

Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) Asylum in Europe

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*“A Common European Asylum System by 2012?
Asylum and Resettlement”*

Committee on Civil Liberties, Justice and Home Affairs
of the European Parliament, 20th October 2011



Raising the Bar
www.No5.com

Yogyakarta Principles (2007)

“Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”

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

CONCEPTS

‘DSSH’

DIFFERENCE

STIGMA

SHAME

HARM

HJ (Iran) and HT (Cameroon) [2010]
UKSC 31; [2011] 1 A.C. 596

The underlying rationale of the Convention is therefore that people should be able to live freely, without fearing that they may suffer harm of the requisite intensity or duration because they are, say, black, or the descendants of some former dictator, or gay. In the absence of any indication to the contrary, the implication is that they must be free to live openly in this way without fear of persecution

As per Lord Rodger [§ 53]

VULNERABLE PERSONS: SPECIAL NEEDS

- Thousands of LGBTI Asylum seekers in Europe every year
- MUST
- Grant protection to ALL LGBTIs where criminal laws prohibiting same-sex conduct exist
- NO need to seek state protection in non-state agent claims where criminal laws exist
- NO to application of CONCEALMENT/DISCRETION
- Self-identification enough to establish identity
- Accurate country information
- Protection in reception centres

(Source: Jansen and Spijkerboer “*Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*” (September 2011))

QUALIFICATION DIRECTIVE (2004/83/EC)

- **APPROVE:**
- **Article 10 – amended to INCLUDE *Gender identity***
- **STILL NEED TO:**
- **10 (d) – replace ‘*might*’ with ‘*shall*’ include a group based on a common characteristic of sexual orientation**
- **Delete – EXCLUSION of sexual orientation to children under the age of consent**
- **CHILDREN MUST BE PROTECTED**

PROCEDURE DIRECTIVE – Articles 2 (d) and 24 of the Recast Directive (2005/85/EC)

- **INCLUSION OF SEXUAL ORIENTATION AND GENDER IDENTITY**

Applicant in need of special procedural guarantees:

- **COMPLEXITY – INTERVIEWS AND EXAMINATION PROCEDURES – IDENTIFICATION (also Art 22 of Reception Directive)**
- **PAST EXPERIENCES**
- **PROCEDURES IN SAFE THIRD COUNTRIES**
- **SUBSEQUENT APPLICATIONS**

RECEPTION DIRECTIVE (2003/9/EC) – Article 18

- **PREVENTION OF VIOLENCE IN ACCOMODATION CENTRES**

DEFINITION OF 'FAMILY' – to include same-sex families

DUBLIN (II) REGULATION (no 343/2003) – Article 2 (i)

Also RECEPTION DIRECTIVE- Article 2 (c) and
QUALIFICATION DIRECTIVE– Article 2 (h) (now Article 2
(j) in recast)

- *Schalk and Kopf v Austria (Application no 30141/04)*
(24.6.2010) [§94]: - Article 8 ECHR (private and family life):
“Consequently the relationship of the applicants, a cohabiting
same-sex couple living in a stable *de facto* partnership, falls within
the notion of “family life”, just as the relationship of a different-sex
couple in the same situation would.”

CORRECTING A HISTORICAL WRONG

