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**European Union Agency for Fundamental Rights**

## The practice of 'phallometric testing' for gay asylum seekers

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Cover of the new report on  
*Homophobia*

The practice of 'phallometric testing' consists in verifying the physical reaction to heterosexual pornographic material of gay men who have filed a claim for asylum on the basis of homosexual orientation. The test is performed by a professional sexologist and, in principle, only with the person's written consent, and once that person has been informed about the technique of the examination. This raises serious questions regarding the compliance of this practice with existing human rights standards.

According to information provided by the [Czech Ministry of the Interior](#) to the national expert of the FRA's research network, 'phallometric testing' may be proposed for an individual seeking international protection in order to assess the credibility of his claim to be homosexual, where inconsistencies appear in his

interview. Although a refusal to undergo the test may result in questioning the claim made by the person concerned about his homosexuality, conversely, where a person passes the test and shows no reaction to visual representations of heterosexual sex, his allegations about his homosexuality are considered proven. There are a number of problems with this situation, even apart from the fact that the reliability of 'phallometric testing' is questionable, since it is dubious whether it reaches sufficiently clear conclusions to be used as evidence in the processing of claims and in possible subsequent legal proceedings. This oblique practice would in any case not be appropriate as regards people who are bisexual.

The discussion on 'phallometry' stems from a decision adopted on 7 September 2009 by the German Administrative Court in Schleswig Holstein granting an interim measure and ordering the stay of transfer under the [Dublin II Regulation](#) of an Iranian gay man because of the possible use of 'phallometry' in the Czech Republic.

As concluded by the German Court, 'phallometric testing' is difficult to reconcile with existing human rights standards. Several arguments support this: **firstly**, the practice raises doubts in light of Article 3 of the [ECHR](#), which prohibits torture and inhuman or degrading treatment; **secondly**, it raises doubts as to its compatibility with Article 8 of the Convention, since this procedure touches upon 'a most intimate part of an individual's private life'; **finally**, the practice of 'phallometry' cannot be defended on the basis that it is only performed with the explicit consent of the person concerned.

Read more in the report on [Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity](#).

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