

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

Table 1. Council of Europe SOGI jurisprudence

Case reference	Asylum claimant(s)	Main legal basis	Key outcomes
<i>B. v. United Kingdom</i> , Application no. 16106/90, 10 February 1990 (European Commission of Human Rights)	Gay Cypriot man	Articles 8, 13 and 14 ECHR	Application manifestly ill-founded (application declared inadmissible)
<i>Shahram Sobhani v. Sweden</i> , Application no. 32999/96, 10 July 1998 (European Commission of Human Rights)	Gay Iranian man	Articles 2, 3 and 8	Application struck out (applicant withdrew application)
<i>F. v. United Kingdom</i> , Application no. 17341/03, 22 June 2004	Gay Iranian man	Articles 2, 3, 5, 6 and 8 ECHR	Application manifestly ill-founded (application declared inadmissible)
<i>I.I.N. v. the Netherlands</i> , Application no. 2035/04, 9 December 2004	Gay Iranian man	Article 3 ECHR	Application manifestly ill-founded (application declared inadmissible)
<i>R.A. v. France</i> , Application no. 49718/09, 8 February 2011	Gay Pakistani man	Articles 2, 3 and 13 together with 2 and 3 ECHR	Application struck out (applicant lost touch with representative)
<i>D.B.N. v. United Kingdom</i> , Application no. 26550/10, 31 May 2011	Lesbian Zimbabwean woman	Articles 2, 3, 8, 13 together with 3, and 14 together with 3 and 13 ECHR	Application struck out (applicant lost touch with representative and left country voluntarily)
<i>K.N. and Others v. France</i> , Application no. 47129/09, 19 June 2012	Gay Iranian man	Articles 2, 3, and 13 together with 2 and 3 ECHR	Application struck out
<i>A.S.B. v. the Netherlands</i> , Application no. 4854/12, 10 July 2012	Gay Jamaican man	Article 3 ECHR	Application struck out



This project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No 677693).



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<i>M.K.N. v. Sweden</i> , Application no. 72413/10, 27 June 2013	Gay Iraqi man	Article 3 ECHR	No violation of Article 3 ECHR
<i>M.E. v. Sweden</i> , Application no. 71398/12, 26 June 2014	Gay Libyan man	Article 3 ECHR	No violation of Article 3 ECHR Acceptance of the 'discretion argument'
<i>M.E. v. Sweden</i> , Application no. 71398/12, 8 April 2015 (Grand Chamber)	Gay Libyan man	Article 3 ECHR	Application struck out
<i>A.E. v. Finland</i> , Application no. 30953/11, 22 September 2015	Gay Iranian man	Article 3 ECHR	Application struck out
<i>A.N. v. France</i> , Application no. 12956/15, 19 April 2016	Gay Senegalese man	Article 3 ECHR	Application manifestly ill- founded (application declared inadmissible)
<i>O.M. v. Hungary</i> , Application no. 9912/15, 5 July 2016	Gay Iranian man	Article 5 ECHR	Violation of Article 5 of the ECHR EUR 7,500 for non-pecuniary damage EUR 3,395 for costs and expenses.
<i>M.B. v. Spain</i> , Application no. 15109/15, 13 December 2016	Lesbian Cameroonian	Articles 2 and 3 ECHR	Application partly struck out and partly considered premature
<i>H.A. and H.A. v. Norway</i> , Application no 56167/16, 3 January 2017	Perceived gay Iranian man	Articles 2, 3, 8 and 13 ECHR	Application manifestly ill- founded (application declared inadmissible)
<i>A.T. v. Sweden</i> , Application no. 78701/14, 25 of April 2017	Gay Iranian man	Articles 2 and 3 ECHR	Application struck out
<i>E.S. v. Spain</i> , Application no 13273/16, 19 October 2017	Gay Senegalese man	Articles 2, 3 and 13 ECHR	Application partly struck out and partly considered premature



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<u>I.K. v. Switzerland</u> , Application no. 21417/17, 19 December 2017	Gay Sierra Leonean man	Articles 3 and 14 ECHR	Application manifestly ill- founded (application declared inadmissible) Recognition of sexual orientation as fundamental characteristic and the unlawfulness of the 'discretion argument'
<u>M.B. v. the Netherlands</u> , Application no. 63890/16, 21 December 2017	Gay Guinean man	Articles 3 and 3 together with 13 ECHR	Application manifestly ill- founded (application declared inadmissible)
<u>M.T. v. France</u> , Application no. 61145/16, 27 March 2018	Gay Cameroonian man	Article 3 ECHR	Application struck out
<u>Khudoberdi Turgunaliyevich Nurmatov (Ali Feruz) v. Russia</u> , Application no. 56368/17, 2 October 2018	Gay Uzbek man	Articles 3 and 5 ECHR	Application partly struck out and partly considered inadmissible
<u>A.R.B. v. the Netherlands</u> , Application no. 8108/18, 17 January 2019	Gay Afghan man	Article 3 ECHR	Application struck out
<u>O.S. v. Switzerland</u> , Application no. 43987/16, lodged on 22 July 2016	Gay Gambian man	Article 3 ECHR	Decision pending
<u>Jafarizad Barenji Rana v. Hungary</u> , Application no. 40888/17, lodged on 29 May 2017	Recognised trans Iranian refugee	Article 8 ECHR	Decision pending
<u>S.A.C. v. United Kingdom</u> , Application no. 31428/18, lodged on 5 July 2018	Gay/bisexual Bangladeshi man	Article 3 ECHR	Decision pending



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Table 2. European Union SOGI jurisprudence

Case reference	Asylum claimant(s)	Main legal basis	Key outcomes
Joined Cases C-199/12, C-200/12 and C-201/12, X, Y and Z v Minister voor Immigratie, Integratie en Asiel , 7 November 2013, ECLI:EU:C:2013:720	Gay men from Sierra Leone, Uganda and Senegal	Articles 2(c), 9(1)(a) and (2)(c), and 10(1)(d) of Directive 2004/83/EC; Article 8 ECHR / Article 7 CFR	Criminalisation of homosexual acts not persecution in itself; PSG requires social recognition test and fundamental characteristic test; 'Discretion argument' is illegitimate
Joined Cases C-148/13 to C-150/13, A, B and C v Staatssecretaris van Veiligheid en Justitie , 2 December 2014, ECLI:EU:C:2014:2406	Gay men from Gambia, Afghanistan and Uganda	Article 4 of Directive 2004/83/EC; Article 13(3)(a) of Directive 2005/85/EC; Articles 1 and 7 CFR	Asylum claimants' sexual self-identification is not determinative; Sexualised evidence and stereotyped assessments of SOGI asylum claims are illegal; Late disclosure of one's sexuality does not automatically harm one's credibility.
Case C-473/16, F v Bevándorlási és Állampolgársági Hivatal , 25 January 2018, ECLI:EU:C:2018:36	Nigerian gay man	Articles 1, 7 and 47 of the EU Charter; Article 4(5) of Directive 2011/95/EU	Projective personality tests are precluded in determining one's sexual orientation in asylum cases.

N.B. All decisions available through SOGICA's database on <http://www.sogica.org/en/sogica-database/>

Last updated 3 May 2019



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