



Jurisprudence on LGBTIQ Applicants in International Protection

The jurisprudence presented in this fact sheet is extracted from the [EUAA Case Law Database](#). The fact sheet provides an overview of case law relevant to the assessment of international protection claims based on sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC). It covers the period October 2023 to July 2025. For earlier cases, please consult “Jurisprudence on LGBTIQ applicants in international protection”, September 2023.

Asylum claims based on sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) have increased in recent years, which has resulted in more cases being scrutinised by European courts (including the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR)) and national courts (mainly, but not exclusively, upper courts).¹ This evolving jurisprudence and the current trends are highlighted in this fact sheet.

Within the Common European Asylum System (CEAS), common standards for LGBTIQ asylum applicants are defined in the recast Qualification Directive, the recast Asylum Procedures Directive, and the recast Reception Conditions Directive. In addition, this fact sheet highlights the key changes brought by the Pact on Migration and Asylum for the protection of LGBTIQ applicants within the EU asylum framework.



¹ Most EU+ countries do not keep statistics on the number of applicants requesting international protection on grounds of their sexual orientation and gender identity. Collecting such data could raise data protection issues or violate the principle of confidentiality. Eurostat does not provide specific data for LGBTIQ+ asylum applications and data are typically presented in terms of overall asylum applicants, with statistics broken down by country of origin and destination, and overall trends. Therefore, centralised EU-level data does not exist on asylum claims based on SOGIESC. Reporting remains inconsistent and fragmented, often relying on NGO documentation, limited national statistics and legal cases.



Main highlights extracted from the EUAA Case Law Database

- Many countries throughout the world, particularly in North and sub-Saharan Africa, the Middle East and Central Asia, still criminalise certain sexual orientations, and general provisions are used to prosecute and discriminate, on various grounds, against the LGBTIQ community. Twelve countries have jurisdictions in which the death penalty is prescribed or possible for consensual same-sex activity, and at least six actively implement it (Iran, northern Nigeria, Saudi Arabia, Somalia and Yemen).¹ Besides state persecution, in certain parts of the world, the LGBTIQ community is at risk of persecution or serious harm from non-state actors, and the state may be unable or unwilling to provide the community with effective protection against persecution or serious harm.
- LGBTIQ applicants are generally granted international protection under the qualification of being a “member of a particular social group” in accordance with Article 10 of the recast Qualification Directive (QD). Already in 1981, the Council of State in the Netherlands [ruled](#) that persecution based on membership of a particular social group may also include persecution on the grounds of sexual orientation.
- More recently, the CJEU interpreted the concept of ‘particular social group’ under Article 10 of the recast QD in [X, Y, and Z](#) (7 November 2013) and it highlighted that a person’s sexual orientation is an innate characteristic that cannot be renounced or concealed, and which can define a particular social group. It further ruled that the criminalisation of homosexual acts does not constitute an act of persecution per se, but the actual application of imprisonment which sanctions homosexual acts amounts to persecution.
- Persecution related to sexual orientation or gender identity can extend to those perceived as belonging to the LGBTIQ community or those advocating for LGBTIQ rights, as courts provided for instance subsidiary protection to lawyers who defended members of the LGBTIQ community and thus faced a real risk of serious harm from state authorities.
- The identification of asylum applicants as belonging to the LGBTIQ community presents significant challenges, given the limited awareness among applicants that sexual orientation and gender identity can constitute legitimate grounds for international protection, particularly where sexual orientation and gender identity are criminalised or heavily stigmatised in the country of origin. As a result, applicants may disclose their belonging to the LGBTIQ community only at a later stage in the asylum process.
- Late disclosure of sexual orientation, according to the CJEU in [A., B., C. v Staatssecretaris van Veiligheid en Justitie](#) (2 December 2014), does not in itself result in a lack of credibility. While some national courts have ruled that late disclosure may have a negative impact on the applicant's credibility, recent case law indicates that, according to most of them, a credibility decision cannot be based solely on the fact that an applicant did not share their sexual orientation immediately, and there may be valid

reasons why an applicant may be reluctant to reveal their sexual orientation given the sensitive nature of such information, factors such as fear, shame or mental health.

- Regarding the processing of applications by LGBTIQ applicants, and specifically the credibility assessment, several aspects were clarified by the CJEU in [A., B., C.](#) and in [F v Office for Immigration and Citizenship \(Bevándorlási és Állampolgársági Hivatal\)](#) (25 January 2018), such as the prohibition of relying solely on stereotyped notions regarding homosexuals, posing questions concerning details of the applicant's sexual practices, or requiring applicants to undergo tests or submit intimate evidence, in violation of the right to private and family life and human dignity protected by the EU Charter. These judgments inspired Recital 42 of the Pact on Migration and Asylum, which now places limits on such practices while carrying out a credibility assessment.
- Country of origin information (COI) also plays a significant role in the assessment of LGBTIQ asylum applications, with EUAA country of origin reports being used as evidence in first and second instance procedures.
- Besides considerations related to substantive assessments, there is also a need to ensure gender-sensitive procedures when an asylum applicant's claim involves violations of sexual self-determination. While the recast APD provides that, if requested by the applicant, wherever possible the interview should be carried out by a *person of the same sex*, the Pact on Migration and Asylum provides for the *choice of the sex* of the interviewer and interpreter whenever possible. For appeal procedures, national jurisprudence has already reached this standard, with judgments holding for instance that failure to assign a female judge and a female interpreter at the request of an LGBTIQ applicant who was assigned male at birth, violated the constitutional right to a trial before a lawful judge.
- A further aspect discussed intensively was the concept of a safe country of origin for LGBTIQ applicants, which may lead to the inadmissibility of the asylum application. Out of 23 EU+ countries which have adopted a national list of safe countries of origin, 7 countries apply exceptions for specific profiles or vulnerable people, including LGBTIQ applicants.² However, in its latest judgment in August 2025, the CJEU pointed out in [LC \[Alace\] and CP \[Canpelli\] v Territorial Commission of Rome](#) that, until the new regulation enters into application on 12 June 2026, a Member State may not designate a third country as a safe country of origin if the third country is not safe for certain categories of persons, including SOGIESC applicants. The court further noted that the EU legislature may amend the respective provision in the regulation, as it was proposed by the European Commission and may also bring forward the date of application.³
- Another aspect which requires special consideration related to LGBTIQ applicants is reception conditions, as courts have noted that LGBTIQ applicants can have specific healthcare needs stemming from the fact that being part of a persecuted social group could affect their mental health. This was highlighted specifically for transgender individuals in the process of transitioning, who may require a doctor that understands their specific medical needs. This reception aspect was codified by the Pact on Migration and Asylum in the new Reception Conditions Directive, Article 24.
- Lastly, the intersection between data protection rights under Article 16 of the GDPR and fundamental rights of transgender individuals in the asylum context was most recently


brought to the CJEU. The CJEU ruled in [VP v National Directorate-General for Aliens Policing \(NDGAP\)](#) (March 2025) that Member States cannot require a proof of gender reassignment surgery to rectify gender-related personal data and the authorities must ensure data accuracy from the beginning of the asylum process, thus recognising that misregistration of gender identity can perpetuate systemic discrimination.




1. SOGIESC in the legal framework of the Pact on Migration and Asylum

The Pact on Migration and Asylum, adopted in June 2024 and set to enter into application on 12 June 2026, addresses the rights of LGBTIQ applicants within the asylum framework. The legal texts that collectively make up the Pact introduce or reinforce provisions relevant to the protection of applicants with diverse sexual orientation, gender identity, gender expression, and sex characteristics (SOGIESC).

Qualification Regulation (QR)

- Recital 40 of the QR closely mirrors Recital 30 of the recast QD, as both address ‘membership of a particular social group’ as a ground for international protection. However, the QR, in both Recital 40 and in Article 10(1), goes further by explicitly recognising not only sexual orientation and gender identity, but also *gender expression* as a relevant characteristic in defining a particular social group. 
- Recital 41 introduces new provisions on the assessment of circumstances in the country of origin, such as the existence of criminal laws targeting LGBTIQ persons, while Recital 42 places clear limits on the intrusiveness of questions or examinations related to sexual orientation and practices during credibility assessments, aligning with the CJEU judgment in [A., B., C. v Staatssecretaris van Veiligheid en Justitie](#) (C-148/13, C-149/13 and C-150/13, 2 December 2014).

Reception Conditions Directive (RCD)

- Article 24 of the RCD 2024 requires Member States to consider that applicants belonging to certain categories are more likely to have special reception needs. Lesbian, gay, bisexual, transgender, and intersex persons are explicitly identified among these categories. 
- Article 24 also defines applicants as having special reception needs if they have experienced trafficking, serious illness, mental disorders, torture, rape, or other severe forms of violence, including that motivated by sex, gender, race, or religion. As such circumstances frequently affect applicants with diverse SOGIESC, they should be recognised as having special reception needs.⁴

Asylum Procedures Regulation (APR)

- Recital 17 of the APR, which mirrors Recital 29 of the recast APD, considers sexual orientation and gender identity as characteristics that may warrant special procedural guarantees and adequate support, including sufficient time to ensure effective access to procedures and to present the elements needed to substantiate the international protection application.
- Article 13(7) stipulates that the case officer handling an asylum application must possess the professional capacity to assess cases involving LGBTIQ applicants, including adequate training and access to relevant resources, such as internal guidelines and country of origin information.⁵
- Article 13(9) stipulates that wherever possible, asylum authorities shall ensure that the interviewers and interpreters are of *the sex that the applicant prefers*. It is worth noting that Article 15(3b) of the recast APD differs slightly, stating that ‘wherever possible [Member States shall] provide for the interview with the applicant to be conducted by a *person of the same sex* if the applicant so requests’.⁶



Screening Regulation

- The Screening Regulation contains several provisions concerning persons with special needs, which may also encompass LGBTIQ individuals. Recital 26 provides that Member States must respect human dignity and refrain from discriminating against individuals also based on sexual orientation.
- Articles 12(5), 17(1e) and 18 stipulate that information gathered during the preliminary vulnerability check may be used for the vulnerability assessments foreseen in the new RCD and the APR, including elements related to sexual orientation.



Crisis Regulation

- Recital 37 of the Crisis Regulation states that vulnerable persons should be given primary consideration for relocation purposes, explicitly mentioning LGBTIQ applicants.
- Recital 41 states that, in situations of crisis or force majeure, the examination of international protection requests by applicants with special procedural needs and/or with special reception needs (such as LGBTIQ applicants) should be prioritised.
- Meanwhile, Article 11(7) stipulates that the same categories of persons shall be excluded from the border procedure.





2. CJEU standard-setting jurisprudence

In November 2013, the CJEU set crucial standards for the assessment of asylum applications based on sexual orientation. It interpreted in [X, Y, and Z](#) (C-199/12, C-200/12, C-201/12, 7 November 2013) the concept of membership of a particular social group within the meaning of Article 10(1)(d) of the recast QD. The court observed that a person's sexual orientation is a characteristic so fundamental to identity that the person should not be forced to renounce it and that, depending on the conditions in a country of origin, a specific social group may be a group whose members have sexual orientation as the shared characteristic.

The CJEU also held that the existence of criminal laws which specifically target homosexuals supports the finding that these persons must be regarded as forming a particular social group. However, the mere fact that homosexual acts are criminalised does not, in itself, constitute an act of persecution. Nonetheless, imprisonment provided for example as a sanction for homosexual acts which is applied in the country of origin constitutes an act of persecution.

The court further added that, when an applicant invokes the existence of legislation which criminalises homosexual acts in the country of origin, the national authorities have the obligation to examine all relevant facts concerning that country, including laws and regulations and the manner in which they are applied.

The CJEU added that applicants should not be expected to conceal their sexual orientation or reserve expression of their sexual orientation in their country of origin to avoid persecution. In that connection, requiring members of a social group, sharing the same sexual orientation, to conceal that orientation is incompatible with the recognition of a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it.⁷



3. Assessing the existence of persecution faced by LGBTIQ applicants

Same-sex relations are criminalised in 63 countries, with 12 of them imposing or allowing the death penalty.⁸ Most jurisdictions target sex between men, using terms like 'sodomy' or 'unnatural offences', while 41 countries also criminalise same-sex activity between women.⁹ In 14 countries, transgender people face criminalisation through laws against 'cross-dressing' or 'impersonation', and many more use vague public order offences to target them.¹⁰

In several countries, same-sex relations may not be explicitly criminalised, yet the state is either unwilling or unable to offer effective protection to LGBTIQ individuals. Legal safeguards and protective mechanisms are often inadequate or entirely lacking. As a result, LGBTIQ individuals may face rejection, discrimination and physical violence, whether from state or non-state actors, without access to meaningful protection. In such contexts, internal protection alternatives are effectively unavailable.

As highlighted by the CJEU in [X, Y, and Z](#), LGBTIQ applicants have been recognised as possessing a characteristic that is either immutable or so fundamental to human dignity that they should not be required to change it. This aligns with the concept of a 'particular social group' under Article 10(1d) of the QR.

3.1. Criminalisation and hostile environment towards LGBTIQ applicants

The existence of criminal legislation which targets LGBTIQ people, a hostile society or a combination of criminalising legislation and hostile private actors towards LGBTIQ applicants have led courts to directly provide international protection after the annulment of a negative asylum decision or refer cases back to the administrative authorities for further consideration. International protection was also granted where general criminal provisions were used for prosecutions of LGBTIQ persons instead of specifically targeted criminal laws (e.g. by the National Court of Asylum in France for an applicant from Türkiye).

Legislation targeting the LGBTIQ community has been examined in judgments concerning applicants from Georgia, Russia and Syria. The Council for Alien Law Litigation (CALL) in Belgium observed in the case of a Georgian woman claiming persecution due to her sexual orientation ([X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#), October 2024) that new country information indicated that the LGBTIQ community was one of the most vulnerable groups and homophobia was deeply rooted in Georgian society. It then noted that Georgia adopted the “law on family values and the protection of minors” in September 2024, prohibiting same-sex marriage, adoption by same-sex couples, gender reassignment surgery and medical treatments, so-called LGBTIQ propaganda in educational institutions, changing gender on official documents, public gatherings or demonstrations advocating LGBTIQ rights and expressions, and images in the media.

A failure to properly assess the escalating hostility and institutionalised discrimination faced by LGBTIQ individuals in Russia in light of the 2023 legislative changes directed against them was noticed by the Supreme Administrative Courts of both Bulgaria ([S.V.S. v State Agency for Refugees \(SAR\)](#)) and Lithuania ([E.M v Migration Department of the Ministry of the Interior of the Republic of Lithuania](#)) in 2024. The latter noted that the legislation passed in November 2023 designated the movement as an extremist terrorist organisation.

Considering legislation that criminalised same-sex relations and the state’s lack of protection for a Syrian applicant, the Federal Administrative Court of Switzerland noted that concealing sexual orientation, a persistent fear of being exposed and a lack of protection from state or private actors constituted unacceptable psychological pressure that justified the granting of refugee status ([A v State Secretariat for Migration \(SEM\)](#), August 2020). Although there is currently no information on the legal framework for LGBTIQ people that the Transitional Administration may establish after the fall of the Assad regime, other actors of persecution such as the Islamic State of Iraq and Levant (ISIL), the Syrian National Army (SNA) and other non-state actors such as family, community and society at large remain active. There is no evidence indicating that their approach towards the LGBTIQ community changed. Therefore, for people falling under this profile, a well-founded fear of persecution would generally be substantiated (see the EUAA [Interim Country Guidance: Syria](#), June 2025; [COI Report - Syria: Country Focus](#), July 2025; and [COI Report - Syria: Country Focus](#), March 2025).

Furthermore, the implementation of criminal sanctions and widespread social stigma were also highlighted concerning applications by Cameroonian nationals claiming persecution due to sexual orientation. The International Protection Administrative Court (IPAC) in Cyprus granted refugee status, noting that same-sex relations were criminalised in Cameroon and punishable by imprisonment and fines, that LGBTIQ individuals faced widespread stigma, harassment and violence, including threats of “corrective” rape, and the authorities were unwilling to offer effective protection ([M.M.B.N. v Republic of Cyprus through the Asylum Service](#), February 2025). The court concluded that LGBTIQ persons in Cameroon may

constitute a particular social group, as they share a common immutable and intrinsic characteristic and are perceived by both the state and society as a distinct group.

Reflecting the combined impact of criminalisation of same-sex relations, widespread hostility and the authorities' failure to provide effective protection, two German courts granted refugee status to homosexual applicants from Ghana and The Gambia, concluding that they faced a well-founded fear of persecution from both state authorities and non-state actors. The German Regional Administrative Court of Hamburg noted in [Applicant v Federal Office for Migration and Asylum \(BAMF\)](#) (February 2023) that male homosexuality is a crime punishable by imprisonment under Ghanaian law, and despite there being no recent convictions, reports included police harassment and extortion attempts as well as COI that homosexual acts are highly condemned by society, including through violent attacks and the Ghanaian security forces are unwilling to protect the LGBTIQ community. The court thus provided refugee status.

Similarly, the Higher Administrative Court of Baden-Württemberg in Germany granted refugee protection to an applicant from The Gambia in [Applicant v Federal Office for Migration and Asylum \(BAMF\)](#) (July 2022). Referring to the EUAA's [Country of Origin Information Report - The Gambia Country Focus](#) (2 December 2017), the court held that men in The Gambia, for whom homosexuality is a significant part of their sexual identity, were at risk of nationwide persecution in the form of a combination of different measures, such as threat of punishment by the Gambian state, discrimination, exclusion from social life, humiliation and violent attacks.

The combined effect of criminalisation of same-sex relations between adults through laws that were enforced, pervasive societal hostility toward LGBTIQ persons and the failure of state authorities to provide protection constituted key indicators of persecution for the Austrian Federal Administrative Court, which granted refugee status to an applicant from Lebanon in [X v Federal Office for Immigration and Asylum \(BFA\)](#) (January 2025). The court recognised a well-founded fear of persecution based on the applicant's sexual orientation and found credible his criminal conviction under Article 534 of the Lebanese Penal Code for acts deemed "against the laws of nature" or "causing public annoyance", including offenses related to sexual conduct. It held that this well-documented conviction for same-sex acts constituted compelling evidence of the applicant's sexual orientation. The judgment noted that while widespread prosecution was rare, LGBTIQ individuals faced occasional harassment and violence from security forces and religious groups, with no government action to prevent discrimination.

Similarly for Senegalese applicants, the Tribunal of Bologna in Italy provided refugee protection on grounds of sexual orientation in [Applicant v Territorial Commission for the Recognition of International Protection \(Bologna\)](#) (July 2021), as homosexuality is considered a crime punished by imprisonment according to the Senegalese penal code and it is socially condemned. The court noted that, following the death of the applicant's father and the family's financial difficulties, the applicant began engaging in sex work with foreign male tourists, for which his family threatened him when they discovered these activities. The court further considered that the applicant was assaulted by his brothers, prompting his flight from Senegal to avoid being killed or persecuted on account of his homosexuality. The court ruled that the applicant's claim that he would face persecution from his family was credible and he would not be protected by the authorities in Senegal. For the same profile of applicants, the Civil Court of Florence in Italy found that the region of Casamance in Senegal should not be considered a safe flight alternative as it was declared unsafe for members of the LGBTIQ community and there was also ongoing internal low-intensity conflict ([Applicant v Ministry of the Interior](#), January 2020).

Finally, a systematic policy of persecution against the LGBTIQ community in Tanzania, exemplified through the criminalisation of LGBTIQ people and societal hostility faced by this group, was examined by the Civil Court of Rome in Italy, which granted refugee protection in [C.U.I. v Ministry of the Interior](#) (February 2024).

Even where targeted criminalisation of LGBTIQ was not confirmed in the country of origin, the use of general provisions for prosecutions was sufficient to provide refugee protection. In [M.F. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)](#), the National Court of Asylum (CDNA) in France granted refugee protection in November 2022 to a Turkish national who had a well-founded fear of persecution based on sexual orientation. The court noted that, although sexual relations between persons of the same sex were not expressly criminalised in Turkish legislation, general provisions were used to prosecute, on various grounds, homosexuals and more broadly members of the LGBTIQ community. The court noted that while homosexuality was not illegal in Türkiye, provisions of the Criminal Code criminalising indecency, obscenity, public exhibitionism or offenses against public morality enabled discriminatory criminal targeting of individuals on the grounds of their homosexuality. Furthermore, it noted that these provisions were regularly applied by Turkish courts to reduce the sentences of perpetrators or murderers of LGBTIQ persons, treating the sexual orientation or gender identity of the victim as a mitigating circumstance for the offender's criminal responsibility.

3.2. Unwillingness or inability of state authorities to provide effective protection to LGBTIQ individuals

The absence of formal criminalisation by a state in national legislation does not automatically ensure effective protection for LGBTIQ persons. Persecution and serious harm may also arise from private actors, societal hostility or discriminatory practices by rogue officials, and a state's unwillingness or inability to provide adequate protection in such circumstances. National courts have granted international protection when they found that there was no effective access to protection from the government from persecution.

The combination of serious harm inflicted by family members due to gender identity and sexual orientation and the lack of effective protection from national authorities led the District Court of The Hague seated in Zwolle to grant international protection to two LGBTIQ nationals from Türkiye ([Applicants v State Secretary for Justice and Security](#), June 2024). The court emphasised that the risk of persecution from non-state actors, especially in light of credible episodes of persecution described by the applicants, should be presumed to persist upon a return to their country of origin particularly in a context where Turkish authorities would not provide sustainable and effective protection against harm from family members.

Although European and national courts recognise that persecution and serious harm can stem from private actors, they also emphasise that applicants must demonstrate both their personal exposure to the risk and the state's failure to provide protection, rather than relying solely on adverse legislation or societal discrimination. This principle was reaffirmed by the Tallin Administrative Court of Estonia in [X v Police and Border Guard Board \(Politsei- ja Piirivalveamet, PBGB\)](#) (October 2023). The court dismissed a Russian applicant's appeal clarifying that Russia's unfavourable treatment of same-sex relationships, including prohibitions on marriage and adoption, and the increased difficulties for LGBTIQ individuals, did not alone constitute grounds for granting international protection. The court further noted that the applicant did not personally experience incidents in Russia related to his sexual orientation. Although he reported an incident of bullying at school, the court concluded that

this did not provide sufficient grounds for granting international protection. Furthermore, he was not an activist of the LGBTIQ community, and there were no reasons to believe that he could be liable for LGBTIQ propaganda upon a return.

Persecution related to sexual orientation or gender identity can extend to those advocating for LGBTIQ rights, as illustrated by the District Administrative Court of Latvia in [A v Office of Citizenship and Migration Affairs of the Republic of Latvia](#) (October 2023). The court upheld the appeal of an Uzbek citizen and granted him subsidiary protection, noting that he had defended members of the LGBTIQ community who were wrongfully convicted and subjected to unlawful treatment by Uzbek law enforcement, including torture during interrogations. The court found that, due to his professional activities, the applicant faced a real risk of serious harm from the Uzbek authorities. It further concluded that he could be subjected to substantial harm if investigated or imprisoned in Uzbekistan, and his country of origin was unable to provide him with the necessary protection.

Two German courts highlighted the inability of national authorities to provide effective protection and granted refugee status to a Georgian and an Iraqi national on the grounds of their sexual orientation. The Regional Administrative Court of Halle in [Applicant v Federal Office for Migration and Refugees \(BAMF\)](#) (August 2023) emphasised that country of origin information on the situation in Georgia showed that LGBTIQ persons were subject to rejection, discrimination and physical violence. It further held that the Georgian state was neither willing nor able to effectively protect homosexual and transgender people from non-state persecution. Furthermore, the Regional Administrative Court of Leipzig in [Applicant v Federal Office for Migration and Asylum \(BAMF\)](#) (January 2023) relied on updated COI, finding that homosexuals in Iraq were subjected to human rights violations and discrimination which were tantamount to a serious violation of fundamental rights. The court noted that LGBTIQ applicants were at risk of physical or psychological violence and state authorities, or other organisations, were not willing to provide protection.

The lack of effective protection against acts of persecution targeting LGBTIQ individuals was highlighted by the Supreme Court of Slovenia, which granted refugee protection to a Serbian applicant on grounds of his sexual orientation in [Ministry of the Interior v Applicant](#) (June 2021). The court noted that the applicant had suffered physical violence, severe psychological violence in the form of death threats, and repeated verbal violence and humiliation because she was transgender. Based on COI, it further considered that transgender people in Serbia represented a particular social group, and the applicant's statements were considered consistent with information about the situation of LGBTIQ people in the country. The court also determined that applicants who identified as LGBTIQ were not provided with adequate protection throughout the country and that they could be persecuted by non-state actors due to the ineffectiveness of the law enforcement. This judgment from June 2021 predates the current practice of 20 EU+ countries, including Slovenia, which designate Serbia as a safe country of origin (see EUAA's Situational Update on the [Overview of the Implementation of Safe Country Concepts](#), 24 July 2025).

Widespread discrimination and homophobia was highlighted by the CNDA in [M.H. v French Office for Refugees and Stateless Persons \(OFPRA\)](#) (October 2020), which granted refugee protection to an LGBTIQ national from Algeria. The court held that COI reports revealed that homosexuality constitutes a criminal offence punishable by imprisonment, and although the law may not be applied, LGBTIQ applicants were subjected to discrimination and societal hostility. In addition, Algerian state actors did not protect the LGBTIQ community.

Several national courts ruled on cases concerning applicants coming from Latin America who claimed that they feared persecution due to the inaction of the authorities in their countries of origin. Belgium, Luxembourg and Spain issued rulings concerning Colombian applicants belonging to the LGBTIQ community. Both Luxembourg and Spain found that the Colombian state could be considered a protection agent, and the national authorities were able and willing to provide the applicants protection. Meanwhile, CALL in Belgium in [*X v Commissioner General for Refugees and Stateless Persons \(CGRS\)*](#) concluded that there was no effective access to protection from the government for persecution. However, it is worth noting that the Belgian decision dates back to 2021, potentially indicating a shift in recent years in how cases involving LGBTIQ claims of persecution made by Colombian applicants are assessed. In [*A1 v Minister of Immigration and Asylum*](#) (June 2025), the Administrative Tribunal of Luxembourg rejected the application for international protection of an LGBTIQ national from Colombia, finding that there were no indications that Colombian authorities were unwilling or unable to provide the applicant protection following the applicant's allegation of online and telephone threats. Furthermore, the court noted that the particular facts raised by the applicant did not amount as acts of persecution or serious harm.

Similar conclusions were reached by the High Court of Spain in [*Jose Carlos v Minister of the Interior*](#) (September 2022), which emphasised that Colombia was one of the countries that made the greatest progress in recognising the rights of LGBTIQ people in Latin America. The court found that, although the Revolutionary Armed Forces of Colombia (FARC) were more likely to target members of the LGBTIQ community, LGBTIQ applicants from FARC regions must still demonstrate an individual risk of persecution. The court further considered the applicant's allegations generic and imprecise, and noted that the acts of persecution described by the applicant were not of sufficient severity to constitute a serious violation of fundamental rights.

Similarly, the Dutch Council of State examined the asylum request of a national of Cuba ([*Applicant v State Secretary for Justice and Security*](#), July 2018) and it ruled that the situation of LGBTIQ in the country did not amount to persecution and there had been significant improvements compared to previous years.

Several national courts have ruled in cases involving transgender applicants, assessing both the enforcement of legal mechanisms in third countries to safeguard their rights and the extent of widespread discrimination and hostility they might face. In this regard, CALL in Belgium upheld a negative decision for a transgender applicant from Chile in [*Applicant v Commissioner General for Refugees and Stateless Persons \(CGRS\)*](#) (April 2024), finding that Chile had adequate legal protections in place to defend the rights of LGBTIQ individuals, including transgender individuals. The court further noted that the incidents cited by the applicant did not meet the threshold for persecution. Meanwhile, the CALL in [*X v Commissioner General for Refugees and Stateless Persons \(CGRS\)*](#) (June 2021) recognised particular vulnerabilities for LGBTIQ individuals in El Salvador, emphasising that LGBTIQ applicants in the country were subjected to persecution by gang members and highlighting the absence of effective protection from the government. In France, the CNDA granted refugee protection in [*G. v French Office for the Protection of Refugees and Stateless Persons \(OFPRA\)*](#) (December 2021) to a Venezuelan national who was a victim of serious abuses by members of the national guard after his arrest in an opposition demonstration. The court noted that the abuse was amplified by the discovery of the applicant's sexual orientation.

3.3. Persecution based on sexual orientation and gender identity resulting in international protection on the ground of membership of a particular social group

Various decisions providing protection on the ground of membership of a particular social group based on sexual orientation were pronounced in the last two years by the CNDA in France for applicants from Burkina Faso, Guatemala, Myanmar, Sri Lanka and Togo, in which the court emphasised societal prejudice, family or community violence, and inadequate state protection which establishes a well-founded fear of persecution. Between 2020 and 2023, the CNDA also granted refugee protection to several LGBTIQ applicants from countries, including Afghanistan, Benin, Brazil, Chad, Iran, Iraq, Lebanon, Tanzania and Tunisia, based on membership in a particular social group under the 1951 Refugee Convention, highlighting both a risk of harm coming from multiple actors and inadequate state protection. At the same time Italy ruled in two cases where applicants from Nigeria and The Gambia qualified for protection on the basis of membership in a particular social group due to their sexual orientation ([Applicant v Ministry of the Interior](#), November 2022 and [Applicant v Territorial Commission for the Recognition of International Protection \(Verona\)](#), April 2022). More recently, IPAC in Cyprus granted refugee protection to a national of Cameroon on grounds of her bisexual orientation, finding that LGBTIQ persons in Cameroon may constitute a particular social group, as they share a common intrinsic characteristic and are perceived by both the state and society as a distinct group ([M.M.B.N. v Republic of Cyprus through the Asylum Service](#), 5 February 2025).

The latest CNDA judgment ([M.C. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#), March 2025) on this matter concerned an LGBTIQ national from Guatemala who was a victim of attacks and threats in his country of origin because of his homosexuality. The court recognised the existence of a particular social group of homosexual people suffering discrimination, serious violence and ill treatment in Guatemala, noting that there were real and persistent threats on the fundamental rights of sexual minorities and the country had no legal framework ensuring effective protection for LGBTIQ people.

The CNDA also found that homosexual persons constitute a particular social group in Sri Lanka ([M.K. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#) December 2024) after considering legal provisions which criminalise same-sex sexual relations, arbitrary arrests and detention suffered by members of the LGBTIQ community, and attacks and hate crimes to which they are subjected within Sri Lankan society. Similarly, the CNDA recognised the existence of a particular social group, homosexual persons, in both Togo ([M.N. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#), July 2024) and Myanmar ([M.A. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#), November 2023), finding that LGBTIQ individuals were subjected to violence, discrimination and harassment, exacerbated by the failure of national authorities to provide effective protection. Regarding the situation in Myanmar, the court further noted that a national law criminalising homosexuals existed in Myanmar, and that available country-of-origin information showed that the relevant provisions were enforced.

Although in July 2024 homosexuality was not criminalised in Burkina Faso, the CNDA recognised homosexual individuals as a particular social group, noting that they faced stigmatisation, discrimination, social violence, mistreatment and humiliation from members of the security forces, the police and society at large ([M.G. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#), July 2024), while noting that a bill aimed at prohibiting and criminalising homosexuality was adopted by the Council of Ministers on 10 July 2024.

A risk of persecution may stem not only from national authorities, but also from individuals (through honour crimes) and health institutions (with gender reassignment surgery and conversion therapy), as observed by the CNDA in [M.A. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#) (July 2023). The court granted refugee protection to an Iranian national due to the risk of persecution by the national authorities and his father if returned to Iran due to his sexual orientation. The court recalled that homosexuality was criminalised in Iran and could be punished by flogging, detention and the death penalty. It further added that such persecution was not carried out solely by the national authorities but also by private actors, as in the applicant's case. The court concluded that homosexual persons in Iran constituted a particular social group within the meaning of Article 1(A2) of the 1951 Refugee Convention.

Pointing to the prosecution of members of the LGBTIQ community based on general legal provisions, practices of discrimination and serious violence going as far as torture and assassination by armed groups, the CNDA granted refugee protection to an Iraqi national in [M.T. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#) (November 2022). The court considered that the applicant was exposed to violence suffered within the family before his departure from Iraq as well as to the more general risk linked to the serious violence perpetrated by various sectors in the Iraqi society against members of the LGBTIQ community. The court thus determined that the applicant had a well-founded fear of being persecuted since he belonged to the social group of homosexuals in Iraq.

Similarly, the CNDA granted refugee protection to a Brazilian national who was persecuted by his relatives and society because of his homosexuality, observing that homosexual people constituted a particular social group in Brazil likely to be exposed to a risk of persecution ([M.C. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#), November 2021). The criminalisation of same-sex relations, coupled with discrimination and stigmatisation, was a key factor in the CNDA's assessment of a Tunisian applicant ([M.R. v Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#), October 2022), and a Chadian applicant ([M.M.A. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#), June 2022).

Furthermore, the CNDA granted refugee protection to a Tanzanian applicant, emphasising the severe penalties of up to 30 years' imprisonment under Zanzibar's Criminal Code for homosexual offences and recalling its prior recognition of homosexual persons in Tanzania as a particular social group ([M.S. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#), January 2022). Although legislation criminalising homosexuality may exist, it is not always enforced by the courts, as highlighted by the CNDA in [M.C. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#) (May 2020), when examining the asylum application of a Lebanese national. Nevertheless, due to *de facto* discrimination, the court found that homosexuals in Lebanon were a particular social group at risk of persecution, and there was a lack of effective state protection for victims of violent homophobic acts.

The well-founded fear of being persecuted due to belonging to the particular social group of homosexual people in Afghanistan was addressed in [M.A. v French Office for the Protection of Refugees and Stateless Persons \(OFPPRA\)](#) (June 2022) when the CNDA recognised refugee status for an Afghan identified as homosexual by the inhabitants of his locality. Citing EUAA's [Country of Origin Information Report Afghanistan Individuals targeted under societal and legal norms](#) (December 2017) and [Afghanistan Country focus. Country of Origin Information Report](#) (January 2022), the court noted that he had a well-founded fear of being stigmatised due to his belonging to a particular social group.

Finally, the CNDA held that women belonging to the LGBTIQ community in Benin constituted a particular social group who had a well-founded fear of persecution (*T. v French Office for the Protection of Refugees and Stateless Persons (OFPRA)*, February 2021). Although homosexuality was not criminalised in Benin, the court noted that LGBTIQ people were not afforded adequate state protection against discrimination.



4. Credibility and evidence assessment for applicants with SOGIESC-related claims

Evidence in support of credibility may be difficult to gather for LGBTIQ applicants because it involves a characteristic fundamental to the identity of the person, “inner” or ‘hidden’ thoughts, outlooks and states of being’.¹¹ The assessment of credibility of LGBTIQ applicants may be done based on documentary evidence available in the file or, in the absence of documents, based on the core material facts of the application (see the EUAA’s [Judicial Analysis on Evidence and Credibility Assessment in the Context of the Common European Asylum System](#), 17 February 2023).

The CJEU provided guidance in three judgments on the methods of assessment to be used by national authorities when examining the credibility of a declared sexual orientation, on the late disclosure of homosexuality as a new element or fact in subsequent applications for international protection, as well as on the use of expert reports to assess the credibility of claims based on sexual orientation. Courts have implemented these standards at the national level, while adding to the growing body of jurisprudence by, for instance, examining the use of social media activity as evidence of SOGIESC claims.

As individuals seek international protection based on SOGIESC, the need for COI on the situation of LGBTIQ persons has grown, as highlighted in the [European Parliament's 2014 resolution on the EU roadmap against homophobia](#), which urged asylum authorities to systematically document and provide such information to decision-makers.¹² The value of COI was highlighted in national jurisprudence when assessing the legal, political and societal conditions in the country of origin, to determine if persons belonging to the LGBTIQ community risk persecution solely because of their sexual orientation.

National courts have also examined the standard of proof and the burden of proof for SOGIESC applications, noting also the duty of the judge to order *ex officio* additional investigations considered appropriate in order to verify the reliability of an LGBTIQ applicant’s story and the evidence in the file.

4.1. CJEU guidance on credibility and evidence assessment for LGBTIQ protection claims

The CJEU, in a Grand Chamber judgment, ruled on credibility assessment of a declared sexual orientation that the declarations made by an applicant asserting a particular sexual orientation are only the starting point in the assessment made by the authorities, which must then explore the assertion while respecting the applicant’s dignity and private life (*A., B., C. v Staatssecretaris van Veiligheid en Justitie*, C-148/13, C-149/13 and C-150/13, December 2014).

The CJEU gave the following guidance on methods of assessment to be used by national authorities:

- 1) The assessment of applications for asylum on the basis solely of stereotyped notions associated with homosexuals does not allow authorities to take account of the individual situation and personal circumstances of the applicant. The inability of the applicant to answer such questions is not, in itself, a sufficient reason for concluding that the applicant lacks credibility.
- 2) While national authorities are entitled to carry out, where appropriate, interviews to determine the facts and circumstances on the declared sexual orientation of an applicant, questions on details of the applicant's sexual practices are contrary to the fundamental rights guaranteed by the EU Charter and, in particular, to the right to respect of private and family life.
- 3) The court clearly stated that submitting an applicant to 'tests' to demonstrate homosexuality or requiring them to produce evidence (e.g. films of their intimate acts) does not necessarily have probative value and would infringe human dignity as guaranteed by the EU Charter.
- 4) Considering the sensitive nature of information that relates to personal identity and a person's sexuality, the authorities cannot conclude that the person lacks credibility solely based on the fact that the person did not declare their homosexuality at the outset due to reticence in revealing intimate aspects.

This CJEU ruling was implemented by national courts which have highlighted the central role of the credibility assessment in evaluating LGBTIQ asylum claims, particularly where personal accounts form the primary basis for establishing a persecution risk.

For instance, referring to the CJEU ruling in [A., B., C. v Staatssecretaris van Veiligheid en Justitie](#), the Appeals Authority in Greece highlighted the importance of respect for private and family life in the assessment of an asylum application lodged by an Iranian national on the grounds of homosexuality ([Applicant v Asylum Office](#), February 2020). The court found that the procedure for assessing the credibility of the applicant's claim and the detailed questions concerning his sexual activities and motives were contrary to Articles 3 and 7 of the EU Charter as the nature and intrusiveness of the questions infringed on the integrity of the individual, violating the person's private and family life.

Similarly in [Applicant v Ministry of the Interior](#) (January 2021), the Supreme Court of Cassation in Italy held that the assessment of credibility cannot be based on stereotypical notions associated with homosexuality and, in particular, on the failure of an applicant to answer stereotypical questions on homosexuality. The difficulties an applicant has in telling the intimate details of his story was emphasised by the Supreme Court of Cassation in Italy, which annulled a decision of a lower court, noting that the assessment of credibility provided by that court was based on secondary details and stereotyped notions connected to the sexual orientation of the applicant, and it did not consider the difficulties the applicant had in recounting intimate details ([Applicant v Territorial Commission for the Recognition of International Protection \(Bari\)](#)).

The Supreme Administrative Court in Lithuania stressed that the applicant's fear of persecution due to his sexual orientation must be assessed in light of his lived experience and rejected the notion that an inability to articulate terms related to homosexuality or conform to

a ‘universal’ standard of LGBTIQ self-identification could undermine the legitimacy of an asylum claim ([Applicant v Migration Department of the Ministry of the Interior of the Republic of Lithuania](#), January 2025). Meanwhile, the High Court of Ireland rejected the appeal of a national from Ghana seeking international protection on grounds of sexual orientation, highlighting that the first instance court had been particularly careful to avoid stereotypical assumptions and conjecture and had conducted a proper and thorough credibility assessment ([F.B.C. v International Protection Appeals Tribunal & Anor](#), June 2024).

Regarding assumptions, the Court of the Hague seated in Hertogenbosch emphasised that authorities should avoid making assumptions about LGBTIQ applicants and recognised that individuals may face significant barriers in disclosing their sexual orientation, regardless of their educational background or personal circumstances ([Applicant v State Secretary for Justice and Security](#), July 2021). The court found that the State Secretary erred in basing its credibility assessment on the way the applicant, an LGBTIQ Ugandan national, chose his words and the fact that the applicant, being highly educated, should have described his feelings and experiences in more detail. In addition, the court noted that, when assessing claims, the determining authority should not look at the way one applicant describes sexual orientation compared to similar applicants.

The presence or absence of specific stereotypical behaviours should not be assumed when evaluating a person’s sexual orientation, as emphasised by IPAC in [Applicant v Republic of Cyprus through the Asylum Service](#) (October 2024), which expressed reservations about the use of the Difference-Shame-Stigma-Harm (DSSH) model in the assessment of the SOGIESC claim of a Cameroonian bisexual applicant. The court noted that such model must be applied with sensitivity to cultural differences and individual experiences, as each person’s response to their sexual orientation is shaped by their personal history, culture and socio-economic context. Consequently, in cases where there is absence of specific elements or emotions related to shame or stigma, the evaluation following DSSH guidelines may undermine the credibility of the applicant. In this case, the court proceeded to evaluate the statements of the applicant not following the DSSH model, but common credibility indicators, stressing that there are no universal characteristics or qualities that characterise LGBTIQ people.

Doubts resulting from inconsistencies in the applicant’s account can be dispelled, as noted by the Regional Administrative Court of Cottbus in Germany, which decided that the submissions on events made by an Algerian national who claimed persecution due to his homosexuality, were credible as they were comprehensive and the applicant was willing to correct any inconsistencies during the interview ([Applicant v Federal Office for Migration and Refugees \(BAMF\)](#), February 2023).

National courts have also noted that ignorance about LGBTIQ groups does not necessarily indicate the applicant’s lack of credibility. As the Tallin Court of Appeal of Estonia highlighted in a case concerning an applicant from Namibia, not everyone wants their sexual orientation to be made public, and the applicant had good reason to fear arrest in Namibia considering that sexual intercourse between two men was criminalised and same-sex relations were not tolerated in the society, so it could be understood why the applicant’s statements were not very detailed ([XX v Police and Border Guard Board](#), November 2019).

Finally, the Supreme Court of Cassation in Italy ruled that it is not possible to consider the applicant to be unreliable by assuming *a priori* that claiming persecution based on homosexuality was the result of a defensive choice aimed only at obtaining international protection ([Applicant v Ministry of the Interior](#), July 2020). The court highlighted that it is not

possible to consider that documents submitted by the applicant were false from the mere fact that, in a certain territory of the country of origin (in this case in Nigeria), the use of false documents was increasing. To determine the credibility in this case, the court noted that the judge could have requested *ex officio* a medical-psychological expert report.

4.2. Late disclosure of SOGIESC in asylum procedures

Late disclosure of SOGIESC in the asylum procedure should not, in itself, negatively affect the assessment on the applicant's credibility. LGBTIQ applicants often face marginalisation, discrimination, stigma and violence in their country of origin, which may prevent them from disclosing their sexual orientation and gender identity. Applicants may also not be aware that their belonging to the LGBTIQ community can constitute ground for international protection. Moreover, the personal circumstances of the applicant, such as their level of education, may also affect their knowledge and understanding of the importance of disclosing their sexual orientation and gender identity within the asylum procedure.

Recital 28 of the QR addresses the issue of late disclosure, stating that "the determining authority should not conclude that the applicant lacks credibility merely because the applicant did not rely on his or her declared sexual orientation on the first occasion he or she was given to set out the ground for persecution, unless it is evident that the applicant merely intends to delay or frustrate the enforcement of a decision resulting in his or her return".

The CJEU ruled on the issue of late disclosure of sexual orientation in the context of subsequent applications under Article 40 of the recast APD in [XY](#) (C-18/20, 9 September 2021), while national courts have noted that late disclosure should not undermine the applicant's credibility as such a delay is understandable and justified considering that fear, shame or ignorance may prevent an applicant from timely disclosing their sexual orientation.

4.2.1. CJEU interpretation of the concept of new elements or facts in subsequent SOGIESC applications for international protection

In [XY](#) (C-18/20, 9 September 2021), the CJEU ruled on the late disclosure of homosexuality as a new element or fact in subsequent applications under Article 40 of the recast APD. At the national level, the Federal Administrative Court in Austria ruled that an Iraqi applicant failed to disclose his homosexuality during the investigation of the first application for international protection and that the *res judicata* principle prohibits the authorities from considering the factual element. Following a referral to the CJEU for a preliminary ruling, the European court ruled that Article 40(2) and (3) must be interpreted in the sense that the notion of 'new elements or facts' which "have appeared or have been presented by the applicant" includes elements or facts occurring after the definitive closure of the procedure having as its subject the previous application for international protection as well as the elements or facts which already existed before the closure of this procedure, but which were not invoked by the applicant.

The court also noted that the national provision which transposed Article 40 of the recast APD included an additional criterion which was not provided in the directive and that is a time limit of 2 weeks to submit the subsequent application, calculated from the moment that the person becomes aware of the new fact for reopening the case. The court held that Article 40 does not authorise the Member States to fix time limits for the lodging of a subsequent application. Finally, Article 40(4) must be interpreted as meaning that it does not allow a Member State which did not transpose this provision to refuse to examine the substance of a subsequent

request, when the new elements or facts relied on existed at the time of the previous proceedings and were not presented within the framework of this procedure due to a fault attributable to the applicant.

4.2.2. National court rulings on late disclosure of SOGIESC in asylum procedures

In 2025, the Austrian Federal Administrative Court issued two rulings on the late disclosure of sexual orientation in asylum claims, finding that late disclosure should not undermine the applicant's credibility and recognising the sensitive nature of revealing one's sexual orientation. The court in [Applicant v Federal Office for Immigration and Asylum \(BFA\)](#) (June 2025) ruled on the appeal of a Cameroonian national, emphasising that although delayed disclosure does not, in itself, undermine credibility, credibility assessments must consider both the timing of disclosure and the overall quality of the evidence. Earlier, in January 2025, the same court annulled a negative decision for a national of Iraq who disclosed his sexual orientation in his subsequent application ([X v Federal Office for Immigration and Asylum \(BFA\)](#)), further affirming that the mere fact that a person did not immediately disclose their sexual orientation does not, given the sensitive nature of the issue, undermine the credibility of such a claim.

Similarly, CALL in Belgium determined that the timing of disclosing sexual orientation should not, in itself, undermine an applicant's credibility. In [X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#) (August 2024), CALL found that the CGRS failed to carry out a diligent assessment of the application because it did not consider that factors such as shame or mental health may delay disclosure of sexual orientation, and that such delays do not automatically undermine credibility. It noted that the applicant's past as a nun may have contributed to feelings of shame and the prevailing societal rejection of same-sex relationships in Uganda could significantly influence how individuals discover and express their sexual identity. As a result, CALL concluded that there was insufficient evidence for a proper evaluation of the claim and requested that the CGRS undertake a more thorough examination. Likewise, in [X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#), (April 2023), CALL stated that it cannot be inferred that an applicant lacks credibility from the fact that he did not immediately declare his homosexuality in the initial application and showed reluctance to disclose intimate details. In this case, CALL annulled an inadmissibility decision rejecting a subsequent application by an Iraqi national, who first raised his sexual orientation in his fifth request and submitted supporting evidence in his ninth subsequent application.

Following a similar line of reasoning, the Federal Administrative Court in Switzerland held that it should not be assumed that the facts about the homosexual orientation of an applicant from Eritrea were not credible as they were not declared at the first available opportunity to present the grounds of persecution ([A v State Secretariat for Migration \(SEM\)](#), July 2019). The court noted that the applicant's perceived fear of suffering significant disadvantages under refugee law due to his sexual orientation or of being arrested and detained again was understandable and justified.

4.3. CJEU ruling on the use of expert reports to assess the credibility of SOGIESC protection claims

The CJEU ruled on the use of expert reports and projective personality tests to assess the credibility of claims based on sexual orientation in [F v Office for Immigration and Citizenship \(Bevándorlási és Állampolgársági Hivatal\)](#) (January 2018). The CJEU held that Article 4 of the

recast QD does not preclude the national authorities from requesting an expert's report in first or second instances, to assess facts and circumstances related to the declared sexual orientation of an applicant. However, two limitations were highlighted by the CJEU: 1) that the procedures for the report must be consistent with the EU Charter, specifically human dignity and the right to private and family life; and 2) the decision should not be solely based on or bound by the conclusions of the expert's report when assessing the applicant's statements relating to sexual orientation.

Notably, the court held that the use of a psychologist's expert report based on projective personality tests with the purpose of providing an indication of the sexual orientation of an applicant is contrary to Article 4 of the recast QD, read in conjunction with Article 7 of the EU Charter, as such tests seriously and disproportionately impact an applicant's private life.

4.4. Use of social media as evidence of SOGIESC claims

Several national courts have considered applicants' social media activities as evidence of sexual orientation, gender identity, gender expression or activism. Online interactions may support claims of belonging to the LGBTIQ community, and threats or hate speech directed to the applicant on social media can serve as evidence. However, applicants might also refrain from exposing themselves online as they may fear that their online profiles are monitored by state authorities or hostile groups in their country of origin. Therefore, courts consider social media activity (or lack thereof) in the broader context of the applicant's narrative and COI.

The impact of social media activities on asylum claims was assessed by the Danish Refugee Appeals Board which found that the applicant's social media activities in support of the LGBTIQ community had limited visibility and impact, and he was unable to provide evidence of any instances of prosecution or targeting of individuals who participated in his activities ([Applicant v Danish Immigration Service \(Udlændingestyrelsen, DIS\)](#), May 2025). The board examined the applicant's fear of imprisonment due to his active involvement in the LGBTIQ community in Russia, noting his activity on YouTube and other social media, which contained LGBTIQ-related material, particularly focusing on a subculture associated within that community. Nonetheless, it recognised that LGBTIQ individuals often faced stigma and discrimination, it stated that being homosexual in Russia was still legal and the applicant had not come into conflict with the Russian authorities because of his sexual orientation. The board found it unclear whether the applicant's online content would qualify as prohibited propaganda in Russia and noted that the penalty would be only a fine or a short custodial sentence. The board further considered that the applicant's social media activities had limited visibility and reach, and he had published content under a pseudonym.

Similarly, the Dutch Council of State ruled on the role of social media as evidence of sexual orientation, gender identity, gender expression or activism allowing the appeal of an Iranian national belonging to the LGBTIQ community ([Applicant v State Secretary for Justice and Security](#), June 2022). The court noted that her Instagram activity concerning her sexual orientation and apostasy from Islam, coupled with the threats she had received online, needed further investigation. The court emphasised that such social media activities, even when conducted from abroad, could expose individuals to criminal prosecution or other forms of persecution upon return. The Council of State further noted that the Iran General Official Report of February 2021 mentioned that LGBTIQ people ran a disproportionate risk of being victims of reprisals from family, friends and others who consider homosexuality a violation of family honour.

4.5. Country of origin information (COI) assessing the legal, political, and societal conditions of LGBTIQ applicants

COI reports are extremely relevant to assess the legal framework and social conditions faced by LGBTIQ persons in their countries of origin, but also for assessing the persecution of individuals perceived as LGBTIQ, even if they identify as heterosexual. In this context, EUAA COI reports have had a significant role assessing asylum claims of LGBTIQ applicants.

Reflecting on the significant role of COI in assessing the legal, political and societal situation of LGBTIQ applicants in their country of origin, the Belgian CALL dismissed the appeal of a Brazilian national, finding no COI indicating that former trans women who, after undergoing restorative surgery, and while living again as men, risked persecution or equivalent discrimination if returned to Brazil ([Applicant v Belgian State represented by the State Secretary for Asylum and Migration](#), January 2025). Although discrimination and violence against LGBTIQ individuals remained problematic in Brazil, CALL considered that relevant COI did not show that homophobic violence and discrimination in the country were systematic, nor that every person belonging to the LGBTIQ community risked persecution solely because of their sexual orientation.

The Council of State in the Netherlands also highlighted the relevance of COI to assess asylum claims in [Applicant v State Secretary for Justice and Security](#) (June 2024), finding that while trans women in Colombia faced significant challenges, they were not subject to systematic persecution. The court noted Colombia's progressive legal framework, which granted rights to the LGBTIQ community, including trans individuals. It then emphasised that a thorough individual assessment, combined with a careful review of available country information, was essential for a proper evaluation of such claims.

COI constitutes an essential element in assessing the persecution of LGBTIQ applicants as well as individuals perceived as such, even if they identify as heterosexual. The High Court of Ireland addressed this issue in a case involving a Nigerian applicant who alleged persecution by homophobic neighbours targeting him and his flatmates on the assumption that they were homosexual ([O v Minister for Justice and Equality and Others](#), November 2019). The court found that IPAT wrongly assessed country of origin information, highlighting that according to up-to-date COI, the risk of persecution in Nigeria extended not only to persons who identify as homosexual but also to those perceived as such, given the widespread homophobia in the country. The High Court quashed the decision holding that IPAT wrongly stated that "all the COI submitted relates to issues that homosexuals have in Nigeria", as the COI also detailed the risks posed to men and women in Nigeria who were perceived, rightly or wrongly, to be homosexual. The High Court took the view that "[a]n adverse credibility finding must be founded on the evidence; conjecture (as opposed to inference) is of no legal value; there must be a logical nexus between findings of fact and the ensuing decision; and inferences too must reasonably be drawn".

EUAA COI reports have had a prominent role in assessing asylum claims of LGBTIQ applicants, as evidenced by the Federal Administrative Court in Austria in [Applicant v Federal Office for Immigration and Asylum \(BFA\)](#) (May 2023). The court overturned a negative decision and granted refugee protection to an Afghan national who had applied for international protection on the grounds that his sexual orientation would not be tolerated in Afghanistan. The court consulted COI reports, including the [EUAA COI Focus Report on Afghanistan](#) (January 2022), to conclude that the LGBTIQ community in Afghanistan was already subjected to significant societal violence before the Taliban takeover and there had been reports of

unlawful killings, physical attacks and sexual violence. For further and more updated information, refer to the EUAA's [COI Report - Afghanistan: Country Focus](#) (November 2024).

4.6. Standard of proof for SOGIESC applicants

To evaluate the risks that LGBTIQ applicants may face in their country of origin, European and national courts apply the 'reasonable degree of likelihood' standard, lower than the level of 'certainty', 'significant probability' or 'beyond reasonable doubt' but higher than 'mere chance' or 'mere possibility' (see EUAA's [Practical Guide on Evidence and Risk Assessment](#)). Courts take into consideration the particular challenges in documenting persecution based on SOGIESC and recognise that a fear of persecution can be well-founded even where specific incidents are not fully documented, provided that the applicant's account is coherent, credible, and consistent with available COI.

CALL in Belgium stressed that homosexual orientation does not need to be proven with certainty and that it is sufficient that the claim appears plausible ([X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#), April 2023), while the Supreme Administrative Court in Slovakia ruled that subjective feelings of rejection and unpleasant incidents of discrimination in certain aspects of life due to homosexuality do not constitute acts of persecution to justify granting asylum ([Applicant v Ministry of the Interior, Migration Department](#), July 2024). The Supreme Administrative Court considered that the first pre-condition for being granted asylum – membership of a particular social group - has been fulfilled, but it was not sufficient alone to justify refugee status if the second condition, a well-founded fear of persecution due to such belonging, was not proved. The court assessed the applicant's claims by comparison to country-of-origin information and found that the applicant never faced issues to obtain employment and stated that the unpleasant incidents described by the applicant may represent subjective feelings of rejection due to his sexual orientation, but they do not constitute such a significant interference with his freedom that he should be granted asylum.

National courts have also emphasised the importance of consistency in an applicant's statements throughout the procedure, treating it as a key indicator of credibility, as highlighted by the Supreme Administrative Court in Finland ([Av Finnish Immigration Service](#), August 2019). The court observed that the applicant's consistent statements throughout the asylum interview, oral hearing, and appeal before the court, including the repeated disclosure of her relationship and self-identification as female, was supported by medical reports. The court deemed this consistency a strong indicator of credibility, leading it to believe that the applicant had a legitimate reason to fear being persecuted in the home country on account of sexual orientation and gender identity.

4.7. Burden of proof when assessing LGBTIQ asylum claims

Refugee protection was granted to applicants based on mere identification as a member of the LGBTIQ community which was considered sufficient to establish a well-founded risk of persecution in the country of origin. In Belgium, CALL granted refugee protection to a Togolese national finding that his sexual orientation alone was sufficient to establish a risk of persecution regardless of the assessment of the credibility of his homosexual experience in Togo, given the repressive legal environment and a hostile social climate toward the LGBTIQ community in the country of origin ([Applicant v Belgian State represented by the State Secretary for Asylum and Migration](#), January 2025). Similarly, CALL granted refugee status to an Iraqi national considering that the violence faced by LGBTIQ individuals in Iraq constituted

acts of persecution and that any person identifying as LGBTIQ might have a well-founded fear of being persecuted solely on the basis of their identity, without needing to demonstrate an individualised risk ([X v Commissioner General for Refugees and Stateless Persons \(CGRS\)](#), October 2024).

The Supreme Court of Estonia noted that the burden of establishing the relevant facts was on the administrative authority and an LGBTIQ applicant's credibility cannot be questioned simply because they did not elaborate on issues when the determining authority failed to ask them to do so ([Police and Border Guard Board v X](#), May 2020).

Furthermore, the Supreme Court of Cassation in Italy emphasised the duty of the judge to order *ex officio* additional investigations considered appropriate in order to verify the reliability of an LGBTIQ applicant's story and the accompanying documentation, when there are doubts regarding the homosexual orientation of the applicant or regarding the authenticity of the documents produced in support of the application ([Applicant v Ministry of the Interior](#), July 2020).



5. Special procedural needs and safeguards for LGBTIQ applicants

LGBTIQ applicants may face particular vulnerabilities that call for specific procedural safeguards to ensure a fair assessment of their claims. Factors such as stereotypes, assumptions, trauma, fear, or mistrust can influence how applicants present themselves and how these are perceived by registration or case officers. In such cases, it is considered especially important to foster an environment of trust throughout the entire asylum process (see the EUAA's [Practical Guide on applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics — Examination procedure](#), 15 November 2024). Failure to provide sufficient time and tailored assistance, not assessing special needs, or overlooking key elements of COI, can lead to procedural violations. Courts may annul decisions where such shortcomings result in unfair, inadequately reasoned decisions that undermine the applicant's rights.¹³ In addition, they have also found procedural violations where the applicant was not provided an oral hearing to clarify information and allow for a more in-depth investigation of the alleged sexual orientation, or where gender-sensitive procedures were not ensured at the appeal stage.

The failure to provide for special procedural needs of transgender applicants was examined by the Tallin Administrative Court in Estonia, which noticed that the mere fact of filling in a statement of vulnerability may not be sufficient to assess the special procedural needs of an LGBTIQ person diagnosed with depression ([X v Police and Border Guard Board \(PBGB\)](#), June 2023). The same court in Estonia highlighted that the systemic nature of procedural violations by the PBGB in a case concerning a Russian transgender man diagnosed with autism and ADHD justified the annulment of the PBGB decision ([X v Police and Border Guard Board](#), May 2023). The court noted that the PBGB had failed to conduct an appropriate assessment of the applicant's special needs and to provide him with the necessary support during the proceedings; violated his rights to information, representation and to be heard; acted against the principle of sound administration; and failed to draw logical conclusions based on the country of origin information it used, including by assessing every relevant circumstance separately rather than cumulatively and by focusing on the period prior to the applicant's departure from Russia rather than on the risks he faced upon return.

The District Court of The Hague addressed the special procedural safeguards and needs of LGBTIQ applicants in two cases, ordering the reassessment of both asylum claims, emphasising that the minister had failed to adequately evaluate the need to provide these safeguards. In [Applicant v The Minister for Asylum and Migration](#) (September 2024), the court found that the Minister had failed to clearly explain how the applicant's medical treatment and psychological condition were considered in the credibility assessment. It also noted the absence of an interpreter fluent in the applicant's specific dialect, which may have hindered his ability to express his sexual orientation. Furthermore, the court observed that the applicant's request to be interviewed in a "female setting" was not accommodated, potentially limiting his ability to speak openly about his experiences. The court stressed that the applicant's age during his sexual development, specifically, that he was a minor, should have been considered in the assessment. Finally, it held that insufficient weight had been given to supporting third-party statements concerning the applicant's sexual orientation. Meanwhile, in [Applicant v the Minister for Asylum and Migration](#) (July 2024), the court first found that the minister had failed to assess the applicant's need for special procedural safeguards, despite her history of long-term sexual abuse and psychological problems. It then emphasised that the minister was obliged, also in the border procedure, to investigate whether such special procedural guarantees were necessary, concluding that the minister's failure to implement these safeguards resulted in an unfair and inadequately reasoned decision. The court then pointed out that, in this case, sufficient support could not be provided in the accelerated border procedure, therefore the application should be assessed in a more standard asylum procedure which allows for more time and resources to assess the application.

Emphasising the obligation of the determining authority to conduct asylum procedures in a manner that allows applicants to effectively exercise their rights, the Administrative Court of Slovenia annulled a negative decision concerning an Algerian applicant, identifying procedural shortcomings in the assessment of his fear of persecution based on sexual orientation ([Applicant v Ministry of the Interior](#), August 2021). The court reiterated that, while the applicant has the duty to make efforts to provide sufficient information and evidence, the determining authority has the obligation to conduct the procedure in such a way as to enable the applicant to exercise his rights efficiently, including in the personal interview.

Providing oral hearings is essential for LGBTIQ applicants, as highlighted by the Supreme Court of Estonia, which noted that in international protection cases, when the decision largely rests on the applicant's credibility and the explanations provided, the court should hold a hearing, also considering that the credibility of a person's statements and the assessment of their reliability may depend not only on the content of the statement but also on the person's behaviour in giving such statement ([Police and Border Guard Board v X](#), May 2020). Similarly, the Supreme Administrative Court in Finland delivered two judgments on the necessity of an oral hearing for applicants who seek international protection on the grounds of sexual orientation. The court highlighted that such hearings allow for a more in-depth investigation of the applicant's alleged sexual orientation and for the evaluation of the applicant's credibility ([A v Finnish Immigration Service](#), June 2018), considering that when assessing the credibility of a person's sexual orientation, the applicant's personal statements are the main and usually only form of evidence available ([A v Finnish Immigration Service](#), July 2017), so the court should hold an oral hearing to clarify information on the applicant's sexual identity, how the person raised this issue in the home country and what consequences the person may have suffered as a result.

Additional procedural safeguards, such as the obligation to ensure gender-sensitive procedures when an asylum applicant's claim involves violations of sexual self-determination,

was highlighted by the Austrian Constitutional Court ([Applicant v Federal Office for Immigration and Asylum](#), June 2025). The court held that failure by a lower court to assign, at the request of the applicant, a female judge and interpreter in a case involving sexual self-determination, violated the constitutionally guaranteed right to a trial before a lawful judge. The Constitutional Court noted that if an applicant based his fear of persecution on encroachments on his sexual self-determination, the applicant should be questioned or heard by a judge of the same sex unless the applicant expressly demanded otherwise.



6. Safe countries of origin concept applied to LGBTIQ applicants

A critical aspect of CEAS with significant implications for LGBTIQ applicants concerns the concept of the safe country of origin. This notion, as described in the recast APD, is based on the presumption that certain countries can be designated, under specific circumstances, as generally safe for their nationals or stateless persons who were formerly habitual residents in that country, meaning that there is generally and consistently no persecution as defined in the QD, 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.

Building on its previous ruling in [CV](#) (C-406/22, 4 October 2024), the CJEU pronounced a much anticipated judgment in two Italian cases interpreting the concept of ‘safe countries of origin’ under EU law ([LC \[Alace\] and CP \[Canpelli\] v Territorial Commission of Rome](#), joined cases C-758/24 and C-759/24, 1 August 2025). The question of whether exceptions can be made for categories of persons (for instance for LGBTIQ people) when designating a safe country of origin was brought for interpretation and the court held that this is not possible under the recast APD. The judgment already has effects at the national level, where the Netherlands announced that, as a result of the judgment, it will shorten its list of safe countries of origin, eliminating Armenia, Brazil, Ghana, Jamaica, Morocco, Senegal, Serbia and Tunisia, so that applications can no longer be declared manifestly unfounded on the ground of origin from a safe country of origin.¹⁴ It is notable that at the time of this judgment, pending legislative changes, seven EU+ countries which implement national lists of safe countries of origin include exceptions for specific geographical areas or profiles of asylum seekers within a country of origin. More information is available in the EUAA’s [Overview of the Implementation of Safe Country Concepts](#), published on 24 July 2025. The ruling contrasts with the EU Pact on Migration and Asylum, Article 61 of the Asylum Procedures Regulation (APR), which explicitly allows for both group and territorial exceptions, considering that in many countries deemed “safe countries of origin”, specific groups of individuals can still face persecution or ill-treatment, such as LGBTIQ persons.

For more information on safe countries, refer to EUAA’s report on [Applying the Concept of Safe Countries in the Asylum Procedure](#) (7 December 2022) and the EUAA’s Situational Update on the [Overview of the Implementation of Safe Country Concepts](#) (24 July 2025). The EUAA [Who is Who in International Protection](#) platform also presents in an interactive way all EU+ countries which apply the concept of safe countries in the asylum procedure, including information on competent authorities and national lists of safe countries.



7. Minors and best interests of the child in SOGIESC cases

Article 25(6) of the APD states that “the best interests of the child shall be a primary consideration for Member States”.¹⁵ Article 22 of the APR builds on Article 25(6) of the APD, changing the term Member States with competent authorities. This concept applies also in cases involving LGBTIQ children or children of LGBTIQ applicants. Minors who identify as LGBTIQ may face persecution in their countries of origin due to criminalisation, societal discrimination, or violence. Although minors are not part of the LGBTIQ community, they may face risks due to their association with an LGBTIQ parent or guardian, and authorities should assess how the parent’s persecution affects the children’s well-being.

Credibility assessment is a key element when assessing asylum claims of minors, as highlighted by the Court of the Hague in [Applicant v State Secretary for Justice and Security](#) (November 2022). The court found a lack of credibility for an Iranian minor and determined that the applicant, who was almost 18 years old at the time of the interview, was deemed mature enough to have a good representation of the facts but failed to respond to questions and provide sufficient information.

Furthermore, CALL in Belgium emphasised that, in addition to considering the best interests of the child, determining authorities must conduct thorough family assessments when evaluating how the minor’s sexual orientation would affect a reintegration in the country of origin. In this context, CALL stated in [Applicant v The Belgian State \(represented by the State Secretary for Asylum and Migration\)](#) (February 2022), that the minor’s vulnerabilities were not sufficiently taken into consideration and emphasised that the family assessment carried out by the determining authority was inadequately conducted. It further stated that the authorities must take into account the opinions of all nuclear family members who may have an impact on the minor’s reintegration in the country of origin, as well as relevant COI.

Children of LGBTIQ couples are also affected by the persecution of their parents, as shown by the UN Committee on the Rights of Child (UNCRC) in [A.B. v Finland](#), which was decided in February 2021. The UNCRC held that Finland failed to consider the best interests of the child of a lesbian couple when rejecting his asylum request, and to protect him against a real risk of irreparable harm when the family had no other choice but to return to Russia. The committee further noted that, when adopting the contested decision, the Finnish authorities failed to take account of the applicant’s young age and the permanent impact that bullying and stigmatisation caused by his mother’s sexual orientation would have on him. The Finnish government was ordered to take all necessary measures to prevent similar violations in the future, in particular by ensuring that the primacy of the best interests of the child will be taken into account effectively and systematically in the asylum procedure and that children will systematically be heard.



8. Specific reception conditions for LGBTIQ applicants

LGBTIQ applicants might have specific needs in reception that should be identified and properly addressed by the relevant authorities. Therefore, specific measures should be

designed, planned, and implemented to support SOGIESC individuals and EU+ Member States should provide a SOGIESC safe and inclusive reception system. For further information, refer to [EUAA's Practical Guide on applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics — Reception \(15 November 2025\)](#).

Article 21 of the RCD 2013 does not include LGBTIQ applicants within the (non-exhaustive) list of vulnerable applicants. Meanwhile, Article 24 of the new RCD, which mirrors Article 21, requires Member States to take into account that certain categories of applicants are more likely to have special reception needs. Lesbian, gay, bisexual, transgender, and intersex persons are explicitly identified among these vulnerable groups.

Suitable accommodation in a medium- or small-scale facility for an applicant who was assessed to be particularly vulnerable due to his sexual orientation and having endured multiple traumatic experiences was ordered for instance in August 2022, by the Brussels Labour Tribunal in [Applicant v Fedasil](#). The tribunal noted that the applicant was at risk of living on the streets due to his experiences in reception centres and it was necessary to ensure that the applicant can live his life in a dignified manner.



9. Right to family life of same-sex couples

The right to family life is enshrined in Article 8 of the European Convention on Human Rights (ECHR), Article 7 of the EU Charter of Fundamental Rights, and Article 16 of the Universal Declaration of Human Rights. Article 4(3) of the Family Reunification Directive allows the reunification of registered partners and individuals in durable relationships, including same-sex couples even though not explicitly mentioned, provided that the relationship is duly proven and recognised by the host state.

Concerning the reunification of registered partners and individuals in durable relationships, the Immigration Appeals Board in Iceland granted asylum under Article 45(2) of the Foreign Nationals Act to a Peruvian LGBTIQ applicant, as his partner had already been recognised as a refugee in the country ([Applicant v Directorate of Immigration](#), November 2022). The court found that it would not be possible for him and his partner to marry and exercise their right to family life in either Peru or Venezuela.



10. Consequences of a possible return to the country of origin for LGBTIQ applicants

The return of LGBTIQ applicants to their country of origin can lead to serious violations of their fundamental rights and may amount to a breach of Article 3 of the ECHR and the principle of *non-refoulement*. The ECtHR ruled in several cases related to claims of ill treatment of rejected LGBTIQ asylum applicants or relatives if expelled to the country of origin.

The relevance of a fresh assessment of the risk of ill treatment in light of the applicant's sexual orientation was emphasised by the ECtHR in [M.I. v Switzerland](#) (November 2024), which found that expelling an Iranian national would constitute a violation of Article 3 of the ECHR. The court emphasised that the Swiss authorities failed to conduct a proper investigation into the

applicant's risk of ill treatment as a homosexual man in Iran or whether state protection against ill treatment by non-state actors was available. The court did not question the credibility assessment of the asylum claim based on the risk of persecution on grounds of sexual orientation, but it took into consideration the fact that ill treatment may also be inflicted by non-state actors other than family members. As such, the court questioned the ability and willingness of Iranian state authorities to provide the applicant with adequate protection and considered that the Swiss authorities failed to investigate this relevant aspect.

The ECtHR emphasised again the importance of a fresh assessment of risks before expelling an applicant in a case concerning an homosexual applicant from The Gambia ([B and C v Switzerland](#), November 2020). The court noted that homosexual acts carry a criminal penalty in The Gambia but the mere existence of criminal laws in the country of destination do not render a removal contrary to Article 3 of the Convention. According to the court, the decisive factor is whether the laws are applied in practice, which was not the case in The Gambia. However, the court noted that, although there were no reports of individual acts of rogue officers, this may be due to under-reporting and fear of state discrimination. In addition, there were reports of widespread homophobia and discrimination against LGBTIQ persons by non-state actors. It further held that the Swiss authorities did not properly analyse the availability of state protection and there were indications of the unwillingness of the authorities to provide such protection. Therefore, the court considered that the applicant's deportation to the Gambia, without a fresh assessment of risks, would amount to a violation of Article 3 of the Convention.

Contrary to the previous judgments, in [M.E. v Sweden](#) (April 2015), the ECtHR held, by six votes to one, that implementing an expulsion order to Libya of an homosexual applicant would not violate Article 3 of the Convention. The court found that there were no substantial grounds to believe that the applicant would be subjected to ill treatment on account of his sexual orientation if he was returned to apply for family reunion from Libya.

National courts have also ruled in several cases on the risk of ill-treatment faced by LGBTIQ applicants upon return to their country of origin, noting that such treatment may be inflicted by both state and non-state actors and would amount to a violation of the principle of *non-refoulement*. The risk of being exposed to such treatment, was highlighted by the Administrative Court of Latvia, which annulled an expulsion order against a homosexual applicant from Iraq whose second subsequent application had been accepted for examination in substance ([Applicant v Office of Citizenship and Migration Affairs](#), April 2023). Based on COI, the court determined that the applicant's statements were credible and there was a real and objective risk of being exposed to acts contrary to Articles 2 and 3 of the ECHR if removed. Along with annulling the removal order, the court clarified that a removal should not be permitted when repeated asylum applications were accepted for an assessment on merits. The court referred to the EUAA's [Judicial Analysis Evidence and Credibility Assessment in the context of the Common European Asylum System](#) (2018), the EUAA [Country of Origin Information Report: Iraq, targeting individuals](#) (February 2022), the EUAA [Asylum Report 2022](#) (28 June 2022).

Access to necessary medical care upon return and the applicant's psychological condition are factors to be considered when assessing the risk of ill-treatment in the country of origin, as affirmed by the Administrative Court of Cologne in Germany ([X v the Federal Republic of Germany](#), February 2022). Despite the fact that the applicant withdrew the appeal, the court concluded that the applicant faced a concrete risk to health if returned, including worsening the post-traumatic stress disorder and severe depression due to the violence experienced in

India. Being transgender would hinder access to medical care, namely to endocrinological treatment in the context of counter-sex hormone therapy. The court also noted that the applicant's reintegration into the family or the Hijra community would not constitute a safe environment, as this was where the applicant experienced sexual abuse and violence since childhood.



11. Other relevant aspects: CJEU on rectifying inaccurate gender identity data for a refugee

The intersection between data protection rights under Article 16 of the GDPR and fundamental rights of transgender individuals in the asylum context was most recently brought to the CJEU in [VP v National Directorate-General for Aliens Policing \(NDGAP\)](#) (C-247/23, 13 March 2025), which concerned an Iranian national who was granted refugee status in Hungary due to persecution based on transgender identity. The CJEU ruled that individuals may be required to provide reasonable evidence to exercise their right to rectify personal data relating to gender identity, pursuant to Article 16 of the General Data Protection Regulation (GDPR), but Member States cannot impose an administrative requirement to prove gender reassignment surgery to exercise this right. The court also underlined that, based on the principle of accuracy of personal data, the authorities should have registered the correct gender identity of the applicant at the time of registration of the asylum application, and not the gender identity assigned at birth. Consequently, national law cannot oppose to the right to have data rectified.

To read about developments in legislation, policies and practices related to LGBTIQ applicants, please refer to "[LGBTIQ applicants in asylum systems](#)", Fact Sheet No 27.

For more analysis, consult the Asylum Report 2025: [Section 9. Safeguards for children and applicants with special needs](#) | European Union Agency for Asylum

Sources

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