Reality is not binary:
Spotlighting the existing gaps in the EU and Italian asylum system for trans applicants

Chiara Scissa[1]

Elisabeth Cucco[2]

Keywords: trans, LGBTIAQ+, asylum, Italian asylum law, Italian reception system, EU asylum law, vulnerability, safe third country

Abstract

Neither European nor Italian asylum systems reflect yet the non-binary society we all live in. Thus, the first aim of this paper is to unveil the persistent flaws in both the Common European Asylum System (CEAS) and in the Italian asylum law of adequate provisions that succeed in addressing the vulnerability of trans asylum applicants, respecting their human rights, and providing them with a fair pathway for their protection and assistance in the EU and in the case of Italy, in turn obstructing the development of a steady integration system. Afterwards, this contribution aims at advancing concrete suggestions to fill this multilevel normative and policy gap.

[1] She holds a MA in International Cooperation and Protection of Human Rights with honours from the University of Bologna. She collaborated as a freelance for the Global Campus of Human Rights and the University of Milano-Bicocca. She is currently Project Assistant at the University of Bologna for the implementation of the Shaping Fair Cities EU-funded project. She also represents the Human Rights and Migrant Protection Focal Point at the UN Major Group for Children and Youth
Email: chiarascissa@gmail.com

[2] She holds a MA in International Cooperation and Protection of Human Rights with honours from the University of Bologna. She worked for numerous associations dedicated to the promotion and protection of gender equality and equal opportunities i.e. Associazione Orlando, Casa delle Donne, Trama di Terre and Caracò. Currently, she is social educator at Casa San Valentino for unaccompanied minors.
Email: elisabeth.cucco@gmail.com

Abbreviations

CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
FRA	EU Agency for Fundamental Rights
ICCPR	International Covenant for Civil and Political Rights
LGBTIAQ+	Lesbian, Gay, Bisexual, Trans, Intersex, Asexual, Queer
MIT	Movimento Identità Trans
NHS	National Health Service
SIPROIMI	Sistema di Protezione per Richiedenti Asilo, Rifugiati e minori stranieri non accompagnati
SPRAR	Sistema di Protezione per Richiedenti Asilo e Rifugiati
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

Contents

Introduction

Neither European nor Italian asylum systems reflect yet the non-binary society we all live in. Thus, the first aim of this paper is to unveil the persistent flaws in both the Common European Asylum System (CEAS) and in the Italian asylum law of adequate provisions that succeed in addressing the vulnerability of trans asylum applicants, respecting their human rights, and providing them with a fair pathway for their protection and assistance in the EU and in the case of Italy, in turn obstructing the development of a steady integration system. Afterwards, this contribution aims at advancing concrete suggestions to fill this multilevel normative and policy gap.

During the evaluation process of international protection requests, the differences within the category of Lesbian, Gay, Bisexual, Trans, Intersex, Asexual, Queer (LGBTIAQ+) international protection applicants are, alas, often not perceived or acknowledged in their own different subjectivity, paving the way to misleading interpretation and prejudice by competent administrative and judicial authorities. The lack of recognition of the abovementioned specificities has thus led not only to legal and theorical issues, but also to concrete and practical obstacles to the reception of LGBTIAQ+. In the particular case of trans international protection applicants (hereinafter also trans applicants), one of the most vulnerable categories among LGBTIAQ+, problems often arise pertaining to the collocation of the claimant in women or men accommodations according to their sex registered at birth, rather than on the basis of their gender identity. Because of the severe consequences that these regulatory and practical gaps have on trans international protection applicants, this paper focuses on the lacks in the EU and Italian asylum and reception system, underlining the adverse effects felt by trans claimants.

Concerning the CEAS, the notion of safe third country is questioned as it gravely endangers trans' right to asylum, inasmuch as it bypasses the individual assessment enshrined in the 1951 Convention on the Status of Refugees and does not consider the serious harm that trans people could face in a country, generally considered as safe, due to their gender identity and sexual expression. To avoid breaches of LGBTIAQ+ rights, this notion should not be applied to LGBTIAQ+ applicants. Moreover, in light of LGBTIAQ+ particular vulnerability and risk to be victims of sexual exploitation, both the CEAS and Italian asylum law should include LGBTIAQ+ persons in the list of vulnerable groups. Furthermore, States should ensure trans-specific healthcare, i.e. hormone replacement therapy, during asylum procedures.

At the national level, the Italian Territorial Commissions should assign trans international protection applicants to *ad hoc* residence centres involved in gender issues, not only to provide them with healthcare and accommodation; but also to avoid a double discrimination effect. This paper

regrettably notes that there are still a handful of facilities able to ensure such protection in the whole country. In order to analyse which reception conditions apply to trans applicants in Italy, we deemed necessary to give voice to the unique experience that Movimento Identità Trans[3] (MIT – Trans Identity Movement) Association is carrying out in the territory of Bologna. Remarkably, the reception and integration approach implemented by MIT is here presented as best practice, hopefully to be reproduced in the whole country.

Part 1: Regulatory flaws at the EU level

The invisibility of trans international protection applicants' in the CEAS

The first paragraph of Article 78 of the Treaty on the Functioning of the European Union (TFEU) claims that '*The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties*'.

Article 78 TFEU is of crucial importance for several reasons: firstly, it maintains that Member States and EU institutions comply to the 1951 Geneva Convention on the Status of Refugees and consequently that the European policy of asylum is based on its provisions, as emerged from the European Council meeting in Tampere (1999) and as proclaimed also by Articles 18 and 51 of the Charter of Fundamental Rights of the European Union[4] (hereinafter, EU Charter). Secondly, it provides the legal basis for any European arrangements regarding the institute of asylum. Thirdly, Article 78 TFEU indicates that the statutes of international protection available at the EU level are more extensive than those enshrined in the 1951 Geneva Convention and its 1967 Protocol, by granting protection and assistance to *any* third-country national in need.

Currently, the CEAS embraces all those agreed provisions regarding asylum- and protection-related issues, namely Regulation (EU) No. 604/2013[5] (Dublin III regulation) on the determination of the

[3] Our sincere gratitude to Mazen Masoud, social operator at MIT Association, for their support. The relevant information shared about the long-lasting experience of MIT in assisting and promoting the protection and social inclusion of trans international protection applicants in Bologna (Italy) have been treasured in this paper. Misinterpretations of the declarations made by Mazen Masoud during the interview are to be totally imputed to Chiara Scissa and Elisabeth Cucco.
[4] All 27 Member States are also parties of the Council of Europe, therefore are tied also to the provisions regarding the protection of migrants and asylum-seekers contained in the 1950 European Convention on Human Rights (ECHR), namely Article 1 ECHR and Article 1 of Protocol No. 7
[5] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (hereafter Dublin III Regulation)

State responsible for evaluating an international protection request, Directive 2013/32/EU[6] (Asylum Procedures Directive) on the procedures relating to the determination of the refugee status, 2013/33/EU[7] (Reception Conditions Directive) on the protection standards to grant to asylum-seekers, Directive 2011/95/UE[8] (Qualification Directive), and Directive 2001/55/EC[9] relating to the temporary protection.

At a first glance, it may appear that the instruments that compose the CEAS cover a wide range of people in need of international protection, by providing common guidelines both to States and beneficiaries for their protection in host societies. Nonetheless, a closer look reveals notable regulatory spots with drastic repercussions not only on the lives and human rights of those left behind, but also on States' understanding of current migration challenges. The lack of regular pathways for people compelled to leave because of environmental disasters[10] as well as war and violence is the result of a myope vision, which does not take into account the biggest threats affecting those countries: climate change and conflicts.

Finally, there is one more vulnerable group who has not been considered so far by EU institutions and Member States with detrimental human rights- as well as health-related effects, namely LGBTIAQ+ international protection applicants. Alas, the regulatory absence of recognition of LGBTIAQ+ people is cross-cutting. Indeed, neither the Treaty on the European Union (TEU) nor the TFEU make a comprehensive reference to gender identity, gender expression, and sexual orientation. Although Article 21.1 of the EU Charter embeds a non-exhaustive list of discrimination grounds under EU law, prohibiting '*any discrimination based on any ground such as sex […] or sexual orientation*', it does not explicitly refer to gender identity.

This lack is also mirrored in the different breadth concerning the definition of vulnerable persons available in pieces of legislation of EU asylum law[11]. As a matter of fact, Article 21 of the Reception Conditions Directive as well as Article 20.3 of the Qualification Directive provide a list of vulnerable

[6] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

[7] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

[8] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

[9] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

[10] (Scissa, A feeble light in the shadow: The recognized need to protect environmental migrants 2019)

[11] For an in-depth analysis of the protection of fundamental rights of vulnerable groups in the Charter of Fundamental Rights of the European Union, please refer to Global Campus of Human Rights, Asylum and Immigration Detention: The Protection of Fundamental Rights in the European Union, online course

groups that includes minors, unaccompanied minors, people with disabilities, elderly people, pregnant women, single parents with children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

A narrower definition of the same concept is provided by Article 3.9 of the 2008/115/EC (Return Directive) which, in comparison, excludes victims of human trafficking, persons with serious illnesses, and persons with mental disorders. Although the abovementioned list is exhaustive in its scope, the European Commission recommended Member States to pay attention also to other situations of particular vulnerability as mentioned in the Reception Conditions Directive[12]. Additionally, the Asylum Procedures Directive requires Member States to assess if international protection seekers need special procedural guarantees and if so to provide them with adequate support during asylum procedures.

Self-evidently, none of them refers to LGBTIAQ+ individuals as vulnerable persons. The origin of this gap may trace back to two main reasons. Firstly, LGBTIAQ+ persons are feebly mentioned in EU law and their fundamental rights are weakly protected, regardless of their EU or non-EU citizenship. Indeed, although Article 10 TFEU and Article 21 EU Charter forbid discrimination based on any ground - including sex, race, colour, ethnic or social origin, genetic features, membership of a national minority, birth, or sexual orientation, among others – EU laws are still anchored to a binary society, which does not reflect reality.

Secondly, this exclusion and the coexistence of different EU definitions referring to the same concept of vulnerability might be gathered given the inherent vagueness of the term. In an outstanding contribution on the matter, Dr. Lourdes Peroni and Dr. Alexandra Timmer affirmed that '*Vulnerability is a concept fraught with paradox. To start with, the concept is in common use but its meaning is imprecise and contested'*[13], then continuing by highlighting the strong nexus between the concept and the human body.

Actually, if we look closely at the different EU definitions of vulnerable persons, two intertwined harmed-based conditions stand out:

1. A biological condition that refers to age (elderly/minors), health status (mental and other serious illness), temporary or permanent physical situations (pregnancy, people with disabilities).

[12] (European Commission 2015)
[13] (Peroni e Timmer 2013, 1058)

2. An experience of serious crime (trafficking, rape, torture, violence) with, again, grave physical and psychological effects, whose victims can be minors, elderly, pregnant women and all other people falling in point 1.

Arguably, trans persons, as well as LGBTIAQ+ persons in general, likely meet both requirements within and beyond Europe.

The latest report issued by the EU Agency for Fundamental Rights (FRA) declares that comparing the results of the 2012 and 2019 survey on LGBTIAQ+ equality in Europe, '*little, if any, progress'* has been registered in the way LGBTIAQ+ persons can exercise their fundamental rights in their daily life[14]. As regards trans people living in an EU Member State, 60% of trans interviewed affirmed to never be open (37%) or to be rarely open (23%) about being trans. More than 55% of trans felt discriminated against in their daily life, such as in housing, healthcare or social services or when showing an identification document. Similarly, in Italy 36% of trans interviewed declared to never be open, and 27% to be rarely open about being trans[15]. Moreover, trans register the highest rate of reported 'street violence', harassment, physical and sexual violence. The Trans Murder Monitoring project, which collects reports of murders of trans persons in all regions, accounts for 680 murders in 50 countries from 2008 to 2011[16]. Another shocking data regards the existence of organizations providing support to LGBTIAQ+ victims of discrimination in their country. Whereas the average of people who have heard of at least one equality organization at the EU level is of 61%, in Italy the percentage drops to 30%.

These findings reveal that most EU countries show little tolerance towards their own citizens because of their gender identity, sexual orientation, and sexual expression. When it comes to LGBTIAQ+ international protection applicants, and trans applicants in particular, EU protection guarantees suffer from the little understanding of a non-binary society and the slight consideration of the complex dimension of inherent vulnerability issues of their request.

UNHCR recalls, in fact, that LGBTIAQ+ persons face multiple discriminations and abuses based on their sexual orientation and gender identity that encompass '*physical and sexual violence, including rape, torture, honour crimes and murder at the hands of authorities and private actors, […], denied access to health care and other social services, including housing, education, and employment and, in some instances,* [they may be, N/A] *arbitrarily detained*'[17], also taking account of forced heterosexual marriage, forced participation in conversion therapy, and so-called 'corrective' rape.

[14] (EU Agency for Fundamental Rights 2020)
[15] *Idem,* figure 6 p.24
[16] (National Coalition of Anti-Violence Programs July 2011)
[17] (UNHCR 2010, 5); (EASO 2015)

In light of the harsh, multiple discriminations along with the risk for their physical and psychological integrity as well as sexual exploitation they face, the CEAS should include LGBTIAQ+ persons in the list of vulnerable groups and reinforce the protection guarantees by, for instance, ensuring them a swifter access to competent administrative or judicial authorities, while granting them the right to live in adequate reception structures. To protect this wide category of people whose vulnerability might notably vary due to both general and individual special conditions, it is not sufficient to sporadically mention in vague terms the particular care EU States should give to gender-based issues as spotted in Directive 2011/95/EU. Borrowing the reasoning of the Court in Justice[18] (CJEU) in dealing with States' derogation of EU provisions by invoking the 'national security clause' (Article 4.2 TEU), for CEAS to be a reliable and effective instrument of protection, national authorities should duly consider '*[…] consistent, objective and specific evidence'* together with a wide and pragmatic gender-sensitive approach as to gender identity, sexual orientation, sexual expression.
In a landmark ruling[19], the CJEU identified the existence of *'a particular social group where, inter alia, two conditions are met. First, members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. Second, that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society'.*

As regards to LGBTIAQ+'s particular needs and vulnerability in case of detention, 2012 UNHCR guidelines pointed out the necessity to adopt alternatives to detention for these persons who otherwise would be exposed to risks of violence, ill-treatment or physical, mental or sexual abuse[20]. Furthermore, it recommended detention personnel and other public officials to be qualified and aware of international human rights standards, principles of gender identity, equality, and non-discrimination.
Similarly, Article 11 of the Reception Conditions Directive provides for a favourable treatment in case of detention of vulnerable persons, where LGBTIAQ+ are not included, and of applicants with special reception needs. Remarkably, Article 11.5 argues that in case of detention of female applicants, Member States shall ensure a separate accommodation from male applicants, unless the latter are family members and all individuals concerned consent thereto. Nonetheless, Member States

[18] CJEU, Judgment of the Court (Third Chamber), Cases C 715/17, C718/17 and C719/17, 2 April 2020, ECLI:EU:C:2020:257
[19] CJEU, X, Y, Z v Minister voor Immigratie en Asiel , C-199/12 - C-201/12, 7 November 2013, ECLI:EU:C:2013:720 (para. 45-46)
[20] (UNHCR 2012)

may derogate this relevant provision when the applicant is detained at a border post or in a transit zone.

On this behalf, MIT rightly recalls that the decision on accommodation of trans applicants should not be made on the ground of their sex registered at birth, rather taking into duly consideration the gender identity the applicants claim, in order to respect their identity and to avoid abuses. Competent authorities should guarantee trans detained applicants' healthcare and access to hormone therapy. In fact, according to MIT, the gender affirmation process should not be interrupted on the sole ground of detention.

On the assessment of gender identity by Territorial Commissions in Italy, Mazen Masoud recalled that usually trans migrants do not hide their gender identity and declare it immediately, while filling the C3 module. According to Mazen Masoud, the asylum claim owing to trans identity, the memory collection as well as the taking charge of trans asylum applicants by MIT reinforce the credibility of statements made by trans applicants in Bologna, as the presence of scars or proofs of having experienced sexual violence in the country of origin may confirm their story.

The adverse effect of the third country notion

The expression 'safe third country' arose in Europe during the '80s, when the volume of inflows increased notably with a consequent escalation in the number of asylum applications, which passed from 160,000 in 1985 up to 696,000 in 1992[21], growing more than four times in less than ten years.

The legal premise of the notion of safe third country is Article 31 of the Geneva Convention[22], which forbids States to impose sanctions on people who leave their home and directly enter or stay in their territory irregularly. Alas, the Convention does not mention secondary movements[23]. It is this legal omission that led Michelle Foster to declare that '*the 1951 Convention neither expressly authorizes nor prohibits reliance on protection elsewhere policies'*[24]. That corresponded, according to Borchelt, to a '*misguided approach*' [25] to asylum, since by considering indirect arrival and transit as secondary movements, the removal of the claimant without an adequate full evaluation of the asylum request was justified. In doing so, the safe third country notion may challenge the key rights and principles guaranteed in the 1951 Refugee Convention, as the notion does not take into consideration the

[21] (Hansen, 2000, 8) quoted by (Borchelt, 2002, 491). See also (Zoeteweij & Turhan, 2017, 152)

[22] Article 31 of the 1951 Geneva Convention affirms that: '*The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming* directly *from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*'

[23] (Byrne & Shacknove, 1996, 189)

[24] (Foster, 2006, 237)

[25] (Borchelt, 499)

individual circumstances that could make a third country unsafe for the claimant. Nevertheless, even if Article 31 does not clarify this aspect, it is equally true that international law does not oblige international protection applicants to seek protection in the first safe third country, where a form of protection could be available[26].

The harmonization process of the safe third country notion took a further, significant step in 2005 with the Asylum Procedures Directive, recast in 2013.

The criteria to evaluate the safety of a third country of origin are highlighted in Annex I for the purposes of Article 37(1), which proclaims that: *'A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict'.* These initial requirements would even impede EU Member States themselves to be considered as safe, in light of the multiple violations of the prohibition of torture set out in Article 3 ECHR as held by the European Court of Human Rights (ECtHR)[27]. Moreover, the *generally* no persecution and torture seem to allow sporadic episodes of violence as well as acts of persecution and torture against minorities, including trans and LGBTIAQ+ people, which do not amount to *generalized* violence.

Additional concerns on the Designation of safe countries of origin arise, when it provides that: '*In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by: (a) the relevant laws and regulations of the country and the manner in which they are applied;(b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention; (c) respect for the non-refoulement principle in accordance with the Geneva Convention; (d) provision for a system of effective remedies against violations of those rights and freedoms'*. In considering as safe a third country of origin that has alternatively ratified one treaty between the ECHR, the ICCPR and the UN Convention against Torture, the Asylum Procedures

[26] (Goodwin-Gill & McAdam, 392); (Mota Borges, 2017, 134)

[27] To mention but a few: ECtHR, Fifth Section, Case of M.S. V. Slovakia and Ukraine, Application no. 17189/11, 11 June 2020, Strasbourg; ECtHR, Fourth Section, Case of Potoroc V. Romania, (Application no. 37772/17, 2 June 2020, Strasbourg; ECtHR, Fifth Section, case of Z v. Bulgaria, Application no. 39257/17, 28 May 2020, Strasbourg; ECtHR, Fourth Section, case of Ciupercescu v. Romania, Applications no. 41995/14 and 50276/15, 7 January 2020, Strasbourg; ECtHR, First Section, N.A. v. Finland, Application no. 25244/18, 14 February 2020, Strasbourg; ECtHR, Grand Chamber, case of Savran v. Denmark, Application no. 57467/15, 27 January 2020, Strasbourg

Directive creates a misleading parallelism among these instruments, which rather focus on the prevention, protection, and promotion of specific rights and freedoms to a different extent. For instance, the fundamental freedom of expression as well as of thought, conscience and religion are equally endorsed in the first two treaties, while it is (understandably) absent in the Convention against Torture. Given the different subject that these three treaties have at the very core, the choice to consider third countries of origin, which have endorsed either of them, as equally safe seems at least controversial.

Furthermore, as Borchelt effectively highlighted, the fact that a country has ratified the 1951 Refugee Convention is not itself enough to determine the safety of that country as it might not implement its provisions, also by virtue of reservations that could have been made, or interpret them in a restrictive way[28]. The same can be said in the case of the three binding arrangements set out in the Annex. In addition, there is little chance that the information obtained by national authorities about the third safe country in question are so objective and precise to assess that persecution will not occur[29]. Finally, it has been observed that not only, through the use of the safe third country notion, the principle of *non-refoulement* might be breached, but it could also lead to 'chain deportations'[30] or even to '*refoulement* chains', a situation where EU Member States could, without conducing a full scrutiny of the individual claim, remove asylum-seekers to a third country that the applicants have crossed (on the grounds that they could have submitted the application there), or even to return them back to the country of origin[31]. In these terms, deportation and *refoulement* may take place, a risk that bilateral readmission agreements exacerbated. Thus, the notions of safe third country of asylum and of origin may indirectly create a tacit obligation for protection-seekers '*to seek asylum in the geographically closest safe State, punishing non-compliance with forced removal and limiting self-determination as regards the choice of the country of refuge'*[32].

As a consequence of the 2015 so-called 'refugee crisis', several Member States introduced a list of safe third countries of origin in their domestic law. Today, fourteen Members have a list, which draws

[28] *Ibid.* For example, the European Court of Human Rights condemned Belgium for violation of the principle of *non-refoulement*, as it sent asylum-seekers back to Greece, an EU Member State with systemic flaws in its asylum and reception system, where therefore fundamental human rights were not fully respected. As a matter of fact, *'When they apply the Dublin Regulation […], they must make sure that the intermediary country's asylum procedure affords sufficient guarantees to avoid an asylum seeker being removed, directly or indirectly, to his country of origin without any evaluation of the risks he faces from the standpoint of Article 3 of the Convention*'. The Court stated that Belgium shall not only '*assume that the applicant would be treated in conformity with the Convention standards but to first verify how the Greek authorities applied their legislation on asylum in practice*'. Please see ECtHR, M.S.S. v. Belgium and Greece, No. 30696/09, 21 January 2011, par. 342-359

[29] (Byrne & Shacknove, 218)

[30] (Borchelt, 510)

[31] (Mota Borges, 2017, 138)

[32] (Moreno-Lax, 673)

up countries considered as safe, plus Norway and Finland, which use this concept without a proper list[33]. The European Commission has noted that most Member States usually take into account what countries have been considered as safe by other EU countries in order to decide whether to include them in their national list. The use of the safe third country notion, whether of origin or of asylum, results in a lack of responsibility of Member States toward the evaluation of the international protection claim.

Italy has recently opted-in to the group of those EU States with a national list of safe third countries. In March 2018, when the European Commission asked the Italian Government to explain why it did not have a national list of safe third countries of origin, it replied that Italy '*chose not to adopt a national list of safe countries following the rules included in Italian Constitution where it's clear that applying for asylum is an individual right*'[34]. It sufficed a change of the government that occurred nine months later for a national list of safe third countries of origin to be adopted and included in the Decree-Law No. 113/2018 on immigration and security. This demonstrates that national and political interests have the concrete potential to adversely affect the right to asylum of the applicants overall, and in the case of trans and LGBTIAQ+ persons, in particular.

The negative impacts of the European list of safe third countries of origin on LGBTIAQ+ applicants

Pursuant to Article 39 of the Asylum Procedures Directive, a European safe third country is a State that: *'(a) has ratified and observes the provisions of the Geneva Convention without any geographical limitations; (b) it has in place an asylum procedure prescribed by law; and (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies*'.

In September 2015, the European Commission suggested to issue a European, common list of safe third countries of origin to '*increase the overall efficiency of their asylum systems as concerns applications for international protection which are likely to be unfounded. An EU common list will also reduce the existing divergences between Member States' national lists of safe countries of origin, thereby facilitating convergence in the procedures and deterring secondary movements of applicants for international protection*'[35].The list initially included seven countries: Albania, Bosnia and Herzegovina, Macedonia, Kosovo, Montenegro, Serbia and Turkey.

[33] (European Migration Network - European Commission, 2018, 1)
[34] *Idem*, 6
[35] COM (2015) 452 final

On the subject, ILGA has recently published its 2020 Rainbow Map[36] to rank European countries (EU Member States as well as other European countries) on the basis of laws and policies that have a direct impact on the LGBTIAQ+ people's human rights. Based on six categories (equality and non-discrimination; family; hate crime and hate speech; legal gender recognition and bodily integrity; civil society space; and asylum), Turkey got on the podium as the second most threatened European country for LGBTIAQ+ people, where only 5% of their human rights are respected. Moreover, Turkey's instable political system along with the denial of civil liberties and political rights[37], the frequent abuses of human rights[38] - such as the principle of *non-refoulement*, the right to life, the prohibition of torture -, the maintenance of the geographical limitation on the 1951 Refugee Convention, the progressively centralised power in the hands of the President of the Republic, the authoritarian turn of the ruling party, as well as the failed coup occurred in 2016 in Turkey seem to violate the legal provisions set out in the Asylum Procedures Directive. According to Mota Borges, these elements make Turkey a 'refugee-producing country'[39] itself.

According to ILGA's findings, Poland is the worst EU Member State (16%), followed by other Visegrad members that do not go beyond 33% of LGBTIAQ+ human rights respected of Hungary. Ironically, Italy seem to provide even less protection guarantees, complying up to 23% of their human rights.

Out of the seven European countries drawn up by the European Commission as generally and consistently safe, only Montenegro seems to provide a substantial safety and protection measures to LGBTIAQ+ (62%), while all the other enlisted countries do not offer such guarantees.

For the purposes of this paper, the safe third country notion therefore is questioned as it gravely endangers trans' right to asylum, inasmuch as it bypasses the individual assessment enshrined in the

---

[36] (Ilga-Europe 2020) available at https://www.ilga-europe.org/sites/default/files/Attachments/ilgaeurope-rainbowmap-2020-interactive.pdf

[37] Freedom House, Country Report: Turkey, 2018 available at: https://freedomhouse.org/report/freedom-world/2018/turkey

[38] Amnesty International, Country Report: Turkey, 2017/2018 available at: https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/. On the human rights' abuses and unlawful push-backs please see Amnesty International, Turkey: Refoulement of Non-European Refugees-A protection crisis, 1997, available at https://www.amnesty.org/.../eur440311997en.pdf. As far as it concerns the violation of the principle of *non-refoulement*, see also the Judgments of the European Court of Human Rights, for instance ECtHR, Hoda Jabari v. Turkey, Application no. 40035/98, 11.7.2000 and ECtHR, Abdolkhani and Karimnia v. Turkey, Application no. 30471/08, 22.9.2009. On the violation of the right to life in Turkey, please see Euro-Mediterranean Human Rights Monitor, Turkish Border Guards Use Lethal Force with Syrian Asylum Seekers, 2016. On the abuse of detention and deportation in Turkey to the detriment of asylum-seekers, please see http://rsaegean.org/scandalous_silence_about_the_violation_of_human_rights_in_turkey; and Ulusoy, Turkey as a Safe Third Country?, 2016, University of Oxford, available at: https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/turkey-safe-third.

[39] (Mota Borges, 142)

1951 Refugee Convention and does not consider the serious harm that trans people could face in a country generally considered as safe due to their gender identity and sexual expression, which further exacerbate their vulnerability. Without prejudice to the fact that the safe third country notion should be erased given the high risk of breaching human rights and fundamental freedom, this notion should not be applied to LGBTIAQ+ applicants neither in light of their particular vulnerability.

In addition, Mazen Masoud stated that there is no such a country completely safe for LGBTIAQ+ people and, in particular, for trans. According to them, the absence of discriminatory or punitive national laws against trans people is not sufficient to assess the safety of a country. A positive effort to protect and promote their rights and freedoms should be, in fact, equally endorsed by States and subnational entities. Apart from regulatory frameworks, socio-cultural norms have equally the potential to gravely affect trans' life, integrity, safety along with the enjoyment of their human rights. As UNHCR Guidelines No. 9 point out, '*It is widely documented that LGBTIAQ+ individuals are the targets of killings, sexual and gender-based violence, physical attacks, torture, arbitrary detention, accusations of immoral or deviant behaviour, denial of the rights to assembly, expression and information, and discrimination in employment, health and education in all regions around the world'*. What is more, all the seven proposed European safe third countries have cases of violence against LGBTIAQ+ persons, as even the Commission itself noticed in its communication[40] on the matter.

EU reception and integration system for trans applicants

The regulatory gaps in providing protection to trans claimants, along with the persistent lack in recognizing their particular circumstances of vulnerability highlighted so far, self-evidently affect the integrity of the EU reception and integration system available for these persons. The next sections focus on the regulatory flaws in the EU reception and integration system that affect trans international protection applicants.

Housing

The Reception Conditions Directive lays down standards for the reception of applicants for international protection. In particular, Article 18 defines the modalities for material reception conditions that, according to Article 2(g) include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance. Article 18.3 affirms that Member States shall take account of the circumstances of vulnerability as

[40] COM(2015) 452 final, Brussels, 9.9.2015

well as of gender- and age-specific concerns, not better specified, when housing is conferred to applicants whose international protection request has been made at the borders or in transit zones. The same is provided when the applicant is settled in accommodation centres, where Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment. Finally, Article 18.7 provides that persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.

Overall, 2013/33/EU Directive could embed an initial breakthrough towards the recognition of vulnerability felt by trans applicants as well as of the particular care that States should have towards their physical and psychological integrity when deciding to collocate them in an accommodation centre. However, for this trans-sensitive approach to be effective, it should firstly be mainstreamed in all CEAS instruments. Secondly, general references to gender equality should be replaced with substantial and concrete provisions. Finally, the numerous exceptions provided in the CEAS that allow States to derogate to this more favourable standard for vulnerable international protection applicants should be removed.

Healthcare

Article 35 EU Charter declares that '*everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities'*. In the context of trans asylum applicants, the right to health established by the Charter is envisaged in Articles 17 and 19 of the Reception Conditions Directive. Whereas the former argues that Member States shall protect the physical and mental health of the claimants, the latter provides that applicants shall receive the necessary health care, including at least emergency care and essential treatment of illnesses and of serious mental disorders, as well as ensuring necessary medical or other assistance to applicants with special reception needs.

Healthcare and psychological treatments are granted to victims of torture and violence pursuant to Article 25 of 2013/33/EU Directive, a condition that is frequently met by trans applicants, who have been subjected to sexual violence and rape in their country of origin and likely in reception/accommodation centres, especially when the decision on their collocation is made on the basis of their sex registered at birth.

Integration

Article 79.4 TFEU allows for the realization of integration[41] actions towards third country nationals regularly residing in the territory of EU Member States. In the EU context, integration is conceived as '*a continuous, two-way process based on mutual rights and corresponding obligations of the legally residing third-country national and the host society*'[42] to be achieved mainly through three elements: social inclusion, non-discrimination, and active participation to host community life. EU soft law instruments on integration[43] include, *inter alia*, measures of education, vocational training, and the access to the labour market.

These components of integration are also set out in the Reception Conditions Directive for international protection seekers. Indeed, Article 15 provides for the right seek an employment no later than nine months from the date when the application for international protection was lodged, requesting Member States to ensure them the access to the labour market. However, Member States are allowed to give preference to EU citizens. Article 16 establishes that Member States may or may not allow applicants access to vocational training irrespective of whether they have access to the labour market. Finally there is no provision in the CEAS concerning social inclusion of migrants in the host community.

All told, the already limited efficaciousness of these provisions may be further restricted in the case of trans applicants, due to the inherent difficulty in finding a job with, for instance, personal data that do not reflect the gender identity of the claimant.

Part 2: Regulatory flaws at the Italian level

Reception conditions of trans asylum seekers and refugees in Italy. A study based on MIT experience.

The issue of reception conditions for trans asylum seekers and refugees in Italy is inextricably linked to the analysis of the category of people involved, as well as of the migration routes they follow to reach the Italian soil for international protection purposes.

[41] For a comprehensive overview of the meaning, the extent, and the role of integration in EU policies and Treaties, please see (Borraccetti, 2020).
[42] 2618th meeting of the Council of the European Union (Justice and Home Affairs), Brussels, Friday 19 November 2004
[43] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan on the integration of third country nationals, Brussels, 7.6.2016 COM(2016) 377 final. Please see also Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 1 September 2005 – A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union [COM(2005) 389 final

First of all, trans men refugees or asylum seekers in Italy[44] are much less than trans women, whose number greatly increases, in light of human trafficking chain and prostitution, especially in the case of Brazilian trans women. Many of them are exploited sex workers. Akin to Nigerian human trafficking, Brazilian exploitation chain usually starts with the manipulation of trans women by the so-called '*mammona*'[45], a central figure who takes care of the organization of the trip from Brazil to Italy, and the access to the prostitution market.

Trans women in charge by the MIT Association often apply for international protection after having irregularly stayed in Italy for years because of the little chance they have to contact MIT or an anti-human trafficking network, reduced to an even lesser extent in case of indoors sexual exploitation.

In the Italian context, in case of sexual exploitation, Article 18 of Legislative Decree 286/98 - Consolidated Immigration Act[46] provides for the issuance of a residence permit falling into the category of special cases (ex humanitarian protection), renewable for a maximum length of 18 months, and then convertible into a working permit. The procedure can be initiated *ex officio* - a procedure that does not require the collaboration of the victim in the proceeding against the offenders of sexual exploitation and the permit is conferred after the consultation of the Questura [47](after consulting the Prosecutor of the Republic) - or judicially through the complaint of the victim. However, the praxis confirms that Questura tends to deny the issuance of a residence permit in absence of a formal cooperation of the victim. This is why trans women in Italy prefer to apply for international protection rather than to rely on Article 18, since the former does not imply, conversely to the latter, the victim's cooperation with competent authorities. Emblematically, South American sexual exploitation is characterized by severe control over the victims and repeated abuses to exacerbate their vulnerability and fear, which in turn prevents exploited trans women from triggering the use of Article 18 of Legislative Decree 286/98.

Another possible reason why trans women in Italy prefer to apply for international protection may be found in the fact that Article 18 of the Consolidated Immigration Act equally applies to all victims of sexual exploitation, would they be trans or cisgender, binary persons. However, the equal application of this provision might result in a different treatment, since it does not take into account the obstacles that diverse subjectivities might encounter. In this sense, looking for a job after the expiration of the

[44] The sections of this paper reporting the cases and the stories of trans asylum seekers in Italy refer to the experience of MIT carried out in the specific context of the Emilia-Romagna Region that, however, is able to accurately reflect the overall Italian situation

[45] Madam, Lady.

[46] Italian Legislative Decree No. 286 of 1998, Testo Unico sull' Immigrazione, 25 July 1998, available at: https://www.refworld.org/docid/54a2c23a4.html

[47] The police force

residence permit pursuant to Article 18 of Legislative Decree 286/98 might be harder for a trans person than for a cisgender, binary individual[48].

Transphobia, the revulsion toward persons who do not correspond to society's gender expectations, might in fact affect each sector of life, such as the possibility to find a job. Trans individuals are also extremely at risk of victimisation and violence, thus it's absolutely necessary to promote integration and remove gender-based discrimination of any kind.

In the Italian context, an important step entails the adoption of a hate speech law. Italy, despite having a provision that prosecutes hate speech[49] (so-called Mancino Law), still has a legislative vacuum regarding the specific criminalization of homophobia, biphobia and transphobia.

On that regard, a proposal on the subject has been recently elaborated to extend the so-called Mancino Law, to condemn crimes not only based on 'hatred' for reasons related to race, ethnicity, religion or nationality, but also owing to sexual orientation and gender identity.

Italian reception centres for trans applicants

Up to 2018, international protection applicants and beneficiaries could find accommodation in Italy in the so-called S.P.R.A.R (Sistema Protezione per Richiedenti Asilo e Rifugiati / Asylum seekers and Refugees Protection System). Decree-Law no. 113/2018 converted into Law no. 132/2018 not only drastically reduced the scope of the humanitarian protection, but also notably changed the Italian reception system, which is now known as SIPROIMI (System of protection for asylum seekers, refugees and unaccompanied minors). People left out by the current reception system nevertheless in need of housing may find accommodation in CAS (Centri di Accoglienza Straordinaria / Special Reception Centres).

While it is true that Italian competent authorities usually guarantee the issuance of an international protection status owing to gender identity issues, it is also true that the specific needs of trans applicants pertaining to reception and integration are not met yet.

As mentioned above, although Directive 2013/33/EU provides specific support to trans applicants also victims of trafficking or of violence, abuse and torture, it does not consider trans as vulnerable

[48] The authors' intention is not to question individuals' freedom to exercise free sex working. However, in some cases, it might occur that national labor markets do not efficaciously promote the use of other job skills they might have. For instance, in the case of some Peruvian trans international protection claimants taken in charge by MIT who perform as free sex workers, it might be difficult for them to find other job opportunities, despite their job expertise.

[49] Decree-Law No. 122 of 26 April 1993 converted into Law No. 205 of 25 June 1993 referred to as the "Mancino Law", available at https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1993-06-26&atto.codiceRedazionale=093A3644&elenco30giorni=false

persons per se. In other words, even if several elements set out in the definition of vulnerability groups are met in the personal stories of trans claimants, they are still left out of this concept, a flaw that may lead to high risks for their physical and psychological integrity in reception centres.
Emblematically, Italian reception centres divide international protection applicants and beneficiaries according to their sex, men and women. In doing so, they fail in recognizing the existence of different subjectivities well beyond the binary approach reception centres are based on.
Trans women and men are therefore collocated in reception structures, where gender discrimination already experienced in their country of origin is often reproduced, thus leading to a double discrimination within the host society as aliens, as well as within the community of asylum seekers due to their gender identity. Ensuring appropriate structures is thus necessary to ensure effective protection and to grant the respect of their human rights and fundamental freedoms.
This paper regrettably notes that *ad hoc* centres for the reception of trans applicants almost do not exist on the whole Italian territory.

Attempting to counteract this lack and its severe consequences for the applicants, the following section briefly illustrates the unique experience of *Casa Caterina*, the only SPRAR/SIPROIMI reception facility addressing trans asylum seekers and refugees' needs in Italy.

Casa Caterina flourished from MIT engagement with the support of the social cooperative CIDAS as result of the '*Rise the Difference'*[50] project supported by the Anti-racial Discrimination Office (UNAR) and Associazione Servizi alla Persona (ASP) - Città di Bologna.
This project puts the specific needs of trans applicants at the core of its activities, based on active listening and suspension of judgment. Another innovative element is for trans applicants to be supported by trans operators, sharing similar life experiences.
Despite the relevance of this initiative, Casa Caterina has the possibility to accommodate only four trans women applicants, leading the excluded to use their personal or alternative networks to find accommodation. Since in the last five years the number of trans international protection applicants has notably increased, the question pertaining to their collocation has become more urgent.

Italian healthcare for trans applicants

Trans international protection applicants and beneficiaries need specific medical attention, especially if the gender affirmation process has already started in the country of origin. Gender transition in Italy

[50] For an overview of the goals of the project Rise the Difference, please see https://www.cittametropolitana.bo.it/immigrazione/Engine/RAServePG.php/P/265011680300/T/-Rise-The-Difference-Accogli-le-differenze

is a very complex process that takes place according to so-called ONIG Protocols (Osservatorio Nazionale sull'Identità di Genere), currently partly replaced by the international Protocol Wpath (World Professional Association for Trans Health).

Although the ONIG Protocols remain a decisive point of reference in Italy, several criticisms have been raised regarding the strict rules that must be followed during the gender affirmation process both with regard to psychological assessments and on the possibility to start either a hormonal therapy or a chirurgical intervention. If the trans person is entitled to international protection, they can initiate or continue a hormone therapy with the support of the National Health Service (NHS) and specialised centres. The difficulty for trans persons to understand the functioning of NHS and the length of the gender affirmation process often drive them to rely on the black market for hormones, often abusing of these and other pharmacological treatments. In some cases, this decision is also related to cultural factors. For South American trans women, for instance, the assumption of hormones acquired within their national community amounts to a ritual, an essential step in the process of gender affirmation.

To sum up, trans applicants need to wait about one year for the Territorial Commission's first evaluation of their international protection application. In case of positive result, they then need to wait for the outcome of the psychological assessments to then gain the chance to start the gender affirmation process.

At the domestic level, indeed, Law No. 164/1982[51] establishes that the psychological evaluation is an essential step, which has to be submitted to the competent Ordinary Court, which allows the applicant to change their name by judgment and/or to undergo to a gender affirmation surgery. On this behalf, the Italian Corte di Cassazione[52] stated that the surgical operation is not an indispensable criterion for the rectification of personal data given at birth.

Additionally, the first Decree-Law on Immigration and Security not only hampers asylum seekers to request the issuance of the residence registration to competent local authorities, but also the gender affirmation process, at least until the recognition of international protection in case of trans applicants. With the result of hindering the issuance of a health insurance to trans applicants, this provision narrows trans access to medical treatment, still approachable through associations such as SOKOS[53], founded by volunteer doctors.

[51] Law No. 164, 14 April 1982, on the Rules concerning rectification of sexual attribution, available at https://www.gazzettaufficiale.it/eli/id/1982/04/19/082U0164/sg

[52] Corte di Cassazione, Judgement No. 15138/2015, 20 July 2015, available at https://www.altalex.com/documents/massimario/2015/08/04/persona-identita-dati-anagrafici-rettificazione-sesso-intervento-chirurgico

[53] Please see http://www.sokos.it/

All told, it seems that the Italian integration path for a trans international protection applicant, as it stands, fails in providing them with an adequate standard of living, given the long-lasting period they have to wait to be entitled to a protection status, on the one hand, and to meet all the necessary requirements to start and finalize the process of gender affirmation, on the other hand.

Conclusions

This paper has considered the multiple gaps in EU and Italian asylum and reception system pertaining to trans applicants as well as the regulatory flaws of the integration system at both levels.

In particular this contribution addresses the lack of mention of LGBTIAQ+ persons in the CEAS' definition of vulnerability groups, and it suggests their inclusion with a particular emphasis, given its purpose, on trans international protection applicants. Indeed, although Article 11 of the Reception Conditions Directive provides a favourable treatment in case of detention of vulnerable persons and of applicants with special reception needs, trans claimants are still left out this relevant category, with consequences for their physical and psychological integrity.

This paper found that for a trans-sensitive approach to be effective, it should firstly be mainstreamed in all CEAS instruments. Secondly, general references to gender identity should be replaced with substantial and concrete provisions, also regarding sexual orientation, sexual characteristics, and gender expressions as well. Finally, the numerous exceptions provided in the CEAS that allow States to derogate to this more favourable standard for vulnerable international protection applicants should be removed.

As regards to reception conditions in Italy, this contribution argues that, in light of the particular vulnerability felt by trans applicants, their asylum request may be submitted to the Territorial Commissions in a shorter time. At the same time, it suggests initiating the process to revise the personal data of trans asylum seekers, when their international protection application is based on gender identity issue.

Moreover, their collocation in accommodation centres should follow their gender identity claim rather than their sex registered at birth. On this regard, this paper calls on States to provide their territories with *ad hoc* accommodation structures. Finally, in order to protect the human rights of trans claimants during the evaluation of their international protection request, as we have seen, the use of the safe third country notion should be avoided.

Bibliography

Amnesty International. “Country Report: Turkey.” 2017/2018.

Amnesty International. “Turkey: Refoulement of Non-European Refugees-A protection crisis.” 1997.

Borchelt, G. “The Safe Third Country Practice in the European Union: A Misguided Approach to Asylum Law and a Violation of International Human Rights Stardards.” *Columbia Human Rights Review* 33 (2002): 473-528.

Borraccetti, M. “L’integrazione dei migranti tra politiche europee, azioni e tutela dei diritti.” *Diritto Pubblico* , 1/2020: 18-33.

Byrne, R., and A. Shacknove. “The Safe Country Notion in European Asylum Law.” *Harvard Human Rights Journal* 9 (1996): 185-225.

Cases C 715/17, C718/17 and C719/17. ECLI:EU:C:2020:257 (CJEU, 2 April 2020).

Cases No. 15138/2015, Cassazione (20 July 2015).

Charter on Fundamental Rights of the European Union. (2 October 2000).

Council of Europe. “European Convention on Human Rights.” Rome, 1950.

EASO. “Evidence and credibility assessment in the context of the Common European Asylum System, 2018 and Hungarian Helsinki Committee, Credibility Assessment in Asylum Procedures - A Multidisciplinary Training Manual.” 2015.

EU Agency for Fundamental Rights . *A long way to go for LGBTI equality* . Luxembourg: Publications Office of the European Union, 2020.

EuroMed Rights. ““Safe” countries: A denial of the right of asylum .” May 2016.

Euro-Mediterranean Human Rights. “Monitor, Turkish Border Guards Use Lethal Force with Syrian Asylum Seekers.” 2016.

European Commission. “Return Handbook.” 2015.

European Commission, Communication: Action Plan on the integration of third country nationals, Brussels, 7.6.2016 COM(2016) 377 final

European Commission, Communication: A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union, COM(2005) 389 final

European Migration Network - European Commission. “Safe Countries of Origin - EMN Inform.” Brussels, 2018.

Foster, M. “Protection Elsewhere : The Legal Implications of Requiring Refugees to Seek Protection in Another State.” *Michigan Journal of International Law* 28 (2006).

Freedom House. “Country Report: Turkey.” 2018.

Goodwin-Gill, G, and J McAdam. *The refugee in international law.* Oxford University Press, 2007.

Gazzetta Ufficiale, GU Serie Generale n.148, 26-06-1993 and n.106, 19-04-1982.

Hansen, R. “Asylum Policy in the European Union.” *Georgetown Immigration Law Journal* 14 (2000): 779-800.

Ilga-Europe. “Rainbow map: Reflecting the Legal and Policy Human Rights Situation ff Lesbian, Gay, Bisexual, Trans and Intersex (Lgbti) People in Europe.” 2020.

M.S.S. v. Belgium and Greece. (21 January 2011).

Moreno-Lax, V. “The Legality of the “Safe Third Country” Notion Contested: Insights from the Law of Treaties.” In *Migration and Refugee Protection in the 21st century: Legal Aspect*, edited by Goodwin-Gill and Weckel, 665-721. The Hague: Hague Academy of International Law Centre for Research, 2015.

Mota Borges, I. “The EU-Turkey Agreement: Refugees, Rights and Public Policy.” *Rutgers Race & Law Review* 18 (2017): 121-146.

National Coalition of Anti-Violence Programs. “Hate Violence against Lesbian, Gay, Bisexual Transgender, Queer and HIV-Affected Communities in the United States in 2010.” New York, July 2011.

Peroni, L., and A. Timmer. “Vulnerable groups: The promise of an emerging concept in European Human Rights Convention Law.” *Oxford University Press and New York University School of Law* 11, no. 4 (2013): 1056–1085.

Scissa, C. "A feeble light in the shadow: The recognized need to protect environmental migrants." Comparative Network on Refugee Externalisation Policies. 19 August 2019, online blog

UNHCR. “Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention.” 2012.

UNHCR. “The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees.” 2010.

X, Y, Z v Minister voor Immigratie en Asiel . ECLI:EU:C:2013:720 (CJEU, 7 November 2013).

Zoeteweij, M. H., and O. Turhan. “Above the Law - Beneath Contempt: The End of the EU-Turkey Deal.” *Swiss Review of International and European Law* 27 (2017): 151-172.