
**“SOGI-related
asylum claims in
Greece: the legal
implications arising
from the specific
protection needs of
LGBTI persons”**

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WHAT ARE WE GOING TO REVIEW TODAY

- What are the general problematic issues that arise during the examination of a SOGI asylum claim?
- What are the gaps and preconceptions when handling a SOGI asylum claim during the first registration and the personal interview?
- Are there any good practices around Europe?
- What are the possible solutions and suggestions towards an improved and more protective framework?



LEGAL FRAMEWORK

Geneva Convention 1951

L 4636/2019 & L
4686/2020

UNHCR Guidelines on
International Protection
No. 9

CJEU - Joined Cases C
148/13, C 149/13 and C
150/13 / Judgment A, B
and C v Staatssecretaris van
Veiligheid en Justitie, 02
December 2014

CJEU - Joined Cases C
199/12 to C 201/12 /
Judgment X., Y. and Z. v
Minister voor Immigratie en
Asiel, 07 November 2013

GENERAL ISSUES REGARDING LGBT+ ASYLUM CLAIMS IN GREECE



No data in the official statistics of the Asylum Service regarding number of SOGI asylum applications



Lack of access to information for the applicant → increasing vulnerability



Lack of access to legal assistance – no free legal aid by the State provided in the first instance



No protective framework in practice – even if they fall into the category of applicants in need of special procedural guarantees

Map of Countries that Cr

the protection of LGBTI asylum ...
coe.int

The map below provides an overview of the countries across the world where lesbian, gay, bisexual and transgender people are criminalised.

Filter Countries by...

Criminalises LGBT

apply filter



GENERAL ISSUES REGARDING LGBT+ ASYLUM CLAIMS IN GREECE

LGBT Criminilisation in
several non-EU countries

Among these countries
we have Morocco,
Tunisia, Algeria, Senegal,
Togo & Ghana.

LIST OF “*SAFE COUNTRIES OF ORIGIN*”

- Morocco, Tunisia, Algeria, Senegal, Togo & Ghana are also included in the list of “*safe countries of origin*” introduced with L 4636/2019.
- Arts. 77 & 84 L 4636/2019 introduce the possibility of the Asylum Service to skip the personal interview if an applicant comes from one of the countries listed as safe.
- This list assigns the burden of proof/counterclaim to the applicant and eliminates the element of “individualized” examination of the asylum application.

FIRST REGISTRATION



FIRST / FULL
REGISTRATION OF ASYLUM
APPLICATION ART. 65 PAR. 1
L 4636/2019



CONDUCTED BY
APPOINTED CASEWORKERS
WITH THE ASSISTANCE OF
AN INTERPRETER



WHAT DOES IT INCLUDE?



WHEN FULL REGISTRATION
IS COMPLETED → DATE OF
ASYLUM APPLICATION
SUBMISSION

FIRST REGISTRATION – PROBLEMATIC POINTS



Caseworkers for first registration

Lack of understanding and knowledge
of specific LGBT+ matters;
Lack of knowledge of religious matters



Personnel's contracts



Confidentiality principle

FIRST REGISTRATION – PROBLEMATIC POINTS

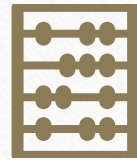
- Lack of privacy → E.g. in the islands' reception centres more than one full registration sessions take place in the same container at the same time.
- Counter-argument → But there is also the following stage of the interview where the applicant can express the SOGI asylum claim and, *“a personal interview shall take place under conditions which ensure appropriate confidentiality (art. 77 L 4636/2019).”*
- However, **chances are higher for negative credibility assessment if SOGI asylum claim is presented for the first time during the personal interview.**



FIRST REGISTRATION – PROBLEMATIC POINTS



Pressure of caseworkers to deliver specific number of full registrations daily, e.g. 15 applications in 8 working hours



Mathematically impossible to conduct full registration of asylum applications, which last at least one (1) hour each



Some steps of the procedure are often overlooked, e.g. going through the application form's questions one more time

FIRST INSTANCE INTERVIEW



Opportunity to support the application for international protection by developing history of applicant's persecution



EU Directive 2013/32/EU art. 14-17 & L 4636/2019



Guarantees for a secure procedure are established in theory



In practice, there are deviations

FIRST INSTANCE INTERVIEW – MISHANDLING & PRECONCEPTIONS

- **Example No1:** Caseworker was unable to believe that the applicant had their first same-sex relationship after they turned 18.
- **Example No2:** SOGI asylum claim found incredible because the applicant stated that they realised their sexual orientation in a later age (over 15 years of age).

FIRST INSTANCE INTERVIEW – MISHANDLING & PRECONCEPTIONS

- **Example No3:** SOGI asylum claim difficult to be found credible if the applicant declares homosexual, but also confirms to have had heterosexual partners in the past.
- **Example No4:** SOGI asylum claim found lacking credibility because the applicant was expressing their sexual orientation in a monogamous way and did not have many partners.

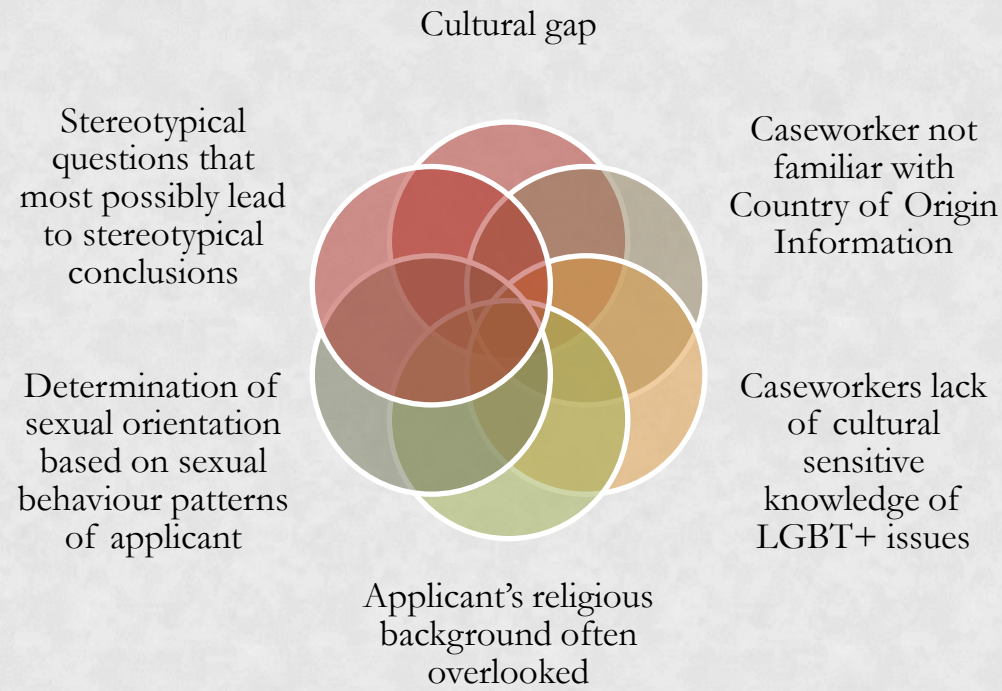
FIRST INSTANCE INTERVIEW – MISHANDLING & PRECONCEPTIONS

- **Example No5:** SOGI asylum claim found non-credible because *“homosexuality in the applicant’s country of origin is generally tolerable under the condition that persons involved in homosexual acts **do not reveal their diversity**”*.
-

FIRST INSTANCE INTERVIEW – MISHANDLING & PRECONCEPTIONS

- **Example No6:** SOGI asylum claim found lacking credibility because the applicant had never visited a gay bar or attended a Pride Parade. (According to the UK Home Office, 05 June 2019, page 32, any such evidence is not in and of itself evidence of sexual orientation and has no evidential value). The above is based on the CJEU Joins case of A,B and C where:-
 - questions based solely on stereotypical behaviour cannot be relied on in order to assess evidence put forward by a claimant
 - detailed questioning about sexual practices must not be asked
 - sexually explicit evidence, even if provided voluntarily by the claimant, must not in any circumstances be accepted
 - an adverse credibility finding cannot be made, merely because a claimant did not raise issues of sexual orientation on the first occasion that they claimed asylum

FIRST INSTANCE INTERVIEW – OVERVIEW OF IMPLICATIONS ARISING

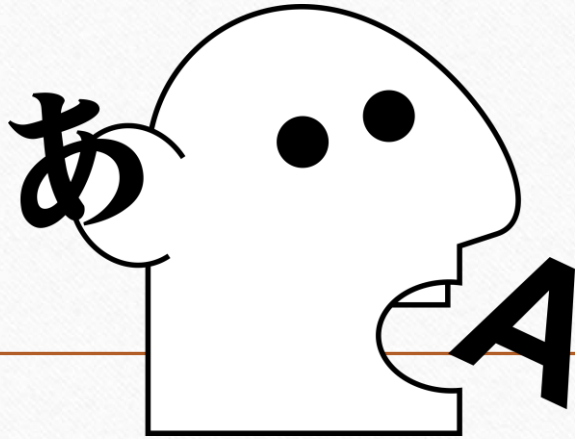


INTERPRETATION



FROM THE SIDE OF THE APPLICANT

- It is very common that the applicant feels uncomfortable to express their SOGI claim before an interpreter of the same sex (especially if the interpreter is a male).
- The applicant's sense of general insecurity rises when interpreting is conducted remotely. In some cases, the interpreter can be an applicant's relative who lives with at the reception center;



INTERPRETATION

FROM THE SIDE OF THE INTERPRETER

- The interpreter may feel awkward/embarrassed while the applicant expresses the SOGI claim.
 - There have been cases where the interpreter was not familiar with SOGI & LGBT terminology and could not attribute the exact meaning of the applicant's wordings; and some of them they have never received a training with regards to the asylum process
 - There have been cases where the interpreter refused to interpret specific words used or sceneries described by the applicant, because of feeling uncomfortable (e.g. description of sexual relationship between two men).

SUGGESTIONS FOR PROTECTIVE & EFFICIENT FRAMEWORK

- **TRAINING & EDUCATION**

- **Caseworkers** should receive additional training with regards to LGBT+ issues and how to raise them with the applicant. There should be a **“checklist” of trainings conducted on a regular basis** by different actors (Asylum Service, EASO, UNHCR, and other actors, such as ILGA Europe, the Greek Transgender Association).
- **Interpreters** and translators should receive adequate training with regards to LGBT+ rights and religious culture.
- **Establishment of cooperation with important stakeholders in the field** for regular updates and continuous policy reforming.



SUGGESTIONS FOR PROTECTIVE & EFFICIENT FRAMEWORK

- **RECEPTION**

- The competent Authorities should endeavour to identify applicants in need of special procedural guarantees as soon as possible → **Assessment within reasonable time, without delay.**

- **ASYLUM CLAIM EXAMINATION**

- Public sharing of Asylum Service's formed policy instructions in SOGI-based claims. See example of UK Home Office https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543882/Sexual-orientation-in-asylum-claims-v6.pdf



SUGGESTIONS FOR PROTECTIVE & EFFICIENT FRAMEWORK



- **INTERNAL ISSUES**
 - Provide caseworkers with a **safer & stable** working status.
 - Hiring **more interpreters**.
- **QUALITY CONTROL & COMPLAINT MECHANISMS**
 - Statistics for SOGI-based asylum applications.
 - Training, Quality and Documentation Department of Asylum Service to conduct quality checks **on all interviews and first-instance decisions, or, at least, on a larger sample.**
 - Also TQDD to check on EASO interviews.



SUGGESTIONS FOR PROTECTIVE & EFFICIENT FRAMEWORK

- **LEGAL REFORMS**
 - **RECAST DIRECTIVE 2013/32/EU art 20** “Free legal assistance and representation in appeals procedures” **to also include free legal assistance and representation in first instance procedures.**
 - State-funded free legal aid at first instance to become obligatory by law.
 - Separate list of “*safe countries of origin*” for SOGI-based asylum seekers



**THANK YOU
FOR YOUR
ATTENTION**
