



Sexual Orientation and Gender Identity Claims of Asylum: A European human rights challenge – SOGICA

SOGI asylum policy roundtable Tuesday 15 September 2020 Summary note

On 15 September 2020, the SOGICA¹ project team held a roundtable to explore possible improvements to SOGI asylum in Europe. The event was an opportunity for officials and senior NGO representatives working at a European and international level and in the countries researched by the SOGICA project – Germany, Italy and the UK – to explore new approaches to current problems and ways to support the work of decision makers, practitioners and service providers.

Participants included the SOGICA project team (Nuno Ferreira, Carmelo Danisi, Moira Dustin and Nina Held), Barry O’Leary from Wesley Gryk Solicitors LLP and member of the SOGICA project Advisory Board, as well as representatives from German, Italian and UK organisations working with LGBTIQ+ asylum claimants, officials and representatives of official organisations in the three countries, SOGI NGOs working at European and International level, the Council of Europe, the European Union and UNHCR.

This is a summary of key points discussed at the meeting. The roundtable was held under Chatham House rules to facilitate open discussion, meaning that speakers’ comments are not attributed. However, the SOGICA team hope that the points discussed and outlined below will be of value to a range of individuals and organisations working in this field beyond those who were able to take part in the roundtable discussion.

Introduction

The starting point for the roundtable discussion was the [SOGICA project recommendations](#) which Nuno Ferreira, SOGICA project leader, introduced, highlighting some key concerns at European level before members of the project team introduced some country-specific challenges and areas of good practice from the three countries studies – Germany, Italy and the UK.

Nuno explained that the recommendations cover the range of experiences that SOGI asylum claimants and refugees undergo, from leaving their countries of origin until they obtain decisions on their asylum cases and beyond. SOGICA recommends, for example, that European countries should offer SOGI refugees a safe passage to Europe by introducing or expanding humanitarian admission programmes and visas. The project also recommends that European asylum authorities should record the number of SOGI claims submitted and the grounds used to refuse or accept them, as well as provide better information about asylum and the right to make a SOGI-based claim.

The Refugee Convention needs to be applied in a more appropriate and consistent manner, in a range of ways, as described in detail in the recommendations. The duration of the asylum procedures should have an appropriate time, and statutory guidance on SOGI asylum should be produced (where absent), and applied more consistently.

The SOGICA project found that in this particular area of asylum, across all three case study countries, the issue so often came down to individual credibility, and how important it is that that is established in a way that respects the human rights of every individual claimant – and sadly the findings were that this was not always the case. So the recommendations address how we can raise the bar and improve standards so every claimant is treated with respect. With this in mind, the project recommendations include that all actors, including decision-makers, judges, interpreters and service-providers, should have to undergo training on SOGI asylum, and all training materials and procedures should be geared towards ensuring a culture of empathy. Legal advice and representation, as well as interpretation and Country of Origin Information (COI), require much improvement, and authorities should do away with the notion that there are ‘safe countries’, as many of these countries do not provide protection for SOGI minorities. The recommendations also cover several aspects related to social integration of SOGI refugees, including accommodation, labour market, education system and the role of NGOs in supporting SOGI refugees. For instance, in line with European human rights developments, national authorities should consider individualised solutions for SOGI claimants, especially when only large reception centers are available and SOGI claimants may be exposed to violence, harassment or discrimination.

Furthermore, [32 recommendations are specifically addressed to the EU](#), which it is hoped will be considered in the context of the new EU LGBTI+ Equality Strategy. These recommendations cover many aspects that are already covered by the national level recommendations, as well as EU-specific aspects, especially in the context of the current reform of the EU Common European Asylum System (CEAS). These include the need to improve the way ‘Dublin transfers’ (if they are not entirely repealed) are used for SOGI asylum claimants. Here, the criteria in place for allocation of responsibility to a State for a given asylum claim needs to be reviewed by paying attention to aspects that are more in tune to SOGI claimants’ needs and rights. Also highlighted is the role of the EU in encouraging greater respect for SOGI minorities’ rights and needs around the world.

Maira Dustin, the UK lead, identified some of the issues that are specific to the UK, in particular, the deployment of ‘discretion thinking’ and stereotyping in decision-making, the mismatch between the guidance (which is often good and has been made based on some engagement with NGOs) and its implementation in Home Office and appeal decisions, and finally the ongoing injustice of detention of asylum claimants without a time limit – something that does not exist in any of the other countries analysed.

Nina Held, the German lead, drew attention to specific issues in Germany including the failure to record and publish statistics on SOGI claims and decisions, the often lengthy time taken for decisions to be made during the appeal process, restricted access to legal aid, the need for better interpreting and also the need for improvements to accommodation provision. Overall a greater culture of empathy is a priority.

Turning to Italy, Carmelo Danisi, SOGICA’s Italian lead, began by highlighting some positive legal elements relating to SOGI asylum, specifically that criminalisation of same-sex sexual conduct in the country of origin is considered as persecution in itself and there is no use of

'discretion reasoning' in decision-making. He went on to draw attention to problems including information needs, credibility assessment and the need to eliminate stereotyping, and the specific problem of claimants being offered subsidiary or humanitarian protection rather than full refugee status. He also drew attention to the tendency to treat claims from some countries with suspicion. Social experiences in Italy may also be negative, including prevalence of racism or discrimination on SOGI grounds seen in harassment in accommodation centres. Disinterest on the part of Italian authorities in addressing these issues is also a concern.

Contributions from roundtable participants

Following these introductory remarks, participants at the roundtable described their work and the particular challenges and opportunities they see in the field of SOGI asylum. There was broad agreement that SOGICA's recommendations correspond to the experiences of those at the roundtable who are working directly in this area, and that furthermore they will be useful in supporting future advocacy and policy work by the organisations represented. They are particularly timely in light of the forthcoming changes to asylum measures by the EU.

Some critical concerns that were raised included:

- The importance of data and the need for reliable statistics on SOGI asylum cases. Only the UK publishes such statistics and these are limited and 'experimental'. Measures could be as simple as updating initial forms, as to include relevant questions in this field.
- The importance of the role of interpreters and the need to improve standards of interpreting provision in SOGI cases.
- The length of time that many SOGI claims take – something that is traumatic for claimants as well as being inefficient for the state.
- The focus on credibility and tendency to base this on stereotypes and biases on the part of decision-makers.
- Poor standards of accommodation for SOGI claimants was identified as a problem by many, including the inappropriate policy of placing people in shared rooms. There is a need for better and more tailored accommodation provision by authorities in all countries.
- A concern about limited access to legal advice, representation and aid.
- The importance of training and the need to utilise existing resources, such as those provided by the European Asylum Support Office (EASO). This includes the training and guidance needs of all those working with SOGI claimants, not only decision-makers but also staff providing accommodation and other support.
- The critical role of NGOs, particularly community groups that are 'self-started' by SOGI claimants, in supporting claimants – and the funding needs that must be addressed to enable such groups to exist.
- A number of participants highlighted the particular needs of transgender claimants that are often over-looked, for example, the need to access hormonal treatments and considering the impact of criminalisation of gender expression (such as the offence of 'impersonation') in countries of origin.
- Participants proposed the inclusion of gender expression and sex characteristics alongside sexual orientation and gender identity terms, including extending SOGI to SOGIESC.
- There were concerns about the inappropriately high standard of proof that is often applied in SOGI cases.
- The need for better country of origin information, particularly relating to different groups such as trans people, and the rejection of the concept of 'safe countries' in relation to asylum were stressed.

- More than one participant highlighted the need to identify routes of safe passage and some form of humanitarian corridor to enable refugees to reach Europe.
- Issues of intersectionality were highlighted – that SOGI claimants experience racism and xenophobia as well as discrimination on SOGI grounds, and their individual characteristics (such as socio-economic status) has a significant impact on their experiences in the asylum system.
- Overall greater public investment and resources in this field, to benefit training activities, accommodation, personnel recruitment, etc.

Summary and concluding remarks

Summing up the roundtable discussion, Barry O’Leary, Wesley Gryk Solicitors and SOGICA project Advisory Board member, pointed out that the SOGICA project recommendations are clearly welcome and that having them in one place is seen as particularly helpful. He drew attention to the recurring concerns in the discussion (highlighted above) before thanking participants for their valuable input.

In conclusion, Nuno also thanked participants for attending. We at SOGICA will be maintaining our links with policy makers and doing our best to ensure our research findings inform policy making in this area. Our website will remain online and available for the foreseeable future – including our database and list of useful links. We would be keen to see closer collaboration with and between the organisations present at the roundtable and hope this event will be a small step in that journey.

ⁱ SOGICA – Sexual Orientation and Gender Identity Claims of Asylum: A European human rights challenge – is a four-year project funded by the European Research Council (ERC), under the European Union’s Horizon 2020 research and innovation programme (grant agreement No 677693). Based in the University of Sussex, it explores the social and legal experiences of SOGI asylum claimants across Europe to determine how European asylum systems can treat SOGI asylum claims more fairly. Besides exploring the European Union (EU) and Council of Europe (CoE) frameworks, SOGICA focuses on Germany, Italy and the UK as case studies. The project’s objective is to provide the necessary evidence base for a more just and humane asylum process for individuals seeking refuge in Europe on the basis of their SOGI. See www.sogica.org for further information.