



DEVELOPING SAFE AND LEGAL PATHWAYS FOR LGBTQI+ REFUGEES:

AN OVERVIEW OF THE
SITUATION IN FRANCE,
GERMANY AND ITALY

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Abstract

Safe and legal pathways are mechanisms for people in need of international protection, who are generally already refugees in a first country of asylum, to be transferred safely, legally and in an organised manner to a country where they can find protection and build a new life. These processes are particularly necessary for people at risk because of their sexual orientation or gender identity, who, because of these grounds for persecution, are less able to leave their country safely and are more likely to be exposed to violence on migration routes.

Unlike Canada, where programmes target this population, discussions about the inclusion of LGBTQI+ refugees on legal pathways are still at an early stage in the European Union while these mechanisms are growing and diversifying in Europe. This study aims to provide an overview of legal routes for sexual and gender minorities in France, Germany and Italy. It aims to identify to what extent they are included in existing programmes, intentionally or otherwise, under what conditions, and whether there are more specific ad hoc practices for these refugees.

Many LGBTQI+ refugees meet one or more of the criteria for government resettlement programmes because of their vulnerabilities. This is also the case for private sponsorship programmes through which civil society organisations and citizens' groups welcome and support refugees. However, although we lack statistical data on the number of resettled LGBTQI+ refugees, it seems that very few of them benefit of this type of legal pathways due to their isolation and fears that they still have in their first countries of asylum. The challenge then is to implement identification and selection procedures adapted to their situation in a climate of compassion, tolerance and understanding of the realities experienced by refugees. Co-operation with local human rights organisations is, therefore, important to reach LGBTQI+ people, which NGO partners in the French and Italian humanitarian corridors are starting to do.

People from sexual and gender minorities manage to legally reach Europe mostly through humanitarian visa schemes. This is the case in France, and to a lesser extent, in Germany where LGBTQI+ rights organisations are using these tools. However, these practices are limited, discretionary and not very transparent, and the outcome is never certain. In the end, they mainly benefit activists connected to international networks. The German humanitarian admission programme for Afghans is the first large-scale

experience of bringing LGBTQI+ refugees into Europe. It has been a failure to date, which once again raises questions about the accessibility of these procedures for LGBTQI+ refugees.

Family reunification has a specific place in the arsenal of legal pathways, as it is a fundamental right. Although queer families are now better recognised, this equality does not extend to LGBTQI+ refugee families, particularly in Italy and Germany. In both these countries, only married couples can qualify for family reunification which excludes LGBTQI+ couples de facto and de jure. The legal framework is more liberal in France where LGBTQI+ refugees can bring in their unmarried partner. However, they are then faced with the difficulty of proving a stable and long-term relationship in a setting where this was more often than not hidden.

The study shows there is still considerable work to be done to better include LGBTQI+ refugees in legal pathways programmes in Germany, France and Italy. However, we are seeing greater awareness of this issue from the German and French governments, but especially from civil society organisations in all three countries. There is a need for greater skills and co-operation between refugee support and sexual and gender minority rights NGOs. However, these efforts may be in vain without leveraging additional resources from public and private donors, and particularly without the involvement of the LGBTQI+ communities in France, Germany and Italy.

Contents

| | |
|---|-----------|
| Introduction | 4 |
| Need for more visible protection..... | 4 |
| Safe and legal pathways for LGBTQI+ refugees: a blind spot in European asylum policies..... | 6 |
| A preliminary overview to initiate dialogue and co-operation | 9 |
| Resettlement: a de facto but ineffective inclusion | 11 |
| Vulnerable refugees eligible to resettlement | 12 |
| Adapting procedures: from identification to welcoming LGBTQI+ refugees | 13 |
| Private sponsorship of refugees: an experimental area to be explored | 15 |
| Untapped agility..... | 16 |
| Involving the LGBTQI+ communities both here and there..... | 17 |
| Humanitarian admissions: a flexible but non-transparent tool..... | 19 |
| A stroke of luck to respond to individual situations..... | 21 |
| Searching for a wider model | 21 |
| Family reunification: a right imbued with a heteronormative view of family | 23 |
| De jure and de facto discrimination | 24 |
| Preparing for family reunification when applying for asylum | 25 |
| Conclusion..... | 27 |

Introduction

More than 50 countries worldwide criminalise consensual same-sex relationships. Even when these laws have been repealed or their application suspended, gay, lesbian and transgender people or those who have a non-heteronormative sexual orientation or gender identity, whether real or assumed, can continue to be under the threat from a repressive and security-focused environment that violates their fundamental rights¹. In recent years, there has not been any significant improvement for LGBTQI+ people worldwide. On the contrary, several countries have recently decided to tighten or reinstate their legislation against LGBTQI+ people. Furthermore, the violence, discrimination and other persecution experienced by sexual and gender minorities extend beyond relationships with the authorities and also includes the social, family and economic areas.

Need for more visible protection

Many LGBTQI+ people, therefore, often have no other choice than to leave their country to protect their dignity and core identity, and in some cases, their lives. LGBTQI+ people are also at risk of non-specific persecution or threats due to domestic or international conflicts, mass human rights violations, racial or religious discrimination, etc. The world is a dangerous place. It is all the more so when a person's sexual orientation or gender identity exposes them to additional risks which place LGBTQI+ people in highly vulnerable situations².

The picture is not so bleak all over the world. Significant progress has been made in terms of equal rights and the fight against homophobia and transphobia. But this progress is limited to a few regions, particularly Western Europe and North America. For example, same-sex marriage between adults is now recognised in 16 European Union (EU) Member States, the United States of America and Canada. However, this march towards equality and safety is neither complete nor inexorable. Reactionary movements are also thriving in these countries and sometimes, result in regressive policies. These movements have turned LGBTQI+ people's rights into an ideological marker.

¹ For an overview of laws criminalising same-sex relations between consenting adults, see ILGA World, *Our identities Under Arrest*, November 2023. Available at: ilga.org.

² A. Shaw et N. Verghese, *LGBTQI+ Refugees and Asylum Seekers. A Review of Research and Data Needs*, UCLA School of Law Williams Institute, November 2022.

Undoubtedly, immigration is another ideological marker which polarises or even divides our societies. The struggle for migrants' and LGBTQI+ rights share the same goals of justice, equality and respect for human dignity. These two struggles intersect all the more tangibly when people who are international migrants are also from sexual and gender minorities. In this instance, both areas collide and can negatively impact each other. Asylum and immigration policies, in their most coercive aspects, can be barriers to the full expression of a person's sexual orientation or gender identity. For example, border control measures, migrant retention policies or legal insecurity stem from a restrictive right of residence that disproportionately affects LGBTQI+ people. Similarly, sexual orientation and gender identity can hinder opportunities to access safety in another country than their country of origin, particularly international protection on grounds of asylum. Violence and social isolation have an impact on the capacities and resources needed to leave their country. Furthermore, trauma and the internalisation of homophobia and transphobia make it more difficult to share their fears of persecution with authorities in host countries.

Since, indeed, persecution related to sexual orientation or gender identity is recognised as a legitimate reason for asylum by an increasing number of countries, with support from the United Nations Commissioner for Refugees (UNHCR)³. Although they were not envisaged by the drafters of the Geneva Convention of 28 July 1951 on the Rights of Refugees, which remains the cornerstone of the global refugee protection system, such persecution is now enshrined in European⁴ and national laws. There is a recognition of the disproportionate violence faced by LGBTQI+ people, whether, at the hands of their country's authorities, communities or their acquaintances, including their families.

Nevertheless, this greater awareness of LGBTQI+ people's international protection needs, which mainly affects the so-called Western countries, is not always matched by a review of asylum systems viewed through the lens of the specific characteristics of their situation. First and foremost, the main barrier to LGBTQI+ people's access to international protection is their own awareness that sexual orientation or gender identity is an eligible ground for asylum⁵ and that they can share their background in confidence with NGOs and institutions. Secondly, the procedures for processing asylum applications, which, in this case, involve going into asylum seekers'

³ In June 2022, 37 countries recognised persecution related to sexual orientation and gender identity according to A. Shaw and N. Verghese, *op. cit.* See also *UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status on Sexual Orientation and/or Gender Identity*, October 2021. Available at: www.unhcr.org.

⁴ See specifically Article 10 from the Directive 2011/95/EU known as the Qualification Directive.

⁵ A. Shaw and N. Verghese, *op. cit.*

personal lives, can convey stereotypes about the sexuality of LGBTQI+ people which can fall under homophobia or transphobia⁶. Finally, the reception conditions, not to mention the detention conditions, and integration policies are not yet sufficiently adapted to this population's specific needs. They can create an oppressive environment and subject LGBTQI+ people to a continuum of violence in the host country. In other words, there is still considerable progress to be made if LGBTQI+ refugees are to be fully protected.

LGBTQI+ rights organisations are reporting an increased number of migrants at their legal aid services

That said, these issues are increasingly well documented, first in North America and then in Europe⁷, which helps to support NGOs' advocacy work and improve public and political stakeholders' awareness of these issues. LGBTQI+ rights organisations are reporting an increased number of migrants at their legal aid services and find themselves having to deal with asylum and immigration policies which they were not accustomed to. At the same time, migrants' and refugees' NGOs say they are supporting more and more LGBTQI+ refugees. This emphasises that protection for LGBTQI+ refugees is an intersectional issue at the crossroads of two areas of action. However, these are still two NGO sectors that are quite separate from each other and work in silos. Yet, it would be in their interest to share their skills and pool their resources to provide a better response to LGBTQI+ refugees. They still need to be able to access European territory...

Safe and legal pathways for LGBTQI+ refugees: a blind spot in European asylum policies

Safe and legal pathways are mechanisms for people in need of international protection, who are generally already refugees in a first country of asylum, to be transferred safely, legally and in an organised manner to a country where they can find protection and build a new life. Legal pathways are both instruments of refugee protection since they are usually aimed at the most

⁶ See A. Shaw and N. Verghese, *op. cit.* See also in Europe, the Sexual Orientation and Gender Identity Claims of Asylum (Sogica) project. Available at: www.sogica.org.

⁷ See in particular the Sogica project which analyses the procedures for examining asylum claims by LGBTQI+ refugees in Germany, Italy and the United Kingdom. See also S. Jansen and T. Spijkerboer, *Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*, COC Nederland/Vrije Universiteit Amsterdam, 2011. Available at: research.vu.nl. Finally, see the European project Rainbow Welcome (rainbowwelcome.eu).

vulnerable, but also a tool of international solidarity with countries that host the largest number of refugees. It should be noted that the number of refugees in the world increased from 15 million in 2010 to 35 million in 2022 and that 76% of these people are in low- and medium-income countries, an imbalance that the war in Ukraine has only marginally corrected. According to the UNHCR, 2.4 million refugees may need to be resettled in 2024. In 2022, only 57,000 people were able to leave their first country of asylum thanks to this type of programme.

LEGAL PATHWAYS ACCORDING TO UNHCR

Resettlement consists of selecting refugees and then transferring them from a country in which they have sought refuge (the host country) to a third country which has agreed to host them – as refugees – and grant them permanent resident status (the country of resettlement). This status provides protection against refoulement and confers the same rights as nationals. Resettlement also allows for naturalisation in the country of resettlement.

Complementary pathways for admission are safe and regulated routes for refugees to complete resettlement by allowing them to legally reside in a third country where their international protection needs are met. These people may be able to obtain a permanent status in the third country. Complementary pathways for admission are diversified:

- Family reunification;
- Private or community sponsorship programmes;
- Humanitarian admission pathways;
- Student mobility programmes;
- Labour mobility programmes.

Typically, European countries are minor players in terms of resettling refugees compared to the United States and Canada. Only the Nordic countries maintained their resettlement programme after the peak period of receiving south east Asian refugees, in which a great majority of Western European countries took part in the late 1970s and early 1980s. Resettlement, and more broadly, humanitarian admission pathways for

people in need of protection are being revitalised in the EU following on from what was called the 2015 Refugee Crisis. A majority of Member States, mainly in the West, implemented resettlement programmes with more or less consistency over the last ten years with financial support from the EU.

We can already point out two downsides in the European approach. Firstly, Member States' ambitions have stagnated or even decreased over the years. At the Global Refugee Forum in December 2023, the EU announced the reception of fewer than 61,000 people in need of international protection in 14 Member States for the 2024-25 period, half through resettlement programmes under the auspices of the UNHCR and another half via humanitarian admission programmes⁸. Germany has committed to take in 37,100 people. Finally, by listing legal pathways as a response to the "2015 crisis", the EU diverts them from their initial objectives, i.e., a long-lasting solution for the most vulnerable refugees and an expression of international solidarity. By prioritising refugees most likely to come irregularly to Europe, the EU aims to make resettlement a tool for managing migration flows and an additional cornerstone for outsourcing asylum and immigration policies.

These mechanisms for legal pathways are particularly necessary for people at risk because of their sexual orientation or gender identity, who, because of these grounds for persecution, are less able to leave their country safely and are more likely to be exposed to violence on migration routes. Indeed, LGBTQI+ people are often in a situation of high family and social isolation in their countries which creates significant inferiority. This situation makes access to student and professional mobility programmes all the more unrealistic. Finally, they continue to be subjected to homophobic and transphobic violence in transit countries which may result in sexual abuse or exploitation. These risks on the migration route are exacerbated by the lack of support from friends and family who could transfer money needed to cross successive borders⁹.

Legal pathways mechanisms are particularly necessary for people at risk due to their sexual orientation or gender identity

⁸ Member States' commitments are available here: home-affairs.ec.europa.eu.

⁹ See A. Shaw and N. Verghese, *op. cit.* See also Florent Chossière's response at the round table organised at the French National Assembly by Deputy Andy Kerbrat on 22 November 2023.

These considerations are now missing from debates on European asylum policies, including in the implementation of resettlement and humanitarian admission programmes carried out by European governments. In this context, civil society organisations have an important role to play in raising awareness among and advocating with public decision-makers for better inclusion of LGBTQI+ people in the mechanisms for legal pathways. Above all, we are observing the emergence of European civil society organisations' initiatives which build and implement legal pathways projects, necessarily in partnership with the authorities. Inspired by Canadian private sponsorship programmes for refugees, these projects mobilise citizens' groups to welcome and support refugees resettled from the first country of asylum. These initiatives are still either at an early or sensitive stage and do not explicitly involve the LGBTQI+ communities to date.

A preliminary overview to initiate dialogue and co-operation

This study aims to provide an overview of legal pathways for LGBTQI+ refugees in three European countries: France, Germany and Italy. Germany and France are now the two main resettlement countries in Europe and have diversified the different legal and safe access pathways to their respective territories¹⁰. For its part, Italy has had a less strong and consistent commitment to resettlement due to its geographical position, but mainly for political reasons. However, since 2016, the Italian NGOs have been continuously running a humanitarian corridor programme similar to Canadian private sponsorship programmes.

The study aims to identify to what extent refugees from sexual and gender minorities are included, intentionally or not, in existing legal pathway programmes, under what conditions, and whether there are specific ad hoc practices for this population. It draws on documentary research, particularly on bilateral interviews, conducted between September 2023 and February 2024 with 20 representatives from organisations in Germany, France and Italy, but also Brussels with European networks¹¹. In addition, an online workshop on family reunification for LGBTQI+ refugees was organised on 22 November 2023¹². This workshop had 22 participants.

However, this study has several limitations. The main one is that it cannot claim to be an exhaustive map of practices in the three countries studied.

¹⁰ For France, see M. Tardis, *Offrir des voies sûres et légales pour les réfugiés en France. Un potentiel à développer*, Synergies migrations, March 2024. Available at: synergies-migrations.org.

¹¹ Due to the confidentiality required by some organisations, we have not publicly published the list of people interviewed.

¹² Programme available here: <https://synergies-migrations.org/family-reunification-and-lgbtqi-refugees-addressing-specific-challenges-to-ensure-equality/>

Indeed, it should be stated immediately: unlike Canada, there are no dedicated legal pathways for LGBTQI+ refugees and, apart from two exceptions, these refugees are not specifically designated as a priority target for existing programmes. This is the case in Germany, France and Italy, but we can also argue that it is certainly the case in other EU countries.

Yet, LGBTQI+ refugees are coming to the EU via safe and legal pathways. These are discrete, sometimes even hidden, one-off and/or informal practices which make their discovery risky. Undoubtedly, we have missed some interesting initiatives led by German, French and Italian NGOs. For these reasons too, the issue of legal routes for LGBTQI+ refugees in Europe does not seem to be documented by the organisation publications, public authorities and researchers, at any rate in the French and English languages, unlike issues related to reception and integration of this population and procedures for examining for their asylum applications.

Therefore, this study should be read as an initial exploratory exercise, an invitation to continue the investigation and analysis on adapting reception conditions of LGBTQI+ refugees, which we barely broach in this paper, in the three target countries and other European Union countries. Above all, this study is an invitation to initiate constructive dialogue between the different stakeholders (NGOs, LGBTQI+ communities, governments, local authorities, foundations, UNHCR, etc.) to experiment, assess and formulate legal routes for at-risk people (LGBTQI+) worldwide.

Resettlement: a de facto but ineffective inclusion

As stated in the introduction, the United Nations High Commissioner for Refugees (UNHCR) defines resettlement as the operation of selecting refugees and then transferring them from a country in which they sought refuge (the host country) to a third country that has agreed to host them – as refugees – and grant them permanent resident status (the resettlement country). This status provides protection against refoulement and confers the same rights as nationals. Resettlement also allows for naturalisation in the country of resettlement.

The identification of refugees is, with some exceptions, carried out by the UNHCR in accordance with the agency's handbook. This handbook defines seven criteria for resettlement: the need for legal and/or physical protection, victims of violence and/or torture, medical needs, women and girls in at-risk situations, family reunification, children and adolescents in at-risk situations, and lack of other short-term sustainable solutions. However, countries have the final say on the refugees they want to host in their country. The selection of refugees can be carried out following a mission from the competent authorities in the first country of asylum or based on a dossier sent by UNHCR.

OVERVIEW OF RESETTLEMENT PROGRAMMES IN FRANCE, GERMANY AND ITALY¹³

Resettlement has developed significantly in Germany since the first operations to admit Syrian refugees in 2014. The Federal Republic is now the leading resettlement country in the EU with a goal of 6,300 people in 2023¹⁴. This quota includes 500 refugees who come under specific programmes implemented by

¹³ Sources: European Union Asylum Agency (euaa.europa.eu), European Commission (home-affairs.ec.europa.eu) and UNHCR (www.unhcr.org)

¹⁴ We have deducted 200 refugees from this quota who were to be resettled under the German community sponsorship programme, NesT (see section 2). This quota includes 3,000 humanitarian admissions of Syrian refugees in Turkey. This programme is considered as a resettlement programme as the cases are submitted by UNHCR.

the states of Berlin and Brandenburg. Germany has committed to resettling the same number of people in 2024 and 2025.

Resettlement has resumed in France since 2008 with a dossier-based selection programme of about 100 cases per year. Especially since 2015, and within a European framework, resettlement has become a more important route to international protection. France received up to 5,000 refugees per year before COVID-19. Since 2022, the resettlement targets have been reduced to 3,000 refugees per year. This commitment has been maintained for the years 2024 and 2025.

In Italy, resettlement has not followed the same trajectory. After a peak of 1,355 refugees resettled in 2019, the Italian resettlement programme was scrapped. Nevertheless, the Italian authorities committed to resettling 500 refugees in 2023, the same in 2024 and again in 2025.

Vulnerable refugees eligible to resettlement

The objective of resettlement programmes is to provide a sustainable solution for the most vulnerable refugees. LGBTQI+ people often fall into this category, whether they have fled their country of origin because of their sexual orientation or gender identity or for another reason. Besides the impact of the trauma, LGBTQI+ refugees continue to deal with homophobia and transphobia in the first country of asylum either from the authorities and the host country's society or from the refugee community they live among. Hence, in many cases, their legal and/or physical safety, sometimes their health, and more generally, their prospects of integration in the country where they have found refuge, are at stake. In other words, many LGBTQI+ refugees meet one or more of the resettlement criteria as set out in the UNHCR handbook.

Therefore, on the face of it, there should be no need to create a dedicated criterion for these people. Similarly, there is no need for resettlement states to specifically mention it in their resettlement priorities since LGBTQI+ refugees are included de facto in their programmes. This seems to be the

case for the German and French programmes¹⁵. Nevertheless, we are in a statistical limbo since there are no data about the number of refugees who self-identify as LGBTQI+ out of the total refugee population, and out of these, who benefit from resettlement programmes. Therefore, it is impossible to know exactly whether de facto inclusion in the resettlement criteria is a reality. However, we fear that there are barriers to the resettlement of LGBTQI+ refugees. As part of its reception programme for Syrian refugees in Lebanon, the state of Berlin specifically wanted to target this population. Only two cases were submitted in 2023.

Adapting procedures: from identification to welcoming LGBTQI+ refugees

Reasons intrinsic to LGBTQI+ refugees' situation explains their invisibility in resettlement programmes. Firstly, the refugees themselves are not always aware that their sexual orientation or gender identity is perceived by UNHCR and by resettlement countries as a possible vulnerability factor to be taken into account during resettlement procedures. If this is the case, refugees are caught between two contradictory requirements: to make their sexual orientation or gender identity visible to facilitate their resettlement to a third country and to keep it secret for fear of becoming a victim of violence and discrimination. This fear extends to UNHCR and humanitarian organisations, particularly when their staff are nationals of the host country on whom refugees project, wrongly or rightly, homophobic and/or transphobic feelings.

Without going so far as to create a specific resettlement programme for LGBTQI+ refugees, which most stakeholders interviewed for this study do not advocate, the challenge is to implement identification and selection procedures adapted to their situation, and by establishing an environment of tolerance and compassion, but also a good understanding of the realities experienced by LGBTQI+ people. To this end, UNHCR published an assessment tool to provide guidelines for its staff when they interview LGBTQI+ refugees in order to submit their dossier to resettlement countries¹⁶. This may not be enough to remove all obstacles, and even greater reliance is placed on local LGBTQI+ rights organisations to ensure people in need of resettlement are reached¹⁷. In 2022, the Canadian government took the plunge by entrusting its refugee referral role for

¹⁵ We do not have information on the Italian programme.

¹⁶ UNHCR, *Resettlement Assessment Tool: Lesbian, Gay, Bisexual, Transgender and Intersex Refugees*, April 2013. Available at: www.unhcr.org.

¹⁷ However, some profiles are harder to reach than others, due to geographical distance or inter-community discrimination, which most often affects transgender people.

LGBTQI+ refugees to Rainbow Railroad¹⁸ and its extensive network of organisations worldwide.

The challenge is to initiate an environment of tolerance and compassion but also a good understanding of the realities experienced by LGBTQI+ people.

Finally, the invisibility of LGBTQI+ refugees in German and French resettlement programmes hinders any debate on how to adapt reception and integration conditions, once they have arrived in the countries. However, the growing number of people claiming asylum in Europe because of their sexual orientation or gender identity has sparked the somewhat limited emergence of support systems for LGBTQI+ refugees. Although not exhaustive, dedicated accommodation solutions are flourishing in Berlin and Cologne in Germany, and in Modena, Lecce and Bologna in Italy. Similarly, there is greater co-operation between NGOs in the asylum sector and the major sexual and gender minority support networks, such as LSVD in Germany and Arcigay in Italy. In France, so-called LGBTQI+ places have been created in reception centres for asylum seekers. In addition, the organisation, Le Refuge, is accommodating an ever-increasing number of refugees in its LGBTQI+ shelters and has even opened a centre for LGBTQI+ refugees in Angers. In other words, expertise and an ecosystem are being developed, which, if the authorities wish, can be called upon to support resettled LGBTQI+ refugees.

¹⁸ www.rainbowrailroad.org.

Private sponsorship of refugees: an experimental area to be explored

Private refugee sponsorship programmes, also known as community sponsorship, are public-private partnerships between the authorities, who facilitate the legal admission of refugees into the country, and private stakeholders who provide financial, social and/or emotional support to welcome and integrate refugees into the host society¹⁹. This type of legal route was developed in Canada in 1978 when groups of citizens wanted to help with the arrival and reception of south east Asian refugees. Community sponsorship is undergoing a revival there with the succession of conflicts and crises around the world, starting with Syrian refugees in 2015.

This model is gradually being exported across Europe in ways specific to each national context. Nonetheless, we can differentiate between programmes where UNHCR and governments identify and select refugees in need of resettlement and programmes where the co-ordinating NGOs themselves identify the target refugees.

OVERVIEW OF PRIVATE SPONSORSHIP PROGRAMMES IN FRANCE, GERMANY AND ITALY²⁰

This overview is a mirror image of the one on resettlement. Indeed, Italy is by far the European leader in this type of programme led by non-governmental organisations. Humanitarian corridors launched in 2015 under the leadership of the Community of Sant'Egidio have welcomed several hundred Syrian refugees in Lebanon. Since then the humanitarian corridors have greatly diversified and expanded. Corridors have been set up from Ethiopia, Pakistan, and recently Libya by a consortium of Italian NGOs (Caritas Italiana, FCEI, Arci, etc.). More than 4,000 refugees have arrived in Italy, where they have been supported by partner NGOs and volunteers.

¹⁹ Definition of ICMC Europe as part of the Share network. More information here: www.share-network.eu.

²⁰ Source: SHARE network, *Resettlement and Community Sponsorship across Europe*, 2022. Available at: www.share-network.eu.

Inspired by this Italian model, the French humanitarian corridors were created in 2017. A protocol between the French government and five NGOs has enabled Syrian, Iraqi, and Palestinian nationals from Syria to be hosted as refugees in Lebanon. New protocols were signed in 2021 with the Community of Sant'Egidio and the Federation of Protestant Mutual Aid (FEP: Fédération de l'entraide protestante) planning for the reception of an additional 300 refugees for each of the NGOs. On arrival in France, refugees are assisted by citizen organisations which provide them with accommodation and support them in their integration process for about 18 months.

The German programme *Neustat im Team* (NesT) is a completely different model in which the government plays a much more leading role than the partner NGOs. Furthermore, NesT is designed as a project within the government's resettlement programme. Therefore, the selection of refugees is carried out by UNHCR and the German government according to the same procedures as for resettlement. The refugees are then received, hosted and supported for 12 months by groups of at least four volunteers. NesT, which was launched in 2019, suffered due to COVID-19 during its first few years. The plan was to receive 200 refugees in 2023.

Untapped agility

Private sponsorship programmes target the most vulnerable refugees. Subsequently, the factors outlined above on resettlement also apply here. Because of their trauma and the dangers in the first countries of asylum, LGBTQI+ refugees can therefore be included in sponsorship programmes. However, the same obstacles exist in accessing these programmes because of fears of revealing their sexual orientation or gender identity. This is particularly true for NesT since the identification and selection of refugees is carried out as part of the German resettlement programme. However, the identification of eligible refugees from the Italian and French humanitarian corridors is undertaken by partner NGOs with UNHCR, which gives them a greater agility in adapting their procedures to LGBTQI+ refugees.

Interviews with the Federation of Protestant Churches in Italy (FCEI: Federazione delle Chiese Evangeliche in Italia) and the Federation of Protestant Mutual Aid in France (FEP) confirmed that LGBTQI+ refugees have been received through humanitarian corridors, in this case from Lebanon²¹. They are just a few of the thousands of people received to date. Nevertheless, these NGOs are aware of LGBTQI+ refugees' resettlement needs and are thinking about how to better reach this population. Moreover, Italian NGOs have gone a step further by explicitly referring to LGBTQI+ people in the targets for humanitarian corridors for Afghan refugees in Pakistan and in the Libyan corridor, which began in autumn 2023. Much remains to be done to turn these intentions into reality, but the process has started.

Involving the LGBTQI+ communities both here and there

Refugee sponsorship programmes rely on citizen involvement of volunteers in the host countries. Naturally, LGBTQI+ rights organisations should therefore be consulted. FEP did this for the few gay refugees who were admitted from the French humanitarian corridors. The programme coordinators made contact with local LGBTQI+ organisations, being aware, however, that most of the people hosted were in rural areas.

The inclusion of LGBTQI+ communities is an opportunity to expand the scope of stakeholders involved in legal channels

In addition to these ad hoc contacts, the LGBTQI+ communities could be involved as sponsors of refugees in their own right. FEP and FCEI are looking into this possibility. FEP was preparing to welcome a gay person at the start of 2024 together with Urgence Homophobie in Marseille, while FCEI has made contact with organisations in Rome. European sponsorship programmes are still overwhelmingly administered by Christian faith-based organisations²² although reception is undertaken regardless of religion. The inclusion of LGBTQI+ communities is an opportunity to expand the scope of stakeholders involved and a factor in establishing legal channels.

²¹ This is not to say that other NGOs that we were unable to interview have not received LGBTQI+ refugees.

²² However, it should be noted that the Italian Recreational and Cultural Association (Arci: Associazione Ricreativa Culturale Italiana), a secular organisation, joined the consortium of NGOs developing humanitarian corridors in Italy in 2021.

Co-operation with LGBTQI+ rights organisations is more relevant in countries of first asylum. Partners in the Italian and French humanitarian corridors are already working with local human rights organisations, particularly in Lebanon, which are themselves in contact with national and refugee LGBTQI+ communities whose rights are threatened on a daily basis. In addition to better identifying LGBTQI+ refugees to sponsor, this type of co-operation would fulfil two other objectives. Firstly, this would be a vehicle to support the competences and resources of LGBTQI+ rights organisations in countries where their activities are either punished or criminalised. Secondly, this would contribute to the sustainability of humanitarian corridors by entrusting refugee identification and selection to local organisations which will be in the country in all circumstances, including the most critical in terms of safety.

Therefore, we are faced with a clean slate with tremendous untapped potential. But there is a major obstacle to overcome. Refugee sponsorship programmes are based on a precarious economic model, particularly in France and Italy, where they receive virtually no public subsidies. LGBTQI+ rights organisations also receive little financial support from the authorities. However, sponsorship programmes have a cost for the organisations that co-ordinate them and for the volunteers who host them. Hence the importance of alerting the authorities to the financial precariousness of these initiatives but also of raising awareness among private sponsors that they are allies of the LGBTQI+ cause, or refugees or both.

Humanitarian admissions: a flexible but non-transparent tool

It is difficult to give a definition of humanitarian admission of people in need of international protection, insofar as these practices are enshrined in very different national frameworks, including within the European Union²³. Each country has the discretion to issue a visa on humanitarian grounds. The Schengen Code allows for exemptions from the common rules for issuing short-stay visas on humanitarian reasons. But humanitarian visas are usually long-stay visas which are not governed by European law. Generally, recipients of these visas are included in the national asylum systems when they arrive in the country of issue.

Legal pathway programmes can be built around these visas. Finally, the Italian and French humanitarian corridors are examples of projects developed by civil society organisations which rely on the issuance of humanitarian visas by the authorities. Governments also generally set up humanitarian admission programmes to host large groups of people from countries in crisis or at war. They differ from resettlement programmes in various ways: the recipients can be evacuated from their country of origin and not from a first country of asylum; the selection and transfer procedures are usually quicker and do not necessarily involve UNHCR; finally, the residence permit issued is sometimes more temporary than that granted to resettled refugees.

²³ See the UNHCR definition: www.unhcr.org

OVERVIEW OF HUMANITARIAN ADMISSION IN FRANCE, GERMANY AND ITALY²⁴

Humanitarian admission is governed by Articles 22 and 23 of the German Residence Act (*Aufenthalt Gesetz*). Article 22 allows for visas and temporary residence permits to be issued in individual cases for humanitarian, political reasons and in Germany's interests. More than 40,000 Afghan nationals who worked with Germany, as well as journalists and human rights activists, were admitted on this basis. This article is also currently used for Russians, Belarusians and Iranians. Article 23 allows for admission programmes for groups of people to be created. After the fall of Kabul, the coalition in power launched a humanitarian admission programme for at-risk Afghans which aimed to admit up to 1,000 people per month. This article also authorises German states to create their own humanitarian admission programmes.

There is no similar legal framework in France. However, French embassies have the option of issuing long-stay visas to “*people in a vulnerable situation and who face serious risks to their lives due to their commitment to freedom or conflict in their country of origin*”²⁵. Upon arrival in France, these people then have to file an asylum application. These asylum visas are used to respond to individual emergencies and are regularly granted to human rights advocates, journalists and other activists. They have also resulted in group reception programmes, including persecuted minorities in Iraq since 2014 and Yazidi families in 2018 and 2019. However, there are no public data on the number of asylum visas issued each year by France.

Apart from humanitarian corridors, we have not identified equivalent practices in Italy.

²⁴ Sources: International Refugee Assistance Project (IRAP), *Humanitarian Visas and Admission Programmes. Legal Situation and Practice in Germany*, August 2023. Available at: refugeerights.org. See also M. Tardis, *op.cit.*

²⁵ Ministry of Interior Affairs, *Les étrangers en France – rapport au Parlement sur les données de l'année 2021 [Foreigners in France – Report to Parliament on Data for the Year 2021]*, 2023.

A stroke of luck to respond to individual situations

French LGBTQI+ rights organisations have exploited asylum visas to try to evacuate people persecuted due to their sexual orientation or gender identity to France. Created in 2017 to support Chechens threatened with torture or death, Urgence homophobie has since developed expertise in supporting visa applications for LGBTQI+ people in Russia. Urgence homophobie experienced an increase in applications and a diversification in countries of origin (Armenia, Georgia, Serbia, Kazakhstan, Turkey, etc.) which further increased in 2022 because of the war in Ukraine and the repression of LGBTQI+ people in Russia. The NGO monitored about forty dossiers in 2023. The NGO, Ankh, was founded in 2018 by LGBTQI+ rights activists in Egypt. Now in France, they offer support for asylum visa applications for at-risk people in the Middle East, North Africa and more recently, for Afghan refugees in Pakistan. About 20 cases were monitored in 2023.

Urgence homophobie, Ankh, and other NGOs supporting asylum visas for LGBTQI+ people, particularly Shams France, Stop homophobie or IRAP, are faced with a lack of transparency in the procedure but also difficulties in contacting the relevant people at the embassies. In fact, the practices and responses to visa applications vary from embassy to embassy, sometimes even within an embassy depending on the member of staff involved, without this being understandable in terms of applications. The French special envoy for LGBTQI+ rights, attached to the Ministry of Foreign Affairs, has announced the appointment of a focal point in each French embassy. However, the list has not yet been distributed to the NGOs to date.

Practices are no more favourable in Germany. Humanitarian admission in individual cases is part of a very political framework which seems restricted to certain nationalities and to human rights activist profiles. This criterion of activism is implicit for French asylum visas, since the requested link with an NGO or an entity in France to support the application involves being known in activist networks.

Searching for a wider model

The German humanitarian admission of Afghan people is of a rather unprecedented ambition in Europe since the major operations to host south east Asian refugees in the 1970s. To date, its implementation has been a failure as less than 100 Afghans were able to enter Germany in 2023. The German authorities rely on German NGOs (most often based in Germany), whose list has not been made public for security reasons. These NGOs are both the contact point and the gateway to the procedure. They also carry out initial screening before submitting applications to the German

authorities. LGBTQI+ Afghans have been identified as a priority category and an NGO was designated to receive their applications.

The German humanitarian admission programme can be seen as an initial large-scale experience in hosting LGBTQI+ refugees in Europe

The German humanitarian admission programme can be considered as an initial large-scale experience in hosting LGBTQI+ refugees in Europe. However, it is a tricky process that particularly affects these people. Firstly, you have to be aware of the name and contact details of the NGO tasked with receiving applications, as this information is not public. Secondly, for Afghans still in Afghanistan, which is generally the case, leaving the country to go to Pakistan is a dangerous journey, particularly for women and transgender women. Germany has planned shelters in Pakistan, including a shelter for LGBTQI+ people, pending an interview at the embassy. Finally, leaving Pakistan is dependent upon payment for a visa and an interview with the Pakistani authorities which may be a particularly difficult ordeal for LGBTQI+ Afghans.

All of these obstacles explain to a large extent why so few Afghans, LGBTQI+ and others, have finally set foot on German soil. All the more so as the NGOs do not receive any financial support from the Federal government to carry out their tasks and are, therefore, slow in responding to requests. This is particularly surprising given the responsibilities entrusted to them. Indeed, NGOs must establish that the people contacting them are particularly at risk, which is undoubtedly the case for any LGBTQI+ person in Afghanistan.

Humanitarian visas and programmes have the advantage of existing and providing a way to save at-risk LGBTQI+ people. The NGO stakeholders have a key role in preparing and submitting dossiers to the competent authorities. It is a guarantee of efficiency, but they perform these assignments without resources, and often, without a formalised co-operation framework.

Family reunification: a right imbued with a heteronormative view of family

Unlike other legal pathways which fall under Member States' discretion, family reunification of refugees is a right-based legal pathways. Enshrined in the Preamble to the 1951 Geneva Convention, family reunification is an example of the right to a normal family life guaranteed in particular by the European Convention on Human Rights and national constitutions. It allows recognised refugees in a country to bring their family members there. However, family reunification is not an intangible right, and it is regulated by more or less strict conditions depending on the country. The scope of this right is also restricted, since it is generally reduced to the nuclear family.

The European Directive dated 22 September 2003 on the Right to Family Reunification intended to standardise legislation and practices in Member States. While the Directive relates to all third-country nationals, it provides for a more liberal regime for refugees, for example in terms of residence and housing conditions. But the Member States retain considerable margin for manoeuvre, particularly in extending family reunification to unmarried couples.

OVERVIEW OF FAMILY REUNIFICATION IN FRANCE, GERMANY AND ITALY²⁶

Article 29bis of the Italian Immigration Decree opens up family reunification to married spouses of refugees, their minor children, and in some cases, dependent adults as well as dependent parents. The refugees do not have to show that they have sufficient income and appropriate-size accommodation to apply for family reunification.

According to Section 29 of the German Residence Law, family reunification is permitted for married spouses, or those in a registered civil partnership, and unmarried minor children.

²⁶ Source: Asylum Information Database/European Council on Refugees and Exiles. Available at: asylumineurope.org.

Germany also allows unaccompanied minor refugees to bring their parents and their siblings who are still minors. The exemption from income and accommodation conditions only applies if the refugees begin the family reunification procedure within three months after recognition of international protection. After this period, refugees are subject to the same rules as other foreigners, namely a stricter regime. Moreover, family reunification for beneficiaries of subsidiary protection was suspended in 2018 and replaced by a system of humanitarian visas at the government's discretion and within a limit of 1,000 visas per month²⁷.

The French family reunification system is the most liberal of the three countries. Article L.562-2 of the Code Governing the Entry and Residence of Foreign Nationals and the Right to Asylum opens up family reunification for the refugee's spouse, civil partner, or a cohabiting partner, and their unmarried children aged under 19 years. Unaccompanied minor refugees can also apply to be joined by their parents and unmarried minor siblings. Unlike other categories of resident foreign nationals, refugees do not need to meet the income and housing criteria.

De jure and de facto discrimination

The Italian legal framework closes the door on the right to family reunification to same-sex couples and, more broadly, to queer families, since only legal unions are taken into account. However, only 37 countries in the world recognise same-sex marriage, including 16 in the European Union²⁸. Therefore, it is more likely that LGBTQI+ refugees are not married to their partner, especially when they flee their country due to their sexual orientation or gender identity. The situation is only slightly better in Germany. The people interviewed for this paper stated that it was extremely difficult, if not impossible, for an unmarried same-sex couple to benefit from family reunification. There is a difference in treatment that could be

²⁷ Furthermore, several German states have set up sponsorship programmes for extended family members of Syrian refugees. These programmes are still ongoing in 2024 in the states of Berlin and Thuringia. Similar programmes have been launched since 2021 for extended family members of Afghan refugees.

²⁸ Moreover, same-sex marriage is not recognised in Italy.

described as discriminatory, since it blocks access to a fundamental right to a category of the refugee population for no objective reason. This results in refugees developing evasive strategies to allow their partner to reach Italy or Germany, either by applying for a short-stay Schengen visa or by taking illegal routes. Once they have arrived, the partners can file an asylum application in their name and/or contract a marriage or civil partnership.

It is easier to provide evidence of a stable and lasting relationship when in a heterosexual relationship than for same-sex couples

On paper, the regulatory framework is much more favourable in France since the law recognises family reunification for unmarried people in a stable and lasting relationship. Therefore, same-sex couples are eligible for reunification on an equal basis with heterosexual couples at least in law. The reality is more complex²⁹. Already, it is easier to prove a legal union than an unregistered cohabiting relationship, especially if you can present a marriage certificate to the French embassy. It is also easier to provide evidence of a stable and lasting relationship when in a heterosexual relationship than for same-sex couples. When this relationship has been condemned by the authorities, society or family, the people involved do not always have a joint address, photos, or certificates proving an emotional bond that they have kept hidden from the eyes of others. Any interaction, including by SMS or Whatsapp, can then be extremely useful in supporting the application for a family reunification visa.

Preparing for family reunification when applying for asylum

NGO stakeholders interviewed in the three countries report with astonishment that few cases of family reunification are applied for. Although we can deduce from this that many LGBTQI+ refugees are single or have arrived accompanied, additional hypotheses can be proposed. The literature emphasised that the first obstacle to accessing international protection was the lack of information for the people involved that sexual orientation and gender identity were eligible grounds for asylum³⁰. It is likely

²⁹ It should be emphasised that family reunification is a long and tricky process for all refugees and their families. See also M. Tardis, *op.cit.*

³⁰ See A. Shaw and N. Verghese, *op. cit.*, but also the recommendations from the Fleeing Homophobia and Sogica projects.

that LGBTQI+ refugees are not aware that their same-sex partner may be considered as a family member under the law.

However, this information needs to be made known as soon as possible, as LGBTQI+ refugees' have to declare their family members as soon as their asylum application is filed. It is on the basis of this statement that the civil status documents will be drawn up for the recognition of international protection and that they will be able to initiate the family reunification procedure. Hence, the importance of also training social workers and lawyers who support LGBTQI+ asylum seekers to encourage them to reveal this relationship and to collect all material traces of it.

However, even if the conception of family ties has recently evolved in Western Europe, the assessment of a stable and lasting relationship is characterised by a heteronormative approach to the family³¹. What is expected as the building blocks of a stable and lasting relationship for a heterosexual couple cannot be adapted to the realities experienced by LGBTQI+ people, especially when they come from countries where LGBTQI+ relationships are prohibited. The prevalence of forced marriages or marriages of convenience to avoid persecution is one of these realities. However, this type of situation presents LGBTQI+ refugees with difficult choices, especially when children are born from these marriages. This means painful negotiations with the family, which is sometimes an agent of persecution, and an example that refugee recognition is rarely a complete liberation from prior persecution.

³¹ C. Danisi and N. Ferreira, 'Legal Violence and (In)Visible Families: How Law Shapes and Erases Family Life in SOGI Asylum in Europe', *Human Rights Law Review*, 2022.

Conclusion

Legal and safe pathways for refugees are developing and diversifying in France, Germany and Italy. However, the inclusion of LGBTQI+ refugees in them is still in the early stages. They have never been expressly excluded, but the identification and selection procedures do not effectively reach this refugee population marked by isolation, trauma, and fears of violence in countries of first asylum. The Italian humanitarian corridors and the humanitarian admission programme for Afghans in Germany are rare examples of LGBTQI+ people as priority targets for legal routes. We lack objectivity to assess whether this has allowed us to welcome more LGBTQI+ refugees. The initial evidence does not clearly show this.

In any event, most NGO and institutional stakeholders, whether they come from the asylum sector or the LGBTQI+ rights sector, do not call for the establishment of a specific programme for LGBTQI+ refugees, but, on the contrary, effective consideration of these people's protection needs in all the existing programmes. Canada achieved this through the involvement of the country's LGBTQI+ communities. There is no reason why the LGBTQI+ communities in Germany, France, Italy, and the rest of the EU cannot get involved in turn. The growing share of refugees in LGBTQI+ rights services has led them to become familiar with asylum procedures. The next stage is to make them aware of these legal and safe pathways, and then to ally with refugee assistance NGOs to question the authorities, find the necessary resources, including from the philanthropic sector, to offer lasting protection to those who cannot go and seek it.

This is not a mandate requiring LGBTQI+ people here to help LGBTQI+ people there, but rather recognition that the march towards equality in Europe is inseparable from the struggle for rights in other parts of the world. In other words, it is a reminder that the universality of human rights and that the right to asylum, and LGBTQI+ people's rights are fully part of it.

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SYNERGIES MIGRATIONS

Synergies migrations is a think and do tank based on dialogue and action at the crossroads of expertise, support with decision-making and stakeholder capacity-building on asylum, immigration and inclusion issues. Synergies migrations intends to contribute to the development of informed policies and practices that promote migrant access to protection and dignity and the emergence of an open and inclusive society.

<https://synergies-migrations.org/>

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