this profile is highly likely to be for reasons of membership of a particular social group, based on the shared characteristics and the distinct identity of persons with diverse SOGIESC in Iraq(7
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  CJEU, *Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*, joined cases C-199/12 to C-201/12 judgment of 7 November 2013, paras. 70-76 (*X and Y and Z*).

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  CJEU, *X, Y and Z*, paras. 45-49.

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