

Protecting the Rights of LGBTI Asylum Seekers

The Alliance of Liberals and Democrats for Europe Party convening in Amsterdam, the Netherlands on 1 to 3 December 2017:

Notes that:

- today, in many places around the world, lesbian, gay, bisexual, transgender, and intersex (LGBTI) people still suffer persecution. A number of them have come to Europe fleeing persecution in their home countries;
- worldwide, nearly 80 countries still criminalise sexual orientation, in many cases with the punishment of imprisonment and in some even with the possibility of capital punishment;
- persecution based on sexual orientation and gender identity is recognised as a ground for claiming asylum under EU law. [1] However, official figures are not collected, making it difficult to assess numbers of LGBTI applicants;
- NGO and civil society estimates suggest the number of LGBTI applicants is significant. For example, in The Netherlands, one organisation alone was contacted by up to 3000 applicants, according to the European Union Agency for Fundamental Rights (FRA). [2]

Stresses that:

- EU law guarantees safety to those fleeing persecution. In practice, however, LGBTI people in many cases do not receive the sufficient protection they need. A FRA report released in March 2017 [3] shows that many Member States fail to adequately support LGBTI asylum seekers;
- the report finds that only a few Member States have national guidelines or training on interviewing LGBTI people, and that interviews are often too short or poorly designed to assess claims of LGBTI persecution;
- the report further highlights that asylum officers tend to have stereotypical views on the LGBTI community, and may fail address the situation of people coming from anti-LGBTI countries. Furthermore, interpreters may have an anti-LGBTI bias;
- in most Member States, there are no special accommodation facilities for LGBTI people;
- while LGBTI asylum seekers are exposed to higher risks of violence, intimidation and abuse, especially within asylum centres;
- LGBTI awareness and training for reception centre staff is in most countries not systematic and often dependent on the work of NGOs;
- most incidents of violence or harassment motivated by bias against LGBTI asylum seekers are not reported and are not recorded as such;

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- transgender asylum seekers often face additional difficulties, especially regarding hormonal treatment, which may not be available during the asylum claim process;
- the urgency of the issue is evident based on recent reports of the detention and ill-treatment of a number of people based on their sexual orientation and identity, as well as desperate and potentially self-harming actions taken by LGBTI asylum seekers;
- there is a necessity to introduce common criteria, to be drawn from international obligations under human rights instruments, on the basis of which applicants for international protection are to be recognised as eligible for subsidiary protection.

Considers that:

- in 2011, the European Union adopted the Recast of the Qualification Directive [4], recognising that persecution based on a person's sexual orientation or gender identity is a valid ground to be granted asylum. The 2013 Asylum Procedures Directive [5] and the Reception Conditions Directive [6] include obligations for EU Member States, particularly in terms of training asylum staff and providing for adequate reception conditions;
- lack of consideration of taboo or stigmatisation in the countries of origin can lead to asylum seekers not revealing their sexual orientation or gender identity at the beginning of the asylum procedure. Late disclosure increase the risk of rejection of the claim, even if the Court of Justice of the EU has ruled that this cannot be a sufficient reason to refuse a refugee status application;
- in 2014, in the case of A,B,C, [7] the ECJ stressed that methods used to confirm an applicant's sexual orientation must not infringe their fundamental human rights and condemned the use of 'tests' and stereotypes in assessing the request for asylum;
- the European Union Agency for Fundamental Rights (FRA) has stressed [8] that EU governments need to expedite the use of humanitarian visas and refugee resettlement programmes to assist LGBTI people in imminent danger in their home countries;
- there are considerable differences in which Member States examine LGBTI asylum applications and the discretion requirement is, regrettably, still frequently applied in the large majority of European states.

Calls for:

- the EU, ALDE and its member parties to step up their efforts to guarantee the rights and protection of LGBTI asylum seekers by safeguarding their safety and providing the opportunity to make use of

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special accommodation facilities, at the minimum for the duration of their asylum procedure;

- the EU to provide sufficient guidelines and recommendations for Member States on the dealing of LGBTI asylum claims and for Member States to outline and implement national recommendations and safeguards for LGBTI asylum seekers, including guidelines related to healthcare;
- the EU and its Member States to provide systematic and adequate training for border and migration staff as well as asylum officers on the evaluation and processing of LGBTI asylum claims;
- the EU and Member States to continue its work for human rights and LGBTI rights worldwide and as an integral part of EU foreign policy to tackle the root causes of LGBTI persecution and discrimination;
- all European states to abstain from enforcing the discretion requirement;
- the Council of Europe to identify those countries where LGBTI rights are so compromised as to warrant the granting of asylum to such applicants.

Sources:

1. <http://fra.europa.eu/en/publication/2015/lgbti-comparative-legal-update-2015>
2. <http://fra.europa.eu/en/news/2017/lgbti-asylum-seekers-lack-adequate-support>
3. <http://fra.europa.eu/en/publication/2017/march-monthly-migration-focus-lgbti>
4. eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF
5. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/common-procedures/index_en.htm
6. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/reception-conditions/index_en.htm
7. curia.europa.eu/juris/document/document.jsf?docid=160244&doclang=en
8. fra.europa.eu/en/news/2017/safe-havens-needed-lgbti-people-fleeing-persecution

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