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Portuguese report for the project 'Fleeing Homophobia, Seeking Safety in Europe: Best Practices on the (Legal) Position of LGBT Asylum Seekers in the EU Member States'

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Publication date

01-01-2011

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Document Version

Published version

Citation for this work (American Psychological Association 7th edition)

Ferreira, N. (2011). *Portuguese report for the project 'Fleeing Homophobia, Seeking Safety in Europe: Best Practices on the (Legal) Position of LGBT Asylum Seekers in the EU Member States'* (Version 1). University of Sussex. <https://hdl.handle.net/10779/uos.23433452.v1>

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QUESTIONNAIRE

European Research Project

FLEEING HOMOPHOBIA, SEEKING SAFETY IN EUROPE,

Best Practices on the (Legal) Position of LGBT Asylum Seekers in the EU Member States

Introduction

Each year, thousands of lesbian, gay, bisexual, transgender and intersex (LGBTI) people apply for asylum in the European Union. Although the EU Qualification Directive recognises that they might qualify for international protection (Article 10(1)(d)), it does not address the particular difficulties they are confronted with. As a result of this considerable differences exist in the ways in which applications of LGBTI asylum seekers are dealt with in the various EU Member States. Yet, data with respect to these issues are very scarce. Through this research project we hope to fill this data gap.

Your answers to this questionnaire (= the country reports) will supply the empirical data for the comprehensive, normative analysis we will draft. We will also make an inventory of statistical data, although our initial research shows that these are hardly available.

The data provided by the country reports will enable us to identify best practices regarding qualification for international protection and asylum procedures. We will draft a policy document, translating the best practices into policy recommendations for the EU and its Member States. We hope this will contribute to the development of a common European approach to address the specific needs of LGBTI asylum seekers and to a European practice of adequate protection for LGBTI asylum seekers.

Guidance to the questionnaire

In this questionnaire we ask you to describe legislation and policy, practice and case law concerning LGBTI asylum seekers. We use the EU Directives Articles only as a means to structure the questions.

It is clear that there are not only considerable differences in the handling of LGBTI asylum applications in each EU country, but in their numbers as well. The availability of these cases will

also vary per country. If your country has a small number of cases available, we would like you to give a full description of these cases. An extra effort should be made to find more cases. If large numbers of LGBTI cases are available, your main effort will consist of studying them. Because it may not be possible to describe all cases, we would then like you to provide a more general picture. We ask you to report on the argumentation in legal practice: decisions and/or case law. Some of you may have access to decisions, but if this is impossible or too complicated, you can confine to case law.

We strongly advise you to cooperate with other stakeholders (refugee and/or LGBTI NGOs, lawyers, UNHCR, government officials etc.) in collecting cases and answers to the questionnaire. If you cannot answer a question yourself, if there is a gap in your knowledge, please involve other experts. For example: lawyers should ask NGOs and NGOs should ask lawyers.

We consider practices ‘good’ when they are in line with human rights standards and ‘bad’ when they are not. While we aim at identifying good/ best practices, we are also very interested in bad/ worst practices. So please don’t hesitate to mention all good and bad practices that came to your attention.

We would like you to point out and make explicit whether you refer to written law, decisions or practice. Please send decisions and/or case law as attachment, or a summary in English (French or German) when the question requires this. We would prefer English summaries and translations, but if this is a major obstacle for you, French or German will do as well.

If possible, please give comprehensive answers, although the maximum length of your answers should not exceed 50 pages (not including questions and attachments). In the grey boxes you can type longer answers, the yes/no boxes can be ticked with the space bar or by using your mouse. You can move through the questions with the tab key or arrow keys.

Thank you very much!

Best regards,

Sabine Jansen, COC Netherlands

Thomas Spijkerboer, VU University Amsterdam

General

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What is the basis of your expertise on LGBTI asylum issues?

Conference contributions

- (2011) LGBT Refugees in the UK: Life experiences of a legal limbo (round-table). University of Manchester, Manchester (convenor and chair).
- (2009) Asylum claims on the basis of sexuality in the UK: Credibility findings, human rights considerations, and notions of identity. In 2nd International Conference on LGBT Human Rights. Copenhagen (speaker and panel chair).
- (2009) Gender- and sexual orientation-related asylum claims in English courts: Credibility in judicial decision-making. In Seeking Refuge: Caught between bureaucracy, lawyers and public indifference?. SOAS, London (speaker).

Research grants submissions

- (2010) Asylum and Human Rights Law in Europe: Gender- and Sexuality-Related Claims (PI, ESRC).
- (2009) Migration, Asylum and Human Rights Law in Europe: Gender- and Sexual Orientation-Related Claims (non-PI, Norface).

Activism

- (2009-present) Coordinator of the Amnesty Manchester refugees' sub-group.

What sources did you use in responding to this questionnaire (e.g. your own cases, case law, lawyers, NGOs, government representatives)?

Legal databases (case law and legislation)

- BDJUR - Bases de dados jurídicos Almedina
- Datajuris
- DRE - Diário da República on line
- Jusnet
- Jusnet - Colectânea de Jurisprudência

- Legix
- vLex

Public authorities

- Comissão para a Cidadania e a Igualdade de Género (Commission for Citizenship and Gender Equality - CIG) (no reply)
- Gabinete de Asilo e Refugiados, Serviço de Estrangeiros e Fronteiras - SEF (Asylum and Refugees Department, Foreigners and Border Service, <<http://www.sef.pt>>) (Maria Emilia Lisboa, Coordinator, and Cristina Barateiro, Inspector)

NGOs

- Amnistia Internacional Portugal (no reply)
- Associação Cultural Janela Indiscreta (ACJI) (Albino Cunha, President of the Board; Fernando Cascais, Member of the Board)
- Centro Avançado de Sexualidades e Afectos (Manuel Damas, President)
- Clube Safo (no reply)
- Conselho Português para os Refugiados - CPR (Portuguese Council for Refugees, <<http://www.cpr.pt>>) (Mónica Farinha, Coordinator of the Legal Department)
- ILGA Portugal (Joana Maria Almeida, Assessor to the Board)
- Opus Gay (António Serzedelo, President of the Board)
- Rede Ex Aequo (Manuel Abrantes)
- Serviço Jesuíta aos Refugiados de Portugal (no reply)
- SOS Racismo (Marta Pereira)

Academics

- Cristina Santinho (ISCTE - Lisbon University Institute)
- Diamene Freitas (School of Law of the University of Lisbon)

Legal practitioners

- HALS
- Rui Elói Ferreira
- Vasco Esteves

The author wishes to thank all institutions and individuals who contributed to this report, without whose input this final result would not have been possible.

Frequency of LGBTI asylum claims

1) Statistics on LGBTI asylum seekers

- a) Does your government provide statistics on LGBTI asylum seekers (their numbers, countries of origin, proportion of L, G, B, T and I cases, positive or negative decisions, recognition rates etc.)?

☒ No

☐ Yes. Please provide us with a copy/translation.

- b) Do NGOs in your country provide statistics on LGBTI asylum seekers?

☒ No

☐ Yes. Please provide us with a copy/translation.

- c) Do other sources in your country provide statistics on LGBTI asylum seekers?

☒ No

☐ Yes. Please provide us with a copy/translation.

- 2) If no national statistics are available, could you tell us how many asylum claims based on persecution for reasons of actual or perceived (imputed) sexual orientation and/or gender identity you know of in your country? Please explain the basis of your answer (published case law, lawyer network, LGBTI community, other NGOs, newspaper reviews, intuition) and indicate the time frame.

In the period between 2000 and 2010, there were eleven asylum claims presented to the Portuguese authorities based on persecution on grounds of sexual orientation. Two of these were directed to other European Member States' authorities within the framework of the Dublin Regulation. There were no asylum claims based on persecution for reasons of gender identity known in Portugal during this period of time. The nine Procedures dealt with by the Portuguese authorities are as follows (identified by letters for anonymity reasons):

Asylum Procedure A (2001, Macedonian homosexual man)

Asylum Procedure B (2001, Macedonian homosexual man)

Asylum Procedure C (2001, Macedonian homosexual man)

Asylum Procedure D (2005, Moldovan homosexual man)

Asylum Procedure E (2008, Senegalese homosexual man)

Asylum Procedure F (2008, Senegalese homosexual man)

Asylum Procedure G (2009, Guinea Conacry homosexual man)

Asylum Procedure H (2009, Angolan homosexual man)

Asylum Procedure I (2010, Senegalese homosexual woman)

This information has been provided by SEF. The figures relative to the older instances of LGBT asylum seekers (2000-2007) have also been reported publicly (FRA 2008: 41).

3) L, G, B, T, I separately

a) What is the approximate number of lesbian cases within these asylum claims?

One.

What are the main issues in these cases?

1. Possibility of internal relocation;
2. Lack of contact with police / public authorities;
3. Proof of danger of individual persecution.

b) What is the approximate number of gay cases within these asylum claims?

Eight.

What are the main issues in these cases?

In order of importance and frequency:

1. (Lack of) Contact with, and (lack of) intervention by, police and/or public authorities;
2. Credibility;
3. Proof of danger of (individual or social group) persecution;
4. Passage by a 'safe third country' (in EU or not) before reaching Portugal and time elapsed between arrival and asylum request;
5. Assertion of 'homosexuals' as a social group in the country of origin;
6. Possibility of internal relocation.

c) Did you find bisexual asylum cases within these asylum claims?

☒ No

☐ Yes. Indicate the number of male and female cases. What are the main issues in these cases?

N/A

d) Did you find transgender asylum cases?

☒ No

☐ Yes. Indicate the number of male-to-female and female-to-male cases.

What are the main issues in these cases?

N/A

e) Did you find intersex asylum cases?

☒ No

☐ Yes. What are the main issues in these cases?

N/A

4) What are the most common countries of origin of LGBTI asylum seekers in your country? If possible, quantify.

1 Macedonia (3)

2 Senegal (3)

3 Angola (1)

4 Guinea-Conakry (1)

5 Moldova (1)

6

7

8

9

10

5) Are you aware of L,G,B,T or I people who do not apply for asylum because of fear of the consequences?

☒ No

☐ Yes. Please explain.

6) When asylum/ protection is granted to LGBTI asylum seekers, is this generally:

☐ refugee status based on membership of a particular social group? (If so, what is the description of the particular social group, e.g. lesbian women in Pakistan)

☐ refugee status for fear of persecution for reasons of sexual orientation or gender identity based on another Convention ground (political opinion, religion, nationality, race) If so, please explain.

☒ subsidiary protection? On which basis?

Illegality of homosexuality and prejudice against homosexuals in the home country (F 2008, Senegal);

Socio-political context and human rights abuses (G 2009, Guinea Conacry).

7) Do you have any information on LGBTI asylum seekers receiving another form of protection on the basis of national law, such as:

a) humanitarian grounds?

☒ No

☐ Yes. Please quantify and explain.

b) other grounds (discretionary leave)?

☒ No

☐ Yes. Please quantify and explain.

8) Do you have information about LGBTI applicants in your country who are, according to your national law, under the age of consent?

☒ No

☐ Yes. Please quantify and explain.

Expertise, Support

9) Do you know general or specialised NGOs supporting LGBTI asylum seekers in your country?

☐ No

☒ Yes. Provide their name and explain what kind of activities specifically aimed at LGBTI asylum seekers they undertake.

ILGA Portugal (<http://www.ilga-portugal.pt>). This NGO has been approached by LGBT individuals considering requesting asylum in Portugal, namely a Turkish gay man (by e-mail), an Algerian gay man (personally), and a Senegalese lesbian (personally).

Associação GIS - Grupo Imigração e Saúde (<http://gisassociacao.blogspot.com/>). This NGO promotes research and offers services in the area of health and immigration. Within the framework of their research, they have had contact with an LGBT asylum seeker from Pakistan, who did not, however, mention his sexuality throughout the asylum procedure.

a) What are the main problems they face while providing support?

Lack of knowledge about the legal framework applicable to LGBT asylum seekers.

Lack of awareness (because inexistent) of other institutions and organisations that may offer more specialised support to LGBTI asylum-seekers.

Lack of economic / material resources to provide accommodation or financial support.

b) Do they employ staff or do they work with volunteers only?

ILGA Portugal employs some staff, but is mostly run by volunteers.

Associação GIS - Grupo Imigração e Saúde is only run by volunteers.

c) Are they supported by bigger LGBTI and/or refugee umbrella organisations?

☐ No ☒ Yes. Which organisation(s)?

ILGA Portugal has been in contact with the Portuguese Council for Refugees (CPR) in relation to the type of support the former can provide to the LGBTI individuals approaching them in relation to asylum (and immigration) issues. ILGA Portugal has advised those LGBTI individuals approaching them to contact CPR.

Associação GIS - Grupo Imigração e Saúde is equally in close contact with the Portuguese Council for Refugees.

d) Do they work with lawyers or with UNHCR on LGBTI issues?

☒ No ☐ Yes. In what form?

e) Do they have contact with the government?

☒ No ☐ Yes. In what form?

10) Special training for NGOs

a) Do people working for general refugee NGOs receive special training on LGBTI issues?

☒ No ☐ Yes

b) Do people working for LGBTI NGOs receive special training on refugee law?

☒ No ☐ Yes

- c) Do people working for LGBTI Asylum NGOs receive special training on refugee law?
- ☐ No ☐ Yes

11) Lawyers' expertise on LGBTI

- a) Are there lawyers with expertise in LGBTI asylum cases?
- ☒ No ☐ Yes
- b) Are there networks of lawyers with expertise in LGBTI asylum cases?
- ☒ No ☐ Yes. Please provide the web address of the network

N/A

12) Sometimes potential asylum seekers are not aware of the fact that sexual orientation or gender identity is a ground for asylum. Are they informed about this?

- ☐ No
- ☒ Yes. Who gives the information and how is such information given? (If it is given through a booklet or leaflet, please attach.)

The answer is positive only to the extent that those LGBTI potential asylum seekers who contact ILGA Portugal are informed by this NGO of the possibility of requesting asylum, and directed to CPR.

Article 49 of Act 27/2008 establishes that asylum seekers are to be informed, in a language that they understand, of their rights and duties in relation to legal procedures, deadlines, legal advice from refugee organisations (UNHCR and CPR), legal aid, accommodation and medical support, interpretation services, etc. This information is to be supplied by SEF to all asylum seekers via a written brochure (Portuguese version available on

http://www.sef.pt/documentos/56/Guia_Asilo.pdf#1), last accessed on 8 June 2011; English version can be found in Annex D). This brochure explains the different grounds for an asylum request (persecution on grounds of religion, political opinion, belonging to a social group, etc), but does not mention that 'social group' may apply to sexual orientation or gender identity.

Policy, legislation, case law

13) Specific law and/or policy

- a) Does your country have specific law and/or policy concerning LGBTI asylum seekers? (primary or secondary legislation, guidelines, internal instructions and/or circulars, etc.)?
- ☐ No

☒ Yes. Please give English (French/German) translations **and** attach the text in the original language. Are these binding? ☐ No ☒ Yes

Article 2(2) of Act 27/2008 [primary legislation] establishes that (web links to full original and English translation versions can be found in Annex C):

'For the purposes of sub-paragraph iv) of paragraph j) of the previous number [which defines 'group'], depending on the circumstances of the home country, a specific social group may include a group based on gender identity or a common characteristic of sexual orientation, and this may not be understood as including typified acts such as crime, according to the law, as well as consider aspects related to gender, although gender in itself, should not be susceptible to create a presumption for the qualification as a group.'

This provision implements Article 10(1)(d) of Directive 2004/83/EC into the national legal order.

b) Does your country have gender guidelines for the handling of asylum claims?

☒ No ☐ Yes

Are these guidelines used in LGBTI claims? ☐ No ☐ Yes. Please explain.

N/A

14) Does your country have explicit law and/or policy on LGBTIs coming from specific countries of origin , for instance to grant asylum to LGBTIs from a specific country? (We do not ask for Country Reports.)

☒ No

☐ Yes. Please describe them.

15) Do you have leading or binding court decisions on LGBTI asylum?

☒ No

☐ Yes. Please provide a brief summary of the case. Provide full citation and attach judgment.

16) Did you find any references to the Yogyakarta Principles¹ and/or to UNHCR's Guidance Note on Refugee Claims Related to Sexual Orientation and Gender Identity² in decisions or case law?

☒ No

☐ Yes. Please specify where you found these references.

Qualification Directive³, Council Directive 2004/83/EC

Article 4 Qualification Directive: Credibility (of sexual orientation/ gender identity)

17) How is sexual orientation/ gender identity generally established?

In the decisions made available by SEF regarding LGBTI asylum seekers, sexual orientation was always determined by self-identification of the asylum seeker in question and not questioned (at least expressly) in the decision. No case pertaining to gender identity was identified.

18) Could you describe cases in which credibility of the stated sexual orientation/ gender identity was the reason for denying asylum?

☒ No. Please go to question 19.

☐ Yes. Please answer questions 18A and 18B.

18A) If the stated sexual orientation or gender identity was not believed, what was the reason given for this?

Decisions and/or case law. Good/bad practices.

18B) Which patterns - if any - do you perceive in rejecting LGBTI cases based on credibility?

19) Is supporting evidence required and/or accepted to prove sexual orientation/ gender identity, apart from the declaration of the person concerned?

☒ No.

¹ Yogyakarta Principles: <http://www.yogyakartaprinciples.org/>

² UNHCR Guidance Note: <http://www.unhcr.org/refworld/docid/48abd5660.html>

³ Qualification Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>

☐ Yes. What does the supporting evidence include (e.g. witness statements from other people than the applicant, membership of LGBTI organisations, declarations of LGBTI organisations, other)?

N/A

Decisions and/or case law. Good/bad practices

Evidence regarding sexual orientation is not (expressly) mentioned or required in administrative (SEF) decisions - see answer to question 18 above.

20) Is medical/ psychological/ psychiatric/ sexological evidence requested or accepted in proving the sexual orientation?

☒ No

☐ Yes

a) Who is considered a 'medical expert' in this respect?

N/A

b) What does the examination include?

N/A

c) Does it include any inhuman/degrading element? Please explain.

N/A

d) What weight is given to the 'expert's' opinion?

N/A

Decisions and/or case law. Good/bad practices

N/A

21) Is medical/ psychological/ psychiatric/ sexological evidence requested or accepted in proving the gender identity?

☐ No

☐ Yes

a) Who is considered a 'medical expert' in this respect?

b) What does the examination include?

c) Does it include any inhuman/degrading element? Please explain.

d) What weight is given to the 'expert's' opinion?

Decisions and/or case law. Good/bad practices

22) Are explicit questions asked about sexual activities?

☒ No

☐ Yes. Please describe them and include the source of the information.

23) Are questions asked about stereotypical LGBTI conduct?

☒ No

☐ Yes. Please describe them.

24) Are questions asked with respect to familiarity with gay scenes or membership of LGBTI groups in the country of origin or in the country where asylum is claimed?

☒ No

☐ Yes. Please describe decisions and/or case law in which such questions were relevant.

25) Did you find cases in which the sexual orientation/ gender identity was not believed because the applicant was married or had children?

☒ No ☐ Yes. Decisions and/or case law. Good/bad practices

Article 4-3 Qualification Directive; Article 8-2 Procedures Directive: Country of origin information

26) Do decision makers/ courts /tribunals have effective access to Country of Origin Information (COI) concerning the position of LGBTI asylum seekers?

☐ No ☒ Yes

In the light of the small number of refugees in Portugal, SEF does not produce their own COI. Instead, they rely on COI produced by other entities and available on-line, such as the US State Department, UK Home Office, UNHCR, Portuguese embassies and consulates, and media. In the case of LGBTI asylum seekers, SEF also relies on more specific information produced and/or made available by specialised entities, such as the International Gay and Lesbian Human Rights Commission (for example, Asylum Procedure F 2008).

27) Does your country have national COI researchers?

☒ No. Please go to question 29

☐ Yes. Are they trained in investigating LGBTI issues? ☐ No ☐ Yes

Please give details.

28) Does the COI from these national researchers report that state protection is available for LGBTIs?

☐ No

☐ Yes. Could you describe this information?

29) Can the legal representative of the applicant consult and instruct an independent COI expert?

☐ No

☒ Yes

a) Can the expert draft a report? ☐ No ☒ Yes

b) How is the expert paid for?

Expert would have to be paid by the asylum seeker. The CPR provides free legal advice to asylum seekers since the moment they present their request, but are not asylum seekers' legal representatives. Until SEF takes a decision (i.e. during the administrative procedure), asylum seekers do not have the right to legal aid, so they need to pay for a lawyer themselves if they wish to be legally represented throughout the procedure. Asylum seekers only have the right to legal aid, including legal representation, when/if the judicial procedure starts (i.e. if SEF denies the asylum seeker's request and s/he appeals to an administrative court) (Articles 49 (1) and (4), and 64 (2), of Law 27/2008; Decision of 18 November 1993, Appeal No. 32,832, Administrative Supreme Court; Opinion of the Prosecutor General's Office of 10 November 1994; Decision No. 962/96 of the Constitutional Court).

c) What weight is given to the expert's report?

None of the decisions in the cases identified makes reference to an expert report. Yet, if an asylum seeker were to provide an expert's report amongst the evidence submitted, SEF would presumably consider it on the same terms as other COI collected from other origins (that is, without giving it less or more weight than to the other COI gathered).

30) How is the available COI concerning the position of LGBTI asylum seekers dealt with by decision making authorities, and by judges?

The only examples available regard:

- Asylum Procedure F 2008: the decision in the admissibility phase ('fase de admissibilidade') refers to the International Gay and Lesbian Human Rights Commission and also quotes the Behind the Mask website <<http://www.mask.org.za>>, in relation to the criminal penalty in force in Senegal against homosexuality; the decision in the inquiry phase ('fase de instrução') refers to the information provided by the Portuguese Embassy in Dakar with regard to the events invoked by the asylum seeker in question;
- Asylum Procedure G 2009: the decision in the inquiry phase refers to a US Department of State report in relation to the punishment for homosexuality in Guinea Conacry.

In both these instances, the information was used to characterise the possible dangers facing the asylum seekers in question if they were to return to their home countries. In the first case mentioned (F 2008), this information strengthened the case for granting subsidiary / humanitarian protection by SEF; in the second case mentioned (G 2009), the information did not strengthen the case for granting subsidiary / humanitarian protection by SEF, but such protection was granted any way, on the basis of (non-LGBTI related) human rights abuses in the country of origin.

There are no examples of use of COI by judges in LGBTI asylum seekers' cases.

31) Do your decision makers or courts consider the reasons why reports of persecution may be unavailable in some countries?

☒ No

☐ Yes. Please give examples.

32) Sometimes a lack of information on lesbian/ bisexual/ trans/ intersex people or a lack of criminal sanctions against same-sex conduct by women or against trans/intersex individuals is regarded as a lack of evidence of persecution. Did you find examples of this?

☒ No ☐ Yes. Please describe the examples.

33) Sometimes general COI which is not relevant for the situation of the LGBTI concerned is used as a basis for a decision (e.g. information on gay men used wrongly to assess the risk for lesbians or trans people; information on heterosexual women's status used for lesbians). Did you find examples of this?

☒ No ☐ Yes. Please describe the examples.

In several of the cases identified, SEF refers to COI not directly relevant to LGBTI individuals, in order to assess the general risk of persecution and danger, with the purpose of determining whether subsidiary / humanitarian protection should be granted or not. When doing this, there was no particular evidence of use of irrelevant or inapplicable information.

Article 5 Qualification Directive; Article 32 Procedures Directive: Coming-out late

34) Does it occur that LGBTIs who have “come out” after leaving the country of origin, are recognised as refugees or as being in need of subsidiary protection?

☒ No

☐ Yes. Please explain with decisions and/or case law. Good/bad practices

35) Does it occur that LGBTIs who – for instance out of fear or shame – did not speak about their sexual orientation or gender identity immediately, but do so later (in a later phase of their first procedure, or in a repeat procedure), are recognised?

☒ No

☐ Yes. Please explain with decisions and/or case law. Good/bad practices

Article 6 Qualification Directive: Persecution by the state

36) Are LGBTI applicants granted asylum if in their country of origin homosexual acts and/or identity is criminalised (by explicit ‘sodomy laws’ or by other criminal law provisions)?

- ☐ No. Please go to question 37.
- ☒ Yes. Proceed with question 36A.

36A) Is it required that those criminal law provisions are actually enforced, or is the existence of those criminal law provisions sufficient? Please provide further information. Decisions and/or case law. Good/bad practices

The positive decision in Asylum Procedure F 2008 (mentioned in replies to questions 26 and 30 above) is based on the fact that homosexuality is punished criminally in Senegal. The decision does not discuss whether the law is enforced or not.

Yet, the decision in Asylum Procedure E 2008, also regarding a homosexual man from Senegal, denied the request without even mentioning that homosexuality is punished criminally in Senegal. The negative decision was based on other elements (lack of persecution, lack of contact with public authorities, the existence of a 'safe third country'), which indicates that criminal law provisions are only relevant if other requisites are fulfilled. Moreover, the decision in Asylum Procedure I 2010, regarding a Senegalese homosexual woman, does not make any reference to the legal framework applicable to homosexual relationships.

Article 6 Qualification Directive: Persecution by non-state actors

37) Do you have examples of LGBTIs who have suffered or feared persecution or serious harm inflicted upon them by non-state actors?

- ☐ No. Please go to question 38,.
- ☒ Yes. Proceed with questions 37A and 37B.

37A) Did they get protection?

- ☒ Yes
- ☐ No. Do you know what were the reasons to consider that they did not have a well founded fear of future persecution or serious harm?

In most cases of LGBTI asylum claims identified, harm was inflicted, at least partially, by non-state actors. Protection by Portuguese authorities depended on the fulfilment of other requirements:

- A 2001: case involved threats by private actors, as well as by police; asylum request was held inadmissible on grounds of lack of persecution and passage by a 'safe third country'.
- B 2001: case involved threats by private actors, as well as by police; asylum request was held inadmissible on grounds of lack of persecution and passage by a 'safe third country'.

- D 2005: case involved threats by a private actor; asylum request was held inadmissible on grounds of lack of persecution, lack of involvement of authorities, possibility to live in another country of nationality, and passage by a 'safe third country'.
- E 2008: case involved threats by the parents of the asylum seeker and police was never contacted; asylum request was held inadmissible on grounds of lack of persecution, lack of involvement of authorities, and passage by a 'safe third country'.
- F 2008: case involved violence by non-state actors and police inaction; asylum request was admitted in the admissibility phase, but denied at the inquiry phase on grounds of lack of substantiating evidence with regard to several aspects of the asylum-seeker's account; yet, considering homosexuality is criminally punished in Senegal, the asylum-seeker was granted subsidiary protection status for the period of two years.
- G 2009: case involved violence by non-state actors and police was never contacted; asylum request was admitted in the admissibility phase, but denied at the inquiry phase on grounds of the vagueness and lack of precision of the asylum-seeker's account, the absence of acts of persecution, lack of contact with police authorities, and the fact that homosexuality is not criminally punished in Guinea Conakry; yet, considering the asylum-seeker's feeling of insecurity and the characterisation of Guinea Conakry's socio-political by human rights' abuses, the asylum-seeker was granted subsidiary protection status for the period of two years.
- H 2009: case involved violence by non-state actors and police was never contacted; asylum request was held inadmissible on grounds of lack of persecution on any applicable ground, and lack of involvement of authorities.
- I 2010: case only involved non-state actors and police was never contacted; asylum request was held inadmissible on grounds of lack of persecution on any applicable ground, and lack of involvement of authorities.

37B) Did you find that persecution by non-state actors was relatively more common in lesbian or transgender/ intersex claims?

☐ No ☐ Yes. Decisions and/or case law. Good/bad practices

Since only one claim involving a lesbian was identified, it is not possible to draw any conclusion in regard to this question.

Article 7-2 Qualification Directive: State protection + effective legal system

38) Are LGBTI asylum seekers who fled persecution from non-state actors required to have sought protection from the police or other authorities prior to fleeing their country of origin in order to prove that the authorities are unable or unwilling to provide this protection?

☐ No. Please go to question 39

☒ Yes. Proceed with questions 38A, B and C.

38A) Is seeking protection from the police or other authorities also expected when the LGBTI asylum seeker came from a country that threatens homosexuality, homosexual acts (and/or transgender identity) with criminal laws?

☐ No ☒ Yes. Please give details. Decisions and/or case law. Good/bad practices.

Even in the cases regarding asylum seekers from countries where homosexuality is punished criminally, asylum seekers were expected to seek protection from the police or other authorities. This is a recurrent element in the decisions identified and in most instances it seemed as an essential element to grant protection. Still, in Asylum Procedure G 2009, subsidiary / humanitarian protection was granted despite the lack of contact with the authorities.

38B) Is seeking protection from the police also expected when the LGBTI asylum seeker came from a country where the police has a reputation of being homophobic, transphobic, etc.?

☐ No ☒ Yes. Please give details. Decisions and/or case law.

This does not derive clearly from the decisions in question or discussions had with individuals consulted. Yet, it seems safe to conclude that, if LGBTI asylum-seekers are expected to seek protection from police when homosexuality is punished criminally, then they are also expected to seek protection from police even if they have a reputation for being homophobic or transphobic.

38C) Is the requirement to seek protection dependent on country of origin information showing that protection would generally be available for LGBTIs?

☒ No ☐ Yes. Decisions and/or case law. Good/bad practices

The decisions identified indicate that seeking protection from police is always a requirement, independently of the country of origin information. Information on whether that protection would be available to LGBTIs or not does not seem to be sought by the authorities or play any role in decision-making.

39) Do your decision makers and courts acknowledge that the existence of criminal sanctions against LGBTIs, even if not enforced, contribute to a homophobic atmosphere in which persecution by state and/ or non-state actors can flourish?

☒ No

☐ Yes. Could you give examples?

There is not sign of this type of acknowledgment in the decisions identified (even if the matter does not expressly arise in any of the cases identified).

Article 8 Qualification Directive: Internal relocation

40) Has an internal relocation alternative been held available for LGBTI asylum seekers?

☐ No. Please go to question 41.

☒ Yes. Please answer questions 40A and 40B.

40A) Could you give examples of reasoning to consider places or situations in the country of origin a good relocation alternative?

There is no direct reference to internal relocation in any of the decisions identified. Yet, the issue is implicit to two of the decisions:

- in the decision taken in the Asylum Procedure H 2009, section 6 / page 2 / para. 1(g), it is stated that the asylum seeker was asked if the attacks he suffered would end if he moved to another part of the city or to another region within the country of origin. The asylum seeker is reported as stating that, at the time, he thought he was being followed and that one of his aggressors had threatened to kill him, so he was not able to think clearly and only wished to leave the country. Although this statement or the possibility of internal relocation are not expressly raised again in the decision in question, it is highly likely that it informed the negative outcome in the procedure.

- in the decision taken in the Asylum Procedure I 2010, section 6 / page 3 / para. 4(l), the asylum seeker is reported as stating that she did not opt for relocating within Senegal to a region where she was not know due to her lack of family support or economic resources. This is brought up again in section 7 of the decision to argue that the asylum seeker's circumstances did not fulfil the requirements for her to be granted international protection.

40B) If so, was discretion reasoning involved in this matter, i.e. could the LGBTI be open about her/his sexual orientation or gender identity in the relocation alternative or was he/she expected to hide there?

☒ No ☐ Yes. Decisions and/or case law. Good/bad practices

Article 9 Qualification Directive: Acts of persecution

41) Could you describe what kind of persecution or serious harm LGBTI asylum seekers who fled to your country experienced in their country of origin (physical violence, (“corrective”) rape or other sexual violence, detention, other criminal penalties, execution, honour killings, medical abuse (as a “cure”), harassment, threats, blackmail, intimidation, forced marriages, other psychological violence, no access to education, health care, housing, welfare, employment, judiciary, and so on...)?

The type of persecution and/or serious harm in question was as follows:

- A 2001: hostility by neighbours; taken to police station on two separate occasions and insulted and threatened by police officers; threatened by a group of 20-30 neighbours; threatened by chief of mafia organisation / security agency.
- B 2001: jokes and comments by people on the streets; taken to police station on two separate occasions and insulted and threatened by police officers; threatened by chief of mafia organisation.
- C 2001: taken to police station on two separate occasions and insulted and threatened by police officers.
- D 2005: death threats by phone from a private individual; (non-specified) discrimination.
- E 2008: expelled from home by parents, and threatened to death by parents if he returned home.
- F 2008: pictures of asylum seeker in a gathering hugging other homosexuals were published by a newspaper; Islamic protesters broke into his house and violently beat up both him and other five friends present in his house; he was in coma for two days; police did not offer any protection and advised him to leave the neighbourhood; threatened by locals with arms to leave that neighbourhood; beaten up and humiliated by private individuals; received anonymous letters threatening to have his head cut; judicial authorities were bias and did not identify any culprit; asylum seeker and his friends hired security guards, but these were also beaten up and threatened by locals.
- G 2009: attacks and threats by local Muslims; severely beaten by local Muslims, which required hospitalisation; his partner's father (the local Imam) threatened to bury him up to his neck and beat him up; searched by partner's father and friends.

- H 2009: beaten up at home on several occasions by a group of men hired by an ex-employer; beaten up on several occasions on the street; car destroyed; attacked, robbed and raped at home; hospitalised on three different occasions.
- I 2010: threatened by husband; refused by parents.

41A) Which of these experiences have been recognised as persecution or serious harm, and which were found to be insufficient to constitute persecution or discrimination that did amount to persecution?

None of the treatment experienced by the asylum seekers in the cases identified and summarised above was recognised as amounting to (individual) persecution or serious harm. In all the decisions in question, the treatment alleged by the asylum seekers was described as insufficient to fulfill the legal criteria required to grant the status of refugee.

As for the two cases identified where subsidiary / humanitarian protection was granted (F 2008 and G 2009), the decisions were based on discriminatory treatment and human rights abuses publicly reported, not on the individual facts alleged by the asylum seekers in question.

41B) Please describe differences in the nature of persecution experienced by men and women respectively, due to their gender (in all of the categories of LGBTI).

Since only one claim involving a lesbian was identified, it is not possible to draw any conclusion in regard to this question. Still, the type of treatment suffered by the lesbian in question (I 2010: threat by husband and refusal by parents) is similar to treatment alleged by one of the homosexual men in the cases identified (E 2008: expelled from home by parents, and threatened to death by parents if he returned home).

42) Is attention being paid to non-conformity to heterosexual gender roles and social roles in the decisions and/or case law?

☒ No ☐ Yes. Please give examples.

Article 9 Qualification Directive: Discrimination /persecution

43) Are LGBTI asylum seekers refused because the harm/ persecution they experienced is labelled as discrimination instead of persecution?

☐ No

☒ Yes. Please give examples. Decisions and/or case law. Good and bad practices.

In the decisions in Asylum Procedures A 2001, B 2001, C 2001, D 2005 and I 2010, the authorities quote para. 54 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status to justify that the circumstances alleged by the asylum seeker in question do not amount to persecution. Nevertheless, this seems to be only an element of the overall argumentation used to justify not granting protection, not a central element thereof.

Article 9-1-a,b, f /10-1-d Qualification Directive: Discretion (upon return)

44) Decision makers sometimes argue that LGBTI people will not be persecuted as long as they act discreetly or hide their sexual orientation or gender identity to avoid persecution ('go home and be discrete'). Do the asylum authorities in your country use this reasoning?

☒ No

☐ Yes. Could you provide further information and describe decisions and/or case law in which this happens? Good and bad practices.

Article 10-1-d Qualification Directive; Article 37-38 Procedure Directive: Implementation

45) Does your law or practice recognise explicitly that people who flee because of their sexual orientation can belong to a particular social group?

☐ No

☒ Yes. Are there any differences between L, G and B applicants, and if so, what differences?

In terms of legislation, and as stated in reply to question 13, Article 2(2) of Act 27/2008 [primary legislation] establishes that:

'For the purposes of sub-paragraph iv) of paragraph j) of the previous number [which defines 'group'], depending on the circumstances of the home country, a specific social group may include a group based on gender identity or a common characteristic of sexual orientation, and this may not be understood as including typified acts such as crime, according to the law, as well as consider aspects related to gender, although gender in itself, should not be susceptible to create a presumption for the qualification as a group.'

No difference between L, G and B asylum seekers seems to may be derived from the wording of this provision.

In terms of decision-making practice, the decisions identified do not detain themselves expressly with this matter, thus not asserting whether the asylum seekers in question belong or not to a social group. Yet, all decisions identified use wording to the effect that the asylum seeker in question 'did not invoke any fear of persecution in virtue of (...) belonging to a certain social group'. It is generally difficult to ascertain whether the meaning of this sentence is that a 'fear of (individual) persecution' was not proven, that 'belonging to a social group' was not proven, or that the persecution suffered was not at the hands of a public authority. On the one hand, in the cases where the asylum seeker alleges treatment that can be reasonably recognised as seriously harmful, such as in H 2009 and F 2008, this wording only makes sense if meaning that 'belonging to a social group' was not proven, or that the persecution suffered was not at the hands of a public authority. On the other hand, in the cases where the asylum seeker alleges treatment that has only been possible due to the authorities' conduct, such as in A 2001, B 2001, C 2001 and F 2008, this wording only makes sense if meaning that a 'fear of (individual) persecution' was not proven, or that 'belonging to a social group' was not proven. In any case, the exact sense of the assertion remains unclear.

46) Does your law or practice recognise explicitly that people who flee because of their gender identity can belong to a particular social group?

☐ No. Does your country have any other policy that provides protection to transgender asylum seekers?

☒ Yes. If there is explicit policy or legislation, please give a translation into English (French or German).

Article 2(2) of Act 27/2008 establishes that:

'For the purposes of sub-paragraph iv) of paragraph j) of the previous number [which defines 'group'], depending on the circumstances of the home country, a specific social group may include a group based on gender identity or a common characteristic of sexual orientation, and this may not be understood as including typified acts such as crime, according to the law, as well as consider aspects related to gender, although gender in itself, should not be susceptible to create a presumption for the qualification as a group.'

47) Does your country apply Article 10(1)(d) of the Qualification Directive in such a way that members of the group must not only share an immutable/innate/ fundamental characteristic, **and** also the condition that the group has a distinct identity, because it is perceived as being different by the surrounding society, or is one of these requirements sufficient?

☐ No ☒ Yes

Article 2(1)(j)(iv) of Act 27/2008 establishes that:

"Group", a specific social group in such cases as:

The members of that group share an inborn characteristic or a common history which cannot be changed, or share a characteristic or belief deemed to be so critical for the group members' identity or conscience that they cannot be asked to give it up; and

That group has a different identity in the country in question, because it is considered to be different by the society that surrounds it'.

48) How is the Qualification Directive's concept of 'gender related aspects' taken into consideration in your legislation?

As mentioned in the answer to question 13, Article 2(2) of Act 27/2008 [primary legislation] establishes that:

'For the purposes of sub-paragraph iv) of paragraph j) of the previous number [which defines 'group'], depending on the circumstances of the home country, a specific social group may include a group based on gender identity or a common characteristic of sexual orientation, and this may not be understood as including acts typified as crimes, according to the law, as well as consider aspects related to gender, although gender in itself, should not be susceptible to create a presumption for the qualification as a group.'

This provision implements Article 10(1)(d) of Directive 2004/83/EC into the national legal order. Yet, the last part of the provision relating to gender has slightly mis-implemented/interpreted the Directive's wording: while the relevant Directive provision states that the 'gender related aspects' should not by themselves alone create a presumption, the Portuguese law refers to 'gender itself' not creating a presumption. It is not clear yet whether this difference in wording will have an impact in legal practice.

Article 11-1-e, 14 Qualification Directive: Cessation/Withdrawal of asylum status

49) Do you have examples of LGBTI asylum seekers whose asylum status was withdrawn, because the credibility of their lesbian, gay, bisexual orientation or gender identity was doubted later on?

☒ No

☐ Yes. What was the reason?

50) Do you have examples of LGBTI asylum seekers whose asylum status was withdrawn, because their lesbian, gay, bisexual orientation or gender identity had changed?

☒ No

☐ Yes. What was the reason?

51) Are there cases in which asylum status was withdrawn because the position of LGBTIs in the country of origin had improved?

☒ No

☐ Yes. Please give examples.

If the answer to questions 49 and/or 51 was yes:

51A) Did the authorities examine whether the person involved could still be at risk in the country of origin for being a perceived LGBTI?

☐ No ☐ Yes. Please give details.

Article 20-3 Qualification Directive: Vulnerable persons

52) Are LGBTI asylum seekers considered part of a 'vulnerable group' or a 'group having special needs' in your national legislation/policy/practice?

☒ No

☐ Yes. Please give details

Article 2(1)(r) of Act 27/2008 establishes that:

"'Especially vulnerable people' [are] people with special needs, namely minors, unaccompanied minors, handicapped people, elderly, pregnant women, members of mono parental families with underage children and people who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence'

This provision thus literally implemented the wording of Article 20(3) of Directive 2004/83.

Procedures Directive⁴, 2005/85

⁴ Procedures Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>

Article 13 Procedures Directive: The interview

53) Can asylum seekers ask for an interviewer and/or interpreter of the gender (sexual orientation/ gender identity) of their own choice?

☐ No

☒ Yes. Is such a preference usually recognised? ☐ No ☒ Yes

Taking statements from asylum seekers is regulated in Article 16 of Act 27/2008. This provision does not make any reference to the possibility of asylum seekers asking for an interviewer / interpreter of a particular gender / sexual orientation / gender identity.

Yet, according to the information provided by SEF, asylum seekers are free to request an interviewer of a particular gender. In the absence of a particular request, SEF matches the asylum seeker's gender with that of the interviewer. If during or after a first interview the asylum seeker expresses a preference for an interviewer of a different gender or reveals a degree of embarrassment due to the interviewer's gender, then in a second interview the interviewer will be of a different gender. Similarly, in relation to the interpreter, if the asylum seeker expresses dissatisfaction with the interpreter (usually on ethnic grounds), then SEF tries to arrange for an interpreter with the characteristics preferred by the asylum seeker, as long as it is reasonable and feasible.

54) Can asylum seekers express a preference for an interviewer and/or interpreter who is not a member of their own ethnic community?

☐ No

☒ Yes. Is such a preference usually recognised? ☐ No ☒ Yes

See reply to question 53.

55) Do you have trainings on LGBTI issues available for officers who take interviews and decisions?

☒ No. Please go to question 56.

☐ Yes. Please answer questions 55A, B, C, D, E and F.

55A) Is this part of a general training or is it a specific training?

55B) Is the training:

- Obligatory ☐ No ☐ Yes. For whom?

- Optional ☐ No ☐ Yes. How many people follow this training (coverage)?

55C) Who has access to this training?

55D) Are judges included in these trainings?

☐ No ☐ Yes

55E) What is the level and frequency of these trainings?

55F) Who does the training?

56) Do you have trainings available for interpreters on the appropriate terminology for use with LGBTI asylum seekers?

☒ No ☐ Yes

Article 23-3,4 Procedures Directive: Accelerated procedure

57) Does your country have accelerated asylum procedures?

☐ No

☒ Yes. Is an exception made for claims of LGBTI asylum seekers?

☒ No ☐ Yes. Please explain.

Accelerated procedures are regulated in Article 19 of Act 27/2008. This provision makes no exception to LGBTI asylum seekers.

58) Are applications from LGBTI asylum seekers prioritised by the national authorities?

☒ No ☐ Yes. Please explain.

Articles 29-31 Procedures Directive: Safe countries

59) Do the asylum authorities use lists of 'safe countries of origin'?

☒ No. Please go to question 60.

☐ Yes. Please answer questions 59A and B.

59A) Does the list include countries that have criminal provisions against same-sex conduct (or obvious homophobic practice)?

☐ No

☐ Yes. Please give the names of these countries.

59B) Does the list provide exceptions for LGBTIs from specific countries?

☐ No ☐ Yes. Please explain.

Article 27, 36 Procedures Directive: Dublin Regulation

60) Did you find examples of LGBTI asylum cases in which the European country responsible for examining the asylum application (Dublin Regulation) was not considered a safe country (because of LGBTI aspects of the case)?

☒ No

☐ Yes. Please give details.

Family Reunification Directive⁵, Council Directive 2003/86/EC

Article 10 Family Reunification Directive: Family members

61) Does your country recognise same-sex marriage or same-sex partnership for nationals?

☐ No. Please go to question 62.

☒ Yes. Please answer question 61A.

61A) Does your country provide family reunification rights based on same sex relationships for partners of refugees?

☐ No ☒ Yes. Please explain under which circumstances.

Article 68 of Act 27/2008 establishes that:

⁵ Family Reunification Directive:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0086:EN:HTML>

- '1. The beneficiaries of the refugee or subsidiary protection status are entitled to family regrouping with the members of their families, according to the terms defined in the legal system ruling the entrance, stay, exit and removal of foreigners in the national territory.
2. The effects of the asylum or subsidiary protection should be declared extensive to the members of the family referred in the previous number.
3. The established in the previous numbers does not apply to the cases in which the member of the family is excluded from the status of refugee or of subsidiary protection or loses it under the terms of this law.'

The legal framework of entry, permanence, exit and removal of foreigners into and out of national territory is laid out in Act 23/2007, 4 July 2007 (web links to original and English translation versions in Annex C). The right to family reunion is regulated in Articles 98 ff. of this Act, and Article 98 states that:

'1. A citizen with valid residence permit has the right to family reunion with the family members that are out of national territory, and who lived with him/her in another Country, or that depend from him/her, or that live in cohabitation, independently from the family ties having been created before or after the resident entered in Portugal.'

'Family members' for the purpose of this provision include spouses, children and ascendants under certain circumstances (Article 99). Article 100 refers expressly to 'common law' marriage and establishes that family reunion may be authorised to a partner who maintains, either in national territory or abroad, a de facto union duly acknowledged in the terms of the law with a foreign citizen. Article 104 accepts as proof of family ties and/or de facto union the existence of common children, previous cohabitation, the registration of the life partnership or any other 'trustworthy means of proof'.

Although the submission of proof of family ties and/or de facto union with a same sex partner may be difficult for most LGBT refugees, the law does create the necessary conditions for such proof to be produced and for the right to family reunion to be exercised.

Reception Directive⁶

⁶ Reception Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>

Article 17 Reception Directive: Reception

62) Do LGBTI asylum-seekers face problems (harassment, ill-treatment etc.) while in reception/ accommodation centres or in immigration detention, based on their sexual orientation/ gender identity?

☒ No. Please go to question 63.

☐ Yes. Please answer questions 62A, B and C.

62A) By whom are these problems caused?

62B) Are the authorities aware of these problems?

☐ No ☐ Yes. How do they react?

62C) Does a complaints mechanism exist?

☐ No

☐ Yes. Is it effective? ☐ No ☐ Yes

63) Does the possibility of housing in private accommodation exist during the asylum procedure?

☐ No

☒ Yes. Please explain

Asylum seekers remain in the official accommodation centre (Centro de Acolhimento da Bobadela, <http://www.refugiados.net/_novosite/car/car.html>, last accessed on 8 June 2011) for a maximum period of three to six months (except for unaccompanied children, who may remain for as long as their asylum request is assessed and, if the outcome is positive, afterwards until the age of 18). After this period of time, asylum seekers become benefit recipients: they are entitled to the same 'social allowance' ('rendimento minimo garantido', i.e. guaranteed minimum income) as national citizens and residents, as well as an 'accommodation subsidy'. Asylum seekers thus have to arrange for their own private accommodation, which they pay for with the benefits they receive. Also, they have the same access to the national health system and the labour market until a final decision is reached in relation to their asylum request.

64) Is it possible in reception/ accommodation centres or immigration detention to be placed in an accommodation separate from people from the same country and/or religious background?

☐ No

☒ Yes. Are asylum seekers informed about this possibility? ☒ No ☐ Yes

Articles 17 and 15 Reception Directive: Transgenders/ intersex

65) Do transgender and intersex people have the possibility to choose whether they want to be housed in a women's or men's (section of) reception/ accommodation and detention centre?

☐ No ☒ Yes

66) Do transgender/ intersex applicants have access to specific health care and support,

a) during the asylum procedure

☐ No ☒ Yes

b) after they are granted asylum?

☐ No ☒ Yes

67) If your country provides the possibility to legally change a person's name and sex, does this also apply to trans/ intersex asylum seekers and trans/ intersex refugees?

☐ No ☒ Yes

Any other issues

68) Are you aware of any other specific problems for LGBTI asylum seekers?

It has been pointed out by one of the research participants that what characterises LGBTI asylum seekers in Portugal is their invisibility. Practically no one is aware of gender or sexuality matters surrounding asylum seekers in Portugal, not even those who deal with asylum seekers on a daily basis as part of their work. Even if one accepts that the real number of LGBTI asylum seekers is low in Portugal, there is very likely a certain number of asylum seekers who choose not to raise the issue of their sexuality or gender identity, as well as related persecution, probably for fearing it will not benefit (or even harm) their asylum claim or social integration.

Although issues of separate / different accommodation for LGBTI asylum-seekers in the official accommodation centre have not arisen in practice, should they arise, it is arguably unlikely it would be easy to address them fully, considering past experiences with the limited availability of preferred type of accommodation (Associação Salpísign-GIS 2009: 54).

69) Are you aware of any other good practices concerning LGBTI asylum seekers?

Although not especially related to LGBTI asylum seekers, the Portuguese legal framework is characterised by some very positive aspects, which promote the dignity and human rights of asylum seekers:

- once their asylum claim is admitted by SEF (i.e. when, after an initial summary assessment / admissibility phase, the SEF accepts to look further into the claim to decide on whether the asylum seeker should be offered international protection or not: 'fase de instrução' / inquiry phase), asylum seekers are granted a residence permit;
- once holding a resident permit, asylum seekers are generally treated as other legally resident individuals in Portugal, including for purposes of health care, education and professional training, social benefits, and, most important, the right to work (Vasconcelos 2004);
- the official accommodation centre (Centro de Acolhimento da Bobadela, <http://www.refugiados.net/_novosite/car/car.html>, last accessed on 8 June 2011) is generally held as possessing good material facilities and offering high standard services to asylum seekers, including in comparison to other European countries (Amnistia Internacional Portugal 2009: 16; Santinho 2009c: 183);
- a new accommodation centre exclusively for unaccompanied children is currently being built (<http://www.publico.pt/Sociedade/centro-para-criancas-refugiadas-vai-estar-pronto-em-2011_1467422> last accessed on 8 June 2011); the centre should hold about 13-14 and offer a playground, a library, and Portuguese language lessons;
- finally, academics and NGOs in Portugal are slowly, but increasingly, dedicating their attention to the legal, social and health issues raised by asylum seekers' experiences (Oliveira 2008; Associação Salpign-GIS 2009; Oliveira 2009; Piçarra 2009; Santinho 2009a; Santinho 2009b; Santinho 2009c), including with regard to sexual orientation and gender identity (Associação Salpign-GIS 2009: 108; Oliveira 2009: 302-03), thus hopefully raising awareness of these issues and improving the way they are addressed by authorities and society alike.

70) Please add any other comments on the situation of LGBTI asylum seekers in your country.

Questions 10 c) and 21 have not been replied to, as they are not applicable to the Portuguese context or there has been no experience in regard to those matters. Reply to question 64 is based on information provided by CPR, which expressed sensitivity to all aspects mentioned (ethnic group, religion, etc) and to requests to change accommodation, but did not mention that asylum seekers are expressly informed of this possibility.

Due to the lack of previous experience, reply to question 65 is based on the assurance offered by the CPR.

Due to lack of past similar situations, replies to questions 66 and 67 have been based on how the provision of health services works for other transsexual and intersex individuals, and for other asylum seekers. The overruling principle is equality of access to health care and health treatment of asylum seekers and national residents/citizens. Also, courts are under the obligation to treat equally all individuals legally resident in Portugal. Consequently, requests to change sex and name would most likely be dealt with positively by courts. A last note: until 2010, requests to change sex and name were not legally regulated in Portugal, so the legal void forced transsexuals to apply for judicial orders and subjected them to the strict conditions imposed in practice and a time-consuming procedure (FRA 2008: 22-23). On 27 November 2010, the Portuguese Parliament approved a Bill to create a legal procedure to change one's gender and first name at the civil registrar, thus filling the previous legal void and dispensing individuals from having to file a lawsuit (Decree No. 68/XI). The President of the Republic, however, vetoed this Decree on 6 January 2011, especially on grounds of insufficient criteria with regard to the medical diagnosis (<http://www.presidencia.pt/?idc=10&idi=50503> last accessed on 8 June 2011). The Decree was again discussed in the Parliament and confirmed by voting on 17 February 2011. The presidential veto was, thus, overcome by a parliamentary majority, and the President was constitutionally obliged to ratify the Decree, which took place on 1 March 2011. This Decree has been published as Act 7/2011 of 15 March 2011, and its Portuguese version can be found on-line: <http://ilga-portugal.pt/noticias/Noticias/lei72011.pdf>, last accessed on 8 June 2011. It has been considered the world's most liberal gender identity legal framework (<http://www.ilga-portugal.pt/noticias/186.php> last accessed on 8 June 2011).

Thank you!

SHORT LGBTI GLOSSARY

Age of consent

The minimum age at which a person is considered to be legally competent of consenting to sexual acts.

Bisexual

An individual who is physically, romantically and/or emotionally attracted to both men and women.

Bisexuals need not have had equal sexual experience with both men and women. In fact, they need not have had any sexual experience at all to identify as bisexual.

Coming out

A lifelong process of self-acceptance. People forge a lesbian, gay, bisexual or transgender identity first to themselves and then may reveal it to others. Publicly identifying one's sexual orientation may or may not be part of coming out.

Gay

Used to describe people whose enduring physical, romantic and/or emotional attractions are to people of the same sex (e.g., *gay man*, *gay people*). Often used to describe a man who is sexually attracted to other men, but may be used to describe lesbians as well.

Gender

Refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women.

Gender Identity

Refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. It includes the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Intersex

Refers to a condition of having sexual anatomy that is not considered standard for a male or female. Intersex can be used as an umbrella term covering differences of sexual development, which can consist of diagnosable congenital conditions in which development of chromosomal, gonadal or anatomic sex is atypical. The term *intersex* is not interchangeable or a synonym for *transgender*.

Lesbian

A woman whose enduring physical, romantic and/or emotional attraction is to other women.

Sexual Orientation

Refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate relations with, individuals of a different gender or the same gender or more than one gender.

Sodomy Laws

Laws that define certain sexual acts as crimes. The precise sexual acts meant by the term sodomy are rarely spelled out in the law, but are typically understood by courts to include any sexual act deemed unnatural. Consensual homosexual acts between adults are illegal in about 70 to 80 countries in the world; in 40 of these, only male-male sex is outlawed.

Transgender

An umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth. Transgender people may identify as female-to-male (FTM) or male-to-female (MTF).

Transgender people may or may not decide to alter their bodies hormonally and/or surgically.