

Sexual orientation, gender identity, gender expression and sex characteristics claims of asylum (SOGIGESC): an essential guide for legal representatives and counsellors

PART 1: HEARING AND CREDIBILITY ASSESSMENT

1. **Explicit signs of openness and sensibility** to LGBTQI issues (such as, for instance, posters indicating that refugees with claims based on sexual orientation, gender identity, gender expression and sex characteristics are welcome, or that persecutions for those reasons could be ground for asylum) should be given, to ensure the possibility of coming-out.
2. The hearing must meet all requirements for **hearings on gender-specific persecution**. The asylum seeker must be able to choose the gender of all those involved and the interviewers, legal representatives and interpreters involved in the individual case must be **professionally trained** and capable of taking into account SOGIGESC aspects of asylum applications.
3. **Establishing SOGIGESC should be based on self-identification of the applicant**. Questions concerning details of **an applicant's sexual practices are contrary to the fundamental rights of the individual**. The applicants should have the opportunity to describe how their self-awareness of their sexual orientation or gender identity has developed, including responses of the environment; experiences with problems, harassment, violence; and **feelings of difference, stigma, shame and harm**.
4. **Medical and psychiatric expert opinions** are inadequate and inappropriate for establishing an applicant's sexual orientation or gender identity.
5. The assessment of the claim for international protection must examine the applicant's individual situation, and not be based on **stereotyped notions**. It is crucial that the decision-maker becomes aware of the influence of **their own individual and contextual circumstances** on the decision-making process.

6. **Little or no reliable information** on the situation and treatment of people with SOGIGESC asylum claims **should not entail** that the applicant's claim is unfounded or that there is no persecution of LGBTQI individuals in the country of origin.
7. SOGIGESC asylum claims should immediately be moved to the **extended procedure** unless a positive decision can clearly be made.
8. It cannot be concluded that the asylum seeker lacks credibility simply because they **did not declare their SOGIGESC** at the outset.

PART 2: DECISION MAKING

1. The **mere existence of provision criminalizing** consensual same-sex relations or gender expression, such as cross-dressing, **should be considered** as persecution. The actual enforcement of such provisions should not bear any weight to the assessment of the claim.
2. Refugees with SOGIGESC asylum claims **must not be required or presumed to hide** their sexual orientation, gender identity, sex characteristics or abstain from their preferred gender expression upon return to the country of origin, in order to avoid persecution.
3. **The internal protection alternative** is not applicable for applicants with SOGIGESC asylum claims, coming from countries which criminalize sexual orientation, gender identity, gender expression or sex characteristics. Such applicants **must not be required or presumed to hide** their sexual orientation, gender identity, sex characteristics or abstain from their preferred gender expression in the internal protection area, in order to avoid persecution.
4. The complexity of gender-related claims **should be properly taken into account** in procedures based on the concept of **safe third country or safe country of origin**. It should be borne in mind that effective respect for the rights of people with SOGIGESC claims is not always a criterion for the establishment of these lists.

PART 3: RECEPTION, ACCOMMODATION AND HEALTH CARE

1. Proactively and explicitly **communicate openness** to LGBTQI issues to enable coming out.
2. **Enable** and **facilitate** contact with specialized LGBTQI organizations.
3. Unless the asylum seeker freely expresses a different need, **ensure that no LGBTQI person is outed** and that the gender identity of trans people and people with variants of gender development is **respected at all times and by all**, particularly through the use of name and gender markers, and through access to appropriate clothing and aids.
4. In case a personal search is necessary, **the person has to be given the opportunity** to choose the sex of the officer that will carry out the search.
5. **No collective accommodation**, neither in federal centres nor in the cantons, as these are never sufficiently safe for LGBTQI persons. **The allocation to Cantons** that have already in place dedicated projects for LGBTQI people should be encouraged.
6. Ensure that **medical treatment**, in particular start of hormonal treatment or hormone substitution for trans people or people with variants of sex development, is continued without interruption. Specialists should ensure immediate access to other indicated gender affirming treatment and, if necessary, access to **LGBTQI-experienced psychological counselling** has to be provided immediately.