



## Sexual Orientation and Gender Identity Claims of Asylum: A European human rights challenge – SOGICA

### **SOGICA submission to the UN Independent Expert on Sexual Orientation and Gender Identity**

This submission is in response to *the Call for Input: Protection against violence and discrimination based on sexual orientation and gender identity in relation to forced displacement*.

In our response, we have focused on the questions relating to Refugee Status Determination (RSD), and discrimination and violence in host countries in Europe (Questions 7 and 13). Evidence for these answers comes from the project materials listed at *Additional Supporting Material*. **Further information, including in response to other questions, can be found in these materials** and we would be happy to provide further information in response to specific queries.

We thank the Independent Expert on Sexual Orientation and Gender Identity for this opportunity to contribute to efforts to improve SOGIESC minorities' protection.

### **Introduction**

SOGICA (Sexual Orientation and Gender Identity Claims of Asylum: A European Human Rights Challenge) was a four-year (2016-2020) research project funded by the European Research Council (ERC) exploring the social and legal experiences of individuals across Europe claiming international protection on the basis of their sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC). It was led by Professor Nuno Ferreira and a team of researchers at the University of Sussex: Dr Carmelo Danisi, Dr Moira Dustin and Dr Nina Held.

Our answers below are based on the SOGICA project research in Europe with case studies of Germany, Italy and the UK. The research included 143 interviews, 24 observations of asylum hearings, 16 focus groups, two Europe-wide online surveys with a total of 239 respondents, and four Freedom of Information requests.

The project was designed before 2016 and the UK's departure from the EU but partially carried out post-Brexit.



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## **7. What forms of violence, discrimination, prejudicial treatment or other human rights violations do LGBT forcibly displaced persons experience during transit or upon arrival in host countries?**

SOGIESC asylum claimants and refugees usually leave their countries of origin to escape homophobia and transphobia, but often experience further violence and trauma while in transit, and on arrival in the host country (Danisi et al, Chs 5 and 10). Discrimination often includes racism as well as homophobia or transphobia.

The impact of hostile laws, policies, political and media discourse about immigration and asylum has had a damaging impact, as our participants explained to us

Diane, an Iranian trans woman in Germany, told us: 'I also get transphobia here. In Iran, too, is transphobia, but here is transphobia with racism about it'.

In the UK, Mary and Zaro had eggs thrown at the exterior of their accommodation and 'Fuck you' written on their door while their application was pending.

In answer to the survey, one refugee reported that 'I face racial discrimination and xenophobia everyday of my life in Spain.'

Another survey participant based in Germany stated: 'My roommate told me face to face that he wished all gay people would be denied asylum (...).'

A respondent from Zimbabwe living in the UK stated '[There is] Homophobia and racism from the LGBTI community.'

A FtM trans Iranian refugee in Hungary reported that 'Sometimes people stop associating with me after finding out [that I am trans]. Most organisations rejected my request for help with accommodation based on my gender issue.'

The majority of respondents (56%) in our survey had experienced discrimination in the country in which they claimed asylum, while 22% had also experienced some form of violence (Andrade et al, 2020, p25).

Many of the individuals we spoke to – both asylum claimants and practitioners – told us of prejudice against particular subgroups of claimants, often on the basis of nationality:

'It seems to me that people from certain countries are more frequently suspected of lying about their sexual orientation.' LGBTIQ+ organisation volunteer in Italy.

'People who behave "gay" get better treatment. People from countries known for homophobic treatments (Afghanistan, Iran) get better treatments than people from "less known" countries (Gambia, Nigeria).' LGBTIQ+ organisation member, Denmark.

Alongside direct discrimination or violence, many had been denied the right to work, access to services, and right to family reunion – problems exacerbated by lengthy RSD processes.

Racism, homophobia, transphobia and SGBV exist in all societies. However, SOGIESC refugees and asylum claimants rarely benefit from the general anti-discrimination measures in States which tend to protect citizens with settled status. Governments in many EU Member States and the UK have increasingly recognised discrimination and violence against SOGIESC minority communities and individuals. They have also recognised and addressed 'race' and religious-based discrimination and SGBV. For example, recent UK governments have introduced various policies to address SOGIESC-based discrimination in recent years, including an [LGBT Action Plan in 2018](#). UK law now recognises [SOGIESC-based hate crime](#) where prosecutors may ask for an uplift in the sentence for those convicted. Hate crimes, including on the basis of SOGIESC, are [recorded and published regularly](#). However, in the UK, crimes that target SOGIESC refugees and asylum claimants are not recognised and recorded as hate crime, despite research showing that this group are unsafe and subject to abuse. In general, SOGIESC and other refugees and asylum claimants are unlikely to be aware of measures to prevent discrimination and SGBV and of sources of support available to those who experience them.

**Recommendation:** In the areas of resettlement and integration, legislation and policies addressing discrimination, hate crime and SGBV need to be inclusive of refugees and asylum claimants, recognising the high levels of violence and abuse that they experience. An important role for States is to raise awareness of the sources of legal protection and social support that all individuals are entitled to, regardless of nationality or citizenship status. States should also take steps to counteract negative stereotypes of refugees and asylum claimants that are perpetuated through media and political discourse and which may contribute to hostility towards refugees and asylum claimants.

### **13. What are the barriers to fair and efficient RSD procedures for LGBT individuals considering both State-conducted and UNHCR-conducted processes? Are certain subsets of the LGBT community more likely to receive protection than others?**

Many of our participants had a negative experience of the asylum system as unfair, lengthy and inefficient. We highlight some particular concerns below.

#### **a) Poor quality country of origin information and 'safe countries'**

Accurate and extensive COI is critical to good asylum decision-making (Danisi et al, 2021, Ch 6), yet data on SOGIESC asylum is scarce and often outdated, leading to flawed decisions. The quality of country of origin information (COI) was amongst one of the main concerns raised by our survey respondents: 40% of claimant respondents reported that the most common reason for refusal was that the decision-maker did not believe they were persecuted or at risk of persecution in their country of origin, connected with the fact that 48% of advocates who responded found limited or low quality Country of Origin Information (COI) to be a significant concern (Andrade et al, 2020, p6).

The designation of 'safe countries' is often accompanied by accelerated RSD procedures, including at border. This is not only in conflict with the requirement to carry out an individual assessment of each asylum claim, but is particularly problematic for SOGIESC claims, as SOGIESC-related rights and protection may be different to the rights and protections of other groups and individuals – reinforcing the need for up-to-date and detailed COI.

**Recommendation:** In the area of RSD, a specific measure we recommend is a greater focus on the risk of persecution and more rigorous collation and use of COI. Decision-making is too often based on an attempt to objectively ‘prove’ a claimant’s SOGIESC and starts from a position of scepticism that the claim is ‘genuine’. We advocate a shift in emphasis in RSD: in place of the current focus in many jurisdictions on discovering the ‘truth’ about a claimant’s sexuality or gender identity, the priority should be evidence-based analysis of the risk of persecution in the country they have fled (Dustin Ferreira, 2021).

**b) Over-reliance on the Particular Social Group Convention ground**

SOGIESC asylum cases are still largely decided using the Particular Social Group (PSG) Refugee Convention ground (Danisi et al, 2021, Ch.7). That means that applicants need to show they are part of a group that shares ‘a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights’ (UNHCR, 2002: 3-4. Emphasis added).

However the EU and other jurisdictions including the UK requires that: ‘members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, *and* that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society’ (Council of the EU, Article 10(1)d. Emphasis added).

The latter cumulative criteria for PSG membership may create unfair obstacles for SOGIESC claimants. For example, a queer Afghani asylum claimant in Germany will need to demonstrate that they share a common characteristic such as being bisexual, but also show that they are identifiable as such in Afghanistan. This may create an impossibly high bar for someone who has had to conceal their SOGIESC all their life.

**Recommendation:** To avoid creating an unreasonably high threshold of proof for claimants, States should adopt the UNHCR rather than the EU criteria for PSG membership. Furthermore, in order to recognise the many factors and identities that are the basis for SOGIESC persecution (inc. religious and political beliefs), decision-makers should make use of all Refugee Convention grounds when assessing SOGIESC-based claims, rather than invariably relying on the PSG category

**c) Lack of awareness of their rights on the part of claimants**

Approximately one third of claimants who responded to the SOGICA survey did not know that they could claim asylum because of sexual orientation or gender identity when they arrived in Europe (Andrade et al, 2020, p5). This contributes to ‘late’ and poorly prepared legal claims:

‘I didn't know whether you could even say it to anyone. I didn't know that you could seek asylum on [grounds of] sexual orientation. After what happened to me in Uganda, couldn't think that anyone or any government supports LGBTQI people.’  
Gay Ugandan refugee in the UK.

**Recommendation:** We recommend that authorities comprehensively provide information about asylum and the right to make a SOGIESC-based claim to any potential claimant, including in easy-read formats and different languages, at a minimum at ports of entry and at asylum interviews, reception and accommodation centres.

**d) Inadequate evidence base for purposes of planned improvements and targeted support**

Any transparent and accountable asylum system needs to maintain and publish rigorous and up-to-date statistics on different types of asylum claims and their outcomes:

‘(...) [t]he lack of statistics on LGBTI refugees case is a general problem that should be addressed by member states.’ NGO worker in Greece.

In 2024, the European Union Agency for Asylum published a [Practical Guide on applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics](#), whose Section 7 of the [Cross-cutting Elements Part](#) – informed by the SOGICA work – recommends data collection on SOGIESC-based asylum applications. This recommendation should now be followed by asylum authorities across the EU. This good practice should also be adopted globally.

**Recommendation:** Information about claims based on different SOGIESC grounds should be collated, including information covering decision-making and appeals stages. This information should be made public in order to support the work of charities, service providers, lawyers, and researchers

**e) Limited access to legal advice and representation**

The impact of the quality of legal representation on the likelihood of success of an asylum claim has been well documented and analysed (Danisi et al, 2021, Ch 6). It is therefore very concerning that almost half of the SOGICA survey respondents did not benefit from legal advice or representation, and that more than half had to pay for legal services or depend on *pro bono* legal advice and representation:

‘Claims for asylum based on sexual orientation show differences from those based on (eg) religion or political grounds, because of the extremely personal circumstances discussed. They need to be handled by lawyers who are basically sympathetic and knowledgeable about this area of the law. With the decrease in legal aid funding, such lawyers are increasingly difficult to find.’ LGBTIQ+ organisation member in the UK (Andrade et al, 2020, p37).

SOGIESC asylum claims are often particularly complex and require legal representatives who have experience and expertise in this area. Yet, many SOGIESC claimants have difficulty accessing good legal advice and in some countries, including the UK, there is a general lack of funding for legal aid.

**Recommendation:** In the interests of both fairness and efficiency, all asylum claimants should have access to legal advice and representation when making their asylum claim right from the initial stage.

**In conclusion**, as well as a need for practical improvements such as those suggested above, there is a great and growing need to promote a culture of empathy and welcome to counteract the hostile environment seen in so many European states and that is harmful to SOGIESC-based asylum applicants and all refugees.

**Some examples of good practice from the UK that we encountered include:**

- Scottish Gov. [‘New Scots’ policy](#): ‘We believe that refugees and people seeking asylum should be welcomed and supported to integrate into our communities from day one.’
- [Micro Rainbow](#) provides ‘safe temporary housing for LGBTQI asylum seekers in the UK.’
- [City of Sanctuary](#) is ‘building a movement of welcome across the UK’ that now includes schools, libraries and universities of sanctuary.
- CSOs and community organisations set up by SOGIESC refugees themselves are a huge source of support and expertise, and are trusted by newly arrived asylum claimants who are often wary of officials. Such organisations need funding and recognition.

**Contact details:**

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**Additional supporting material:**

Andrade, Danisi, Dustin, Ferreira and Held, [Queering Asylum in Europe: A Survey Report](#), 2020

Danisi, C., Dustin, M., Ferreira, N. and Held, N., [Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity](#), Springer, 2021

Dustin, M. and Ferreira, N., [Improving SOGIESC Asylum Adjudication: Putting Persecution Ahead of Identity](#), Refugee Survey Quarterly, Volume 40, Issue 3, September 2021, pp. 315–347 [cited in Federal Court, [Mohammed v. Canada](#) (*Citizenship and Immigration*), 2023 FC 956]

European Union Agency for Asylum, ‘Practical Guide on applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics’, EUAA, 2024

SOGICA project. [Final recommendations](#). 2020

[SOGICA website](#) and [database of resources](#)

UNHCR Guidelines on International Protection No. 2: "Membership of a Particular Social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/02), 2002.

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