

PROCEDURAL PROBLEMS IN LGBT¹ ASYLUM CASES

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Abstract. *In 2012 there are 76 countries of the world still criminalising same-sex sexual acts between consenting adults. In seven of those countries homosexual acts are punishable with death penalty (i. e., Mauritania, Sudan, the northern states of Nigeria, the southern parts of Somalia, Iran, Saudi Arabia and Yemen). Homophobic (transphobic) attitudes are also frequent in many societies. However, the LGBT asylum seekers are frequently left outside the refugee definition due to many refugee qualification and procedural problems in LGBT cases. Criminalisation, state protection against non-state persecution, concealment of sexual or gender identity, internal protection were discussed in the previous article ‘The Refugee Qualification Problems in LGBT Asylum Cases’ by Laurynas Biekša². In this article the*

- 1 The term ‘LGBT’ refers to ‘lesbian’ (a woman whose enduring physical, romantic and/or emotional attraction is to other women), ‘gay’ (used to describe people whose enduring physical, romantic and/or emotional attractions are to people of the same sex; often used to describe a man who is sexually attracted to other men, but may be used to describe lesbians as well), ‘bisexual’ (an individual who is physically, romantically and/or emotionally attracted to both men and women) and ‘transgender’ (an umbrella term for people whose gender identity and/or gender expression differs from the sex they were assigned at birth; transgender people may identify as female-to-male or male-to-female).
- 2 Biekša, L. The Refugee Qualification Problems in LGBT Asylum Cases. *Jurisprudencija*. 2011, 18(4): 1555–1565.

authors aim to describe the main procedural problems in LGBT asylum cases (i. e., credibility assessment, late disclosure, country of origin information and reception) and propose their solutions. Guiding European and international standards are laid down in the Reception Directive³, Qualification Directive⁴, Procedures Directive⁵ and UNHCR Guidance Note⁶. Today these standards should serve as a starting point for identifying the problems LGBT asylum seekers may have during their asylum procedures and for finding possible solutions.

Keywords: *asylum, LGBT asylum seekers, credibility, reception, country of origin information, Reception Directive, Qualification Directive, Procedures Directive.*

Introduction

In 2011, under the European Refugee Fund research project ‘Fleeing Homophobia, Seeking Safety in Europe: Best Practices on the Legal Position of LGBT Asylum Seekers in the EU Member States’, national experts examined the situation of LGBT asylum seekers in 26 European countries and Israel and prepared their national studies. In September 2011, taking into account the information collected in the national studies and during the consultations with national experts, the Dutch experts Sabine Jansen and Thomas Spijkerboer produced the report ‘Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe’⁷. Among the general findings of the report, it is stated that considerable differences exist as to the way that European states examine LGBT asylum applications, that on a number of points European state practice is below the standards required by international and European human rights and refugee law, and that LGBT individuals are frequently denied asylum and returned to their country of origin where they have a well-founded fear of being imprisoned or sentenced to death. The report specifies eight particular issues, most problematic with regard to asylum qualification and asylum procedures in LGBT asylum cases (i. e., criminalisation, state protection against non-state persecution, concealment of sexual or

3 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception on asylum seekers. [2003] OJ L 31/18.

4 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. [2004] OJ L 304/12.

5 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. [2005] OJ L 326/13.

6 *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*. Geneva, 21 November 2008 [interactive]. [accessed 2011-12-03]. <<http://www.unhcr.org/refworld/pdfid/48abd5660.pdf>>.

7 Jansen, S.; Spijkerboer, T. *Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*. COC Nederland/Vrije Universiteit Amsterdam, September 2011.

gender identity, internal protection, credibility assessment, late disclosure, country of origin information, reception)⁸.

The Lithuanian national experts (Lyra Jakulevičienė, Laurynas Biekša and Eglė Samuchovaitė) agree with the findings of this international research and consider it important to inform the Lithuanian lawyers and specialists studying and/or practicing in the field of asylum about the fundamental international and European human rights standards and the main problems of LGBT cases in Lithuania and other European countries. Therefore, refugee qualification related problems in LGBT asylum cases (i. e., criminalisation, state protection against non-state persecution, concealment of sexual or gender identity, internal protection) were discussed and solutions proposed in the first article by Laurynas Biekša⁹. This article further focuses on LGBT asylum cases and describes problems related to the refugee status determination procedure (i. e., credibility assessment, late disclosure, country of origin information, reception) and their solutions in this quite specific group of asylum cases. It presents a comparative research with the dominating methods of systematic and comparative approach, examining legal provisions and practice at international, European and national levels in Lithuania and other European countries.

1. Credibility Assessment in LGBT Asylum Cases

Generally, statements of an asylum seeker are one of the main evidence in asylum cases. The role of the decision maker is to assess the testimony and to come to the conclusion whether or not the claim is credible. Credibility is critical in every type of claim, but while different forms of verification can be used for the ones based on political opinion, race, nationality or religion, for LGBT cases there might be no other evidence apart from the applicant's account on facts¹⁰. Asylum applications based on sexual orientation are specific since the procedure restricted to a mere analysis of actual facts cannot be applied. This is not only true for the element 'well-founded fear' where a subjective estimate is always essential but also for the inalienable characteristic 'to belong to a specific social group'¹¹. Jan Beddeleem and Keneth Mills distinguish three types of credibility: external credibility is based on country of origin information; internal credibility, which is recognised as crucial, – on the testimony of the LGBT applicant; and operational credibility based on interaction with asylum applicants both

8 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 7–11.

9 Biekša, L., *supra* note 2.

10 Cragolini, G. Lesbian, Gay, Bisexual and Transgender (LGBT) Refugees Looking for Protection and Safety. Challenges in Refugee Status Determination and Living Conditions in Turkey. *VU University Amsterdam, Fleeing Homophobia Conference, 5-6 September, 2011*.

11 Beddeleem, J.; Mills, K. Today Goodwill, Tomorrow Paradigm? From Limits to the Asylum Procedure to Value Innovation. *VU University Amsterdam, Fleeing Homophobia Conference, 5-6 September, 2011*.

in bad as in good faith¹². The tendency is clear: a growing number of LGB claims are being rejected because the sexual orientation of the applicant is disbelieved¹³.

The Qualification Directive¹⁴ includes very general provisions related to credibility assessment. It states that the applications should be examined with a keen eye for the problems asylum seekers may have in submitting evidence (Article 4(5)), whereby the authorities and the applicant should cooperate in order to assess the relevance of the elements of the application (Article 4(1)).

The UNHCR provides more specific guidance on the issues of credibility assessment:

‘35. Self-identification as LGBT should be taken as an indication of the individual’s sexual orientation. While some applicants will be able to provide proof of their LGBT status, for instance through witness statements, photographs or other documentary evidence, they do not need to document activities in the country of origin indicating their different sexual orientation or gender identity. Where the applicant is unable to provide evidence as to his or her sexual orientation, and/or there is a lack of sufficiently specific country of origin information, the decision-maker will have to rely on that person’s testimony alone. If the applicant’s account appears credible, he or she should, unless there are good reasons to the contrary, be given the benefit of the doubt.

36. In the assessment of LGBT claims, stereotypical images of LGBT persons must be avoided, such as expecting a particular ‘flamboyant’ or feminine demeanour in gay men, or ‘butch’ or masculine appearance in lesbian women. Similarly, a person should not automatically be considered heterosexual merely because he or she is, or has been, married, has children, or dresses in conformity with prevailing social codes. Enquiries as to the applicant’s realization and experience of sexual identity rather than a detailed questioning of sexual acts may more accurately assist in assessing the applicant’s credibility.

37. It is important that LGBT applicants are interviewed by trained officials who are well informed about the specific problems LGBT persons face. The same applies for interpreters present at the interview. Relevant ways to increase officials’ awareness, include short targeted trainings, mainstreaming of issues relating to sexual orientation and gender identity into the induction of new staff and training of existing staff, accessing websites with expertise on LGBT issues, as well as the development of guidance relating to appropriate enquiries and interview techniques to use during the different stages of the asylum procedure¹⁵’.

According to the report ‘Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe’, there is no consistent practice in the Member States on the way that credibility issues are dealt with. Nevertheless, various European countries use medical examinations, witness statements, questioning methods, assumed

12 Beddeleem, J.; Mills, K., *supra* note 11.

13 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 47.

14 *Supra* note 4, Art. 4.

15 UNHCR, *supra* note 6, p. 16–17.

knowledge and behaviour in order to establish whether or not the applicant is an LGBT person¹⁶.

Medical examinations. Examples of examinations requested by the authorities or on the initiative of the applicant and performed by psychologists, psychiatrists and sexologists to assess someone's sexual orientation were reported in 8 countries: Austria, Bulgaria, the Czech Republic, Germany, Hungary, Poland, Romania and Slovakia¹⁷. However, experts of the report recognised medical and psychiatric expert opinions as an inadequate and inappropriate method for establishing an applicant's sexual orientation or gender identity and recommended to base it on self-identification of the applicant. Such conclusions were supported by the following statements¹⁸: firstly, since LGBT identities do not constitute legitimate medical, psychological or psychiatric categories, medical or psychiatric experts have no expertise on this point; secondly, medical examinations can be emotionally painful and humiliating for those who have suffered persecution because of their sexual orientation or gender identity and the aim of establishing credibility can be reached by other means; thirdly, these examinations serve no legitimate purpose, therefore, all examinations by psychologists, psychiatrists and sexologists performed to assess someone's sexual orientation or gender identity (found in the 8 countries referred above) are to be considered as violation of the right to privacy under Article 8 of the ECHR.

Witness statements. There are no specific provisions on international or European level as to the role of witness statements. However, witness statements of an applicant's participation in activities of LGBT organisations in the country of origin or the country of refuge or statements of people who had sexual contacts with applicants, therefore may be relevant for the credibility of applicants, provided that they are evaluated in the wider context of the case¹⁹.

Questioning methods. Credibility depends not only on applicants' efforts to tell their story. It may crucially depend on the interviewer's approach to questioning and types of questions asked. Two problems were identified in the report²⁰: firstly, applicant's credibility may be damaged with sexually explicit questions, which lead to evasive responses. However, it should be taken into account that the purported evasiveness of the responses may be related as much to the shock of being asked questions about sexual details as to a lack of veracity. Secondly, questions may rely on stereotypes and thus be offensive to applicants and may not only interfere with the asylum interview, but also lead to conclusions, which are as incorrect as the presumptions. Jan Beddeleem and Keneth Mills go further and state that when confronted with such an application, the interrogator does not have objective methods to validate the claimed identity. Any attempt to do so may be considered to be controversial, to be a discrimination compared

16 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 48.

17 *Ibid.*, p. 49.

18 *Ibid.*, p. 53.

19 *Ibid.*, p. 54.

20 *Ibid.*, p. 54–57.

to heterosexual application or to be an infringement of existing rights on the privacy that were more recently acquired than the status of refugee²¹.

To avoid situations when the method of questioning negatively affects credibility, interviewers, decision makers, the judiciary and legal aid providers need to be professionally trained, competent and capable of taking into account the sexual orientation and gender identity aspects of asylum applications, including the process of 'coming out' and the special needs of lesbian, gay, bisexuals and transsexual applicants, giving applicants a sufficient 'safe space' to tell their story and focusing on the applicant's perspective²². As Jan Beddeleem and Keneth Mills say, the interrogator is only allowed to ask questions on the intimate privacy as long as they are necessary for assessing the well-founded fear for persecution on the basis of an inalienable characteristic. Any additional question merely asked to assess the physical and social ties with a social group may be considered discriminatory²³. A further indicator is the language used during the interview. Internalized homophobia could be expressed through a language which despises the identity the applicant is claiming. The officer would try to read in between the lines²⁴.

Assumed knowledge and behaviour. In many cases credibility findings depend on assumptions an interviewer or a decision maker may have on what is a 'true' LGBT person or what a 'true' LGBT person should know. For example, it is wrongly expected that LGBT person should be familiar with gay scenes, has to have knowledge of particular LGBT organisations or meeting places; or if an LGBT person has been married, it is considered to be not credible that the applicant can be an LGBT person; or being unaware of the exact criminal sanctions against sexual orientation itself is a ground for finding an applicant not credible²⁵.

However, according to the experts of the report simple facts mentioned above do not allow for direct conclusions as to credibility of LGBT persons. Credibility can only be established on the basis of an interview which allows the applicant to freely tell their own story: how their sexual orientation or gender identity has developed, including responses of the environment, experiences with problems, harassment, violence, and feelings of difference, stigma, fear and shame²⁶.

Jan Beddeleem and Keneth Mills state that there are no external characteristics or objective methods to verify somebody's sexual orientation. Assessing the credibility or the truthfulness of an asylum applicant claiming to belong to this social group is only possible on the basis of some presuppositions on what it means to be homosexual and how this is reflected in the life of a person or in his/hers reaction and answers²⁷.

21 Beddeleem, J.; Mills, K., *supra* note 11.

22 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 54–57.

23 Beddeleem, J.; Mills, K., *supra* note 11.

24 D'Epifanio, M. Credibility Issues of LGBT Asylum-seekers in Turkey. *VU University Amsterdam, Fleeing Homophobia Conference, 5-6 September, 2011*.

25 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 57–63.

26 *Ibid.*, p. 62–63.

27 Beddeleem, J.; Mills, K., *supra* note 11.

Giulia Cragolini recites the following issues, which must be considered by adjudicators: difficulty the applicant can have in disclosing his or her story to the interviewer; it should be taken into account that the applicant might not be able to talk linearly and coherently about his or her experience if his or her sexual identity or orientation has been or still is the cause of physical or psychological sufferance; the examiners should be careful to interpret this as a lack of spontaneity and genuineness and should instead regard it as an indicator of the harshness of the trauma suffered; it is extremely relevant to create safe environment and establish trust between the parties since the beginning of the interview; the interviewer should be conscious that his or her mind is shaped by the societal attitude in his or her own environment, as sexuality and sexual identity are at the core of the auto-determination of every society²⁸. It should be indisputable that these dimensions of the claims of many asylum seekers need to be treated in a much more sensible and adequate way, resorting to more sophisticated, diverse and appropriate cultural and social notions²⁹.

Amanda Gray says the case of the UK can provide a welcome example to other EU states on how to work towards improving the credibility assessment methods in LGB cases. Good quality training and policy is a key. Engagement with civil society will help ensure the quality of both is there. Continuous training and monitoring of their effectiveness on the ground is crucial, including thorough thematic audits of the quality decisions³⁰.

To conclude one should agree with Giulia Cragolini, stating that it appears obvious that credibility in LGBT cases represents a serious challenge, both to the adjudicators and for asylum seekers. The interviewer should take duly into account the applicant's psychological involvement and create a safe environment for him or her. As well decision makers should avoid stereotypical images and fix westernized ideas of what sexual orientation is³¹. Credibility should mostly be established on the basis of an interview which allows the applicant to freely tell their own story. If the applicant's account appears credible, they should, unless there are good reasons to the contrary, be given the benefit of the doubt. In such case additional tests should not be required, unless the applicant voluntarily decides to undertake them.

2. Late Disclosure

In general, people applying for international protection are supposed to relate the reasons why they fear persecution immediately and in a clear and coherent manner.

28 Cragolini, G., *supra* note 10.

29 Gitari, E. You Are Not Gay Enough; Proving Sexual Orientation and Gender Identity within the Asylum Regime; the Credibility Challenge in Varying Cultural Expressions of Sex and Gender. *VU University Amsterdam, Fleeing Homophobia Conference, 5-6 September, 2011*.

30 Gray, A. Credibility Assessment in LGB Cases: the Case of the UK. *VU University Amsterdam, Fleeing Homophobia Conference, 5-6 September, 2011*.

31 Cragolini, G., *supra* note 10.

Raising the issue of sexual orientation or gender identity at a later stage often casts doubt on the applicant's credibility and therefore such late claims are likely to be rejected. However, there may be valid reasons why LGBT asylum seekers may not have disclosed their sexual orientation or gender identity at the moment of their initial application, such as: later awareness of their sexual orientation or gender identity; feelings of difference, stigma, shame, fear to disclose sexual orientation or gender identity to an officer or doubts what could happen if it become known in accommodation centres; the process of 'coming-out' or not knowing that it may be relevant to their claim³².

The survey of the state practice shows two problems: 'coming out' (disclosure of previously concealed sexual orientation or gender identity) is not taken into account at all – a notion of *res judicata* is applied; or 'coming out' is taken into account, but is met with mistrust³³.

The Procedure Directive³⁴ states that a subsequent application for asylum shall be subject to preliminary examinations as to whether new elements or findings relating to the examination of whether the individual qualifies as a refugee have arisen or have been presented by the applicant. If new elements or findings arise which significantly add to likelihood of the applicant qualifying as a refugee the application should be further examined. The experts of the report also draw a conclusion that the sole fact of late disclosure should not affect the credibility of the claimant. Country information should be taken into account in the assessment of the late coming-out and also whether the claimant has a valid reason for not stating sexual orientation earlier on³⁵.

Professor Hemme Battjes examines the *sur place* (taking place since the applicant left the country of origin) element of LGBT claims. He says that cases of LGBT people are often not *sur place* cases in the strict sense in so far as the sexual orientation has not changed after departure from the country of origin. But in many cases there is a *sur place* element, in so far as the applicant could not practice the sexual orientation in public in the country of origin, can do so in the country of refuge, and is unwilling to give that up after expulsion. He states that neither the Refugee Convention nor the ECHR gives reason to deny relevance to events or activities that occurred or were engaged in after departure from the country of origin when assessing an application for asylum and arrives to the conclusion that if the sexual identity has been established, there is no reason to state further requirements on credibility or otherwise because of the *sur place* character³⁶.

32 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 65.

33 *Ibid.*, p. 66.

34 *Supra* note 5, Art. 32.

35 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 68–69.

36 Battjes, H. *Sur Place Claims and the Accommodation Requirement in Dutch Asylum Policy*. VU University Amsterdam, *Fleeing Homophobia Conference, 5-6 September, 2011*.

3. Lack and Misinterpretation of Country of Origin Information

Country of origin information (further – COI) enables a decision maker to relate purported fear of persecution to the human rights situation of LGBT persons in the country of origin³⁷. UNHCR’s Gender Guidelines³⁸ both acknowledge one of the problems of the LGBT related COI and provide one of the solutions stating that it is important ‘to recognise that in relation to gender-related claims, the usual types of evidence used in other refugee claims may not be as readily available. Statistical data or reports on the incidence of sexual violence may not be available, due to under-reporting of cases, or lack of prosecution. Alternative forms of information might assist, such as the testimonies of other women similarly situated in written reports or oral testimony, of non-governmental or international organisations, or other independent research. It should be taken into account that only relatively recently international human rights organisations started to cover these issues. In addition, these organisations admitted the difficulty to gather information as violence towards these people goes often unreported, due to the worldwide negative attitude towards them³⁹.

In most of the reporting countries (e. g. Romania, Spain, Germany, Italy, the Czech Republic, Sweden, the United Kingdom, etc.) lack of LGBT relevant information is taken to mean that LGBTs have no problems. Another tendency indicated in the European research report is improper use of the COI: information about gay men is automatically applied to the situation of lesbian, bisexual, trans and intersex applicants, or available information is interpreted selectively⁴⁰.

To avoid misinterpretations of the lack of the LGBT related COI or improper use of the existing LGBT related COI, the following recommendations⁴¹ are included in the report. Firstly, COI should include precise and up-to-date information as to the position of lesbian, gay, bisexual, trans and intersex people, in particular: the occurrence of state and non-state persecution; homophobia and transphobia in government institutions and agencies such as the police, prisons, education; homo and transphobia in daily life (on the street, the workplace, schools, housing); the willingness and ability of the authorities to provide effective protection against homophobic and transphobic violence, and whether gay, lesbian, bisexual, trans and intersex people have access to such protection; the availability of effective state protection in different parts of the country, with a view to the possibility of internal protection. Secondly, as long as little or no reliable country of origin information is available on the human rights situation of lesbian, gays, bisexuals, trans or intersex people, this should not be considered *per se* as a sign that human rights violations against these groups do not occur. Decision makers and the judiciary should

37 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 71.

38 UNHCR Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002, par. 37.

39 Cragolini, G., *supra* note 10.

40 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 71.

41 *Ibid.*, p. 75–76.

keep in mind that homophobic and transphobic violence may be under-reported in certain countries. The principle of the benefit of the doubt is of particular importance in such situations.

4. Reception Conditions

Although research ‘Fleeing Homophobia: Asylum Claims Related to Sexual Orientation and Gender Identity in Europe’ places no particular focus on reception, accommodation and detention conditions of LGBT asylum seekers, however, the conclusion of the report is that national reports make it clear that homophobic and transphobic harassment and violence against LGBT applicants is a widespread and serious issue in most European countries⁴². Often there is social exclusion, verbal and physical harassment, and sometimes even sexual abuse, mostly by other asylum seekers, in particular people from the same country of origin. Also incidents by staff members and by guards and police officers in detention are reported⁴³.

The existing Reception Directive⁴⁴ is rather laconic on prevention of violent incidents in reception and accommodation centres. However, the latest version of the European Commission’s amended proposal for the Reception Directive⁴⁵ refers to genderbased violence more explicitly. Experts of the report go even further and recommend to explicitly address the relevant special needs relating to sexual orientation and gender identity in drafting the new Reception Directive. Member States should also develop appropriate procedures, guidelines and training modules in order to address special needs and to put in place effective complaint system for dealing with harassment and violence against LGBT applicants in reception, accommodation and detention centres. It is also recommended to allow LGBT applicants moving to a single room or to another accommodation if they are facing harassment or violence in the original location; or the perpetrators must be transferred to another accommodation, what is

42 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 77.

43 *Ibid.*, p. 78.

44 *Supra* note 3, Article 14(2)(b): ‘Member States shall pay particular attention to the prevention of assault within the premises and accommodation centres [...]’; Article 17(1): ‘Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence’.

45 European Commission, Amended proposal for a Directive of the European Parliament and of the Council, laying down standards for the reception of asylum seekers (Recast COM(2011), 2008/0244 (COD) 1 June 2011, Article 18(3): ‘Member States shall take into consideration gender and age specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres [...]’; Article 18(4): ‘Member States shall take appropriate measures to prevent assault and gender based violence including sexual assault, within the premises and accommodation centres [...]’; Article 22: ‘Member States shall establish mechanisms with a view to identifying whether the applicant is a vulnerable person and, if so, has special reception needs, also indicating the nature of such needs. [...] Member States shall ensure that these special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure. Member States shall ensure adequate support for persons with special reception needs throughout the duration of the asylum procedures and shall provide with the appropriate monitoring of their situation’.

recognised as an example of good practice in Belgium and Finland. LGBT organisations should be facilitated to work in reception, accommodation and detention centres, as it is in Sweden, where national LGBT organisation RFSL distributes information flyers in asylum centres, including right to seek asylum based on sexual orientation or gender identity; or in Belgium, where LGBT network of asylum seekers in reception centres holds monthly meetings⁴⁶.

Conclusions

Credibility in LGBT cases represents a serious challenge, both to the adjudicators and for asylum seekers. The interviewer should take duly into account the applicant's psychological involvement and create a safe environment for them. In addition, decision makers should avoid stereotypical images and fix westernised ideas of what sexual orientation is. Credibility should mostly be established on the basis of an interview which allows the applicant to freely tell their own story. If the applicant's account appears credible, they should, unless there are good reasons to the contrary, be given the benefit of the doubt with regard to issues not supported by evidence. In such case additional tests should not be required, unless the applicant himself or herself voluntarily decides to undertake them.

The sole fact of late disclosure should not affect the credibility of the claimant. Country of origin information should be taken into account in the assessment of the late coming-out and also whether the claimant has had a valid reason for not stating sexual orientation earlier on.

COI should include precise and up-to-date information as to the position of LGBT people. As long as little or no reliable country of origin information is available, this should not be considered *per se* as a sign that human rights violations against such persons do not occur. The principle of the benefit of the doubt is of particular importance in such situations.

Member States should develop appropriate procedures, guidelines and training modules in order to address special needs and put in place effective complaint system for dealing with harassment and violence against LGBT applicants in reception, accommodation and detention centres.

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46 Jansen, S.; Spijkerboer, T., *supra* note 7, p. 78.

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PROCEDŪRINĖS PROBLEMOS LGBT⁴⁷ PRIEGLOBSČIO BYLOSE

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Santrauka. 2012 metais vis dar yra 76 valstybės, kurios kriminalizuoja tos pačios lyties asmenų seksualinius santykius, esant pačių suaugusių asmenų sutikimui santykiauti.

47 Terminas „LGBT“ reiškia „lesbietės“ (moterys, kurias traukia kitos moterys), „gėjus“ (vartojama žmonėms, kuriuos traukia tos pačios lyties žmonės, pavadinti; dažnai vartojama vyrams, kuriuos traukia kiti vyrai, taip pat gali būti vartojama ir lesbietėms pavadinti); biseksualus (asmenys, kuriuos traukia ir vyrai, ir moterys) ir „transeksualus“ (vartojama žmonėms, kurių lyties tapatybė arba / ir lyties išraiška skiriasi nuo jų įgimtos lyties, kai moteris gali save identifikuoti kaip vyrą arba vyras save identifikuoti kaip moterį, pavadinti).

Septyniose iš minėtų 76 valstybių homoseksualiniai santykiai yra baudžiami mirties bausme (t. y. Mauritanijoje, Sudane, šiaurinėse Nigerijos valstijose, pietinėse Somalio dalyse, Irane, Saudo Arabijoje, Jemene). Homofobija (ir / ar transfobija) yra taip pat paplitusi daugelyje visuomenių. Nepaisant to, LGBT prieglobsčio prašytojams yra labai sunku būti pripažintais pabėgėliais, nes LGBT bylose yra daug problemų, susijusių su tuo, kad valstybės netinkamai kvalifikuoja LGBT prieglobsčio prašytojų atvejus arba taiko netinkamas prieglobsčio procedūras. Kriminalizavimo vertinimas, valstybės apsauga nuo nevalstybinio persekiojimo, reikalavimas slėpti savo seksualinę orientaciją ar lytinę tapatybę, vidinės apsaugos alternatyva buvo aptarti Lauryno Biekšos straipsnyje „Kvalifikavimo pabėgėliais problemos LGBT prieglobsčio bylose“. Šiame straipsnyje autoriai aptaria pagrindines procedūrines problemas LGBT prieglobsčio bylose (t. y. patikimumo vertinimą, vėlesnę seksualinės orientacijos ir lytinės tapatybės atskleidimą, kilmės valstybės informacijos vertinimo ir priėmimo sąlygų problemas) ir siūlo nustatytų problemų sprendimo būdus.

Pagrindinė straipsnio išvada, kad, siekiant išvengti procedūrinių problemų LGBT prieglobsčio bylose, turi būti vengiama nepakantaus ar stereotipinio požiūrio į LGBT prieglobsčio prašytojus, sudaroma saugi ir tolerantiška prieglobsčio procedūros aplinka, užtikrinamas bendradarbiavimas su prieglobsčio prašytoju faktų nustatymo metu bei abejonės privilegijos taikymas, nesant prieštaravimų prieglobsčio prašytojo pateiktuose faktuose ir nesant kitų įrodymų dėl kai kurių bylos aspektų.

Reikšminiai žodžiai: prieglobstis, LGBT prieglobsčio prašytojai, patikimumas, priėmimas, kilmės valstybės informacija, Priėmimo direktyva, Kvalifikavimo direktyva, Procedūrų direktyva.

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