

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
<u>B. v. United Kingdom</u> , 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)
<u>Shahram Sobhani v. Sweden</u> , 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)
<u>F. v. United Kingdom</u> , 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)
<u>I.I.N. v. the Netherlands</u> , Application no. 2035/04, 9 December 2004	Gay Iranian man	Article 3 ECHR	Application manifestly ill-founded (application declared inadmissible)
<u>R.A. v. France</u> , 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)
<u>D.B.N. v. United Kingdom</u> , 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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<u>K.N. and Others v. France</u> , Application no. 47129/09, 19 June 2012	Gay Iranian man	Articles 2, 3, and 13 together with 2 and 3 ECHR	Application struck out
<u>A.S.B. v. the Netherlands</u> , Application no. 4854/12, 10 July 2012	Gay Jamaican man	Article 3 ECHR	Application struck out
<u>M.K.N. v. Sweden</u> , Application no. 72413/10, 27 June 2013	Gay Iraqi man	Article 3 ECHR	No violation of Article 3 ECHR
<u>M.E. v. Sweden</u> , Application no. 71398/12, 26 June 2014	Gay Libyan man	Article 3 ECHR	No violation of Article 3 ECHR Acceptance of the 'discretion argument'
<u>M.E. v. Sweden</u> , Application no. 71398/12, 8 April 2015 (Grand Chamber)	Gay Libyan man	Article 3 ECHR	Application struck out
<u>A.E. v. Finland</u> , Application no. 30953/11, 22 September 2015	Gay Iranian man	Article 3 ECHR	Application struck out
<u>A.N. v. France</u> , Application no. 12956/15, 19 April 2016	Gay Senegalese man	Article 3 ECHR	Application manifestly ill-founded (application declared inadmissible)
<u>O.M. v. Hungary</u> , 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
<u>M.B. v. Spain</u> , 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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<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
<i>I.K. v. Switzerland</i> , 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'
<i>M.B. v. the Netherlands</i> , 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)
<i>M.T. v. France</i> , Application no. 61145/16, 27 March 2018	Gay Cameroonian man	Article 3 ECHR	Application struck out
<i>Khudoberdi Turgunaliyevich Nurmatov (Ali Feruz) v. Russia</i> , Application no. 56368/17, 2 October 2018	Gay Uzbek man	Articles 3 and 5 ECHR	Application partly struck out and partly considered inadmissible
<i>A.R.B. v. the Netherlands</i> , Application no. 8108/18, 17 January 2019	Gay Afghan man	Article 3 ECHR	Application struck out



<u>S.A.C. v. United Kingdom</u> , Application no. 31428/18, 5 December 2019	Gay/bisexual Bangladeshi man	Article 3 ECHR	Application struck out
<u>Rana v. Hungary</u> , Application no. 40888/17, 16 July 2020	Recognised trans Iranian refugee	Article 8 ECHR	Violation of Article 8 of the ECHR EUR 6,500 for non-pecuniary damage EUR 1,500 for costs and expenses
<u>B and C v. Switzerland</u> , 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 EUR 14,500 for costs and expenses
<u>R.Y. against Russia</u> , Application no. 21977/20, 23 March 2021	Gay Uzbek man	Article 3 ECHR	Application struck out
<u>L.B. v France</u> , Application no. 67839/17, lodged on 11 September 2017	Intersex Moroccan 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.



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<p>Case C-18/20, XY v Bundesamt für Fremdenwesen und Asyl, 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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