

## 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   |
|---|--------------------------|--|--|
| <a href="#"><u>B. v. United Kingdom</u></a> , 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)                         |
| <a href="#"><u>Shahram Sobhani v. Sweden</u></a> , 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)  |
| <a href="#"><u>F. v. United Kingdom</u></a> , 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)                         |
| <a href="#"><u>I.I.N. v. the Netherlands</u></a> , Application no. 2035/04, 9 December 2004                                     | Gay Iranian man          | Article 3 ECHR   | Application manifestly ill-founded (application declared inadmissible)                         |
| <a href="#"><u>R.A. v. France</u></a> , 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)                              |
| <a href="#"><u>D.B.N. v. United Kingdom</u></a> , 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) |



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| <a href="#"><u>K.N. and Others v. France</u></a> , Application no. 47129/09, 19 June 2012      | Gay Iranian man     | Articles 2, 3, and 13 together with 2 and 3 ECHR | Application struck out   |
| <a href="#"><u>A.S.B. v. the Netherlands</u></a> , Application no. 4854/12, 10 July 2012       | Gay Jamaican man    | Article 3 ECHR                                   | Application struck out   |
| <a href="#"><u>M.K.N. v. Sweden</u></a> , Application no. 72413/10, 27 June 2013               | Gay Iraqi man       | Article 3 ECHR                                   | No violation of Article 3 ECHR   |
| <a href="#"><u>M.E. v. Sweden</u></a> , Application no. 71398/12, 26 June 2014                 | Gay Libyan man      | Article 3 ECHR                                   | No violation of Article 3 ECHR<br>Acceptance of the 'discretion argument'                                    |
| <a href="#"><u>M.E. v. Sweden</u></a> , Application no. 71398/12, 8 April 2015 (Grand Chamber) | Gay Libyan man      | Article 3 ECHR                                   | Application struck out   |
| <a href="#"><u>A.E. v. Finland</u></a> , Application no. 30953/11, 22 September 2015           | Gay Iranian man     | Article 3 ECHR                                   | Application struck out   |
| <a href="#"><u>A.N. v. France</u></a> , Application no. 12956/15, 19 April 2016                | Gay Senegalese man  | Article 3 ECHR                                   | Application manifestly ill-founded (application declared inadmissible)                                       |
| <a href="#"><u>O.M. v. Hungary</u></a> , Application no. 9912/15, 5 July 2016                  | Gay Iranian man     | Article 5 ECHR                                   | Violation of Article 5 of the ECHR<br>EUR 7,500 for non-pecuniary damage<br>EUR 3,395 for costs and expenses |
| <a href="#"><u>M.B. v. Spain</u></a> , Application no. 15109/15, 13 December 2016              | Lesbian Cameroonian | Articles 2 and 3 ECHR                            | Application partly struck out and partly considered premature  |



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| <a href="#"><i>H.A. and H.A. v. Norway</i></a> ,<br>Application no 56167/16,<br>3 January 2017  | Perceived<br>gay Iranian<br>man | Articles 2, 3, 8<br>and 13 ECHR              | Application manifestly ill-<br>founded (application declared<br>inadmissible)  |
| <a href="#"><i>A.T. v. Sweden</i></a> ,<br>Application no.<br>78701/14, 25 of April<br>2017   | Gay Iranian<br>man              | Articles 2 and<br>3 ECHR                     | Application struck out   |
| <a href="#"><i>E.S. v. Spain</i></a> , Application<br>no 13273/16, 19 October<br>2017   | Gay<br>Senegalese<br>man        | Articles 2, 3<br>and 13 ECHR                 | Application partly struck out<br>and partly considered<br>premature  |
| <a href="#"><i>I.K. v. Switzerland</i></a> ,<br>Application no.<br>21417/17, 19 December<br>2017  | Gay Sierra<br>Leonean<br>man    | Articles 3 and<br>14 ECHR                    | Application manifestly ill-<br>founded (application declared<br>inadmissible)<br>Recognition of sexual<br>orientation as fundamental<br>characteristic and the<br>unlawfulness of the 'discretion<br>argument' |
| <a href="#"><i>M.B. v. the Netherlands</i></a> ,<br>Application no.<br>63890/16, 21 December<br>2017  | Gay Guinean<br>man              | Articles 3 and<br>3 together with<br>13 ECHR | Application manifestly ill-<br>founded (application declared<br>inadmissible)  |
| <a href="#"><i>M.T. v. France</i></a> ,<br>Application no.<br>61145/16, 27 March<br>2018  | Gay<br>Cameroonian<br>man       | Article 3 ECHR                               | Application struck out   |
| <a href="#"><i>Khudoberdi<br/>Turgunaliyevich<br/>Nurmatov (Ali Feruz) v.<br/>Russia</i></a> , Application no.<br>56368/17, 2 October<br>2018 | Gay Uzbek<br>man                | Articles 3 and<br>5 ECHR                     | Application partly struck out<br>and partly considered<br>inadmissible   |
| <a href="#"><i>A.R.B. v. the<br/>Netherlands</i></a> , Application<br>no. 8108/18, 17 January<br>2019   | Gay Afghan<br>man               | Article 3 ECHR                               | Application struck out   |



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| <a href="#"><u>S.A.C. v. United Kingdom</u></a> , Application no. 31428/18, 5 December 2019             | Gay/bisexual Bangladeshi man     | Article 3 ECHR                   | Application struck out  |
| <a href="#"><u>Rana v. Hungary</u></a> , Application no. 40888/17, 16 July 2020                         | Recognised trans Iranian refugee | Article 8 ECHR                   | Violation of Article 8 of the ECHR<br>EUR 6,500 for non-pecuniary damage<br>EUR 1,500 for costs and expenses              |
| <a href="#"><u>B and C v. Switzerland</u></a> , Applications nos. 889/19 and 43987/16, 17 November 2020 | Gay Gambian man                  | Article 3 ECHR                   | Deportation without a fresh assessment would be a violation of Article 3 of the ECHR<br>EUR 14,500 for costs and expenses |
| <a href="#"><u>R.Y. against Russia</u></a> , Application no. 21977/20, 23 March 2021                    | Gay Uzbek man                    | Article 3 ECHR                   | Application struck out  |
| <a href="#"><u>L.B. v France</u></a> , Application no. 67839/17, lodged on 11 September 2017            | Intersex Moroccan man            | Article 3 ECHR                   | Decision pending  |
| <a href="#"><u>M.I. v. Switzerland</u></a> , Application no. 56390/21, lodged on 22 November 2021       | Gay Iranian man                  | Articles 2, 3, 8, 13 and 14 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, <a href="#">X, Y and Z v Minister voor Immigratie, Integratie en Asiel</a> , 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 href="#">A, B and C v Staatssecretaris van Veiligheid en Justitie</a> , 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, <a href="#">F v Bevándorlási és Állampolgársági Hivatal</a> , 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.   |



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| <p>Case C-18/20, <a href="#">XY v Bundesamt für Fremdenwesen und Asyl</a>, 9 September 2021, ECLI:EU:C:2021:710</p> | <p>Iraqi gay man</p> | <p>Article 40(2) and 40(3) of Directive 2013/32/EU (Procedures Directive)</p> | <p>EU law precludes a subsequent application for international protection from being rejected as inadmissible on the sole ground that it is based on circumstances which already existed during the procedure relating to the first application. In addition, the reopening of the first procedure in order to examine the substance of the subsequent application cannot be subject to the condition that that application has been lodged within a certain time limit.</p> |
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N.B. All decisions available through SOGICA's database on <http://www.sogica.org/en/sogica-database/>

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