

LGBTQI+ Asylum Seekers in Greece

We acknowledge and appreciate the steps that have already been taken by your respective departments to improve the understanding of, and commitment to, the well-being of the LGBTQI+ asylum-seekers in Greece.

To continue these efforts, the following letter seeks to draw your attention to some of the remaining concerns on this matter. These concerns have been identified following the Greek-wide collection of data (Annex I), as well as focus groups conducted with LGBTQI+ asylum seekers and independent observations from organisations.

Services, Support and Shelter

The previous communication recognised the need for LGBTQI+ asylum seekers to have access to appropriate accommodation and privacy. It was suggested that people seeking asylum on the grounds of their sexual orientation and/or gender identity should inform the authorities about their particularities from the pre-registration phase in order to access appropriate reception conditions.

Despite such assurances, it has been observed and reported over the past year that, even with informing the relevant authorities, LGBTQI+ asylum applicants continue to be placed in unsuitable accommodation. Applicants are often housed with non-LGBTQI+ applicants in overcrowded and make-shift structures, which offer little privacy or respite.

As a result of these policy decisions, LGBTQI+ asylum seekers who are housed with non-LGBTQI+ asylum seekers are forced to continue concealing their sexual orientation or gender identity. It is well-established that compelled concealment has a severe and detrimental impact on people's mental health, and is contrary to the legal standards outlined in both in European and Greek case law.[1]

LGBTQI+ applicants in mixed accommodation are placed at a constant risk of assault and physical violence, including those who are also forced to conceal their identity. In the past six months, there has been a significant increase of applicants who have been 'outed' or suspected of being LGBTQI+ in the camps on the Aegean Islands. This has often resulted in severe physical attacks. One contributing factor was the delay between the initial registration and the registration by the Greek Asylum Service, during which time applicants were unable to leave camp. This containment policy in combination with the reception conditions, that provide minimal privacy, exposed applicants to an increased risk of harm.

"I came to be safe, but I am not safe here"

The lack of appropriate reception conditions appears to stem from a failure to include, and therefore recognise, LGBTQI+ asylum seekers as a vulnerable group.[2] The restrictive interpretation of the Asylum Code evidently fails to reflect the reality given the ongoing compelled concealment and threats towards LGBTQI+ asylum seekers.

As evidenced in previous communications, it is acknowledged that LGBTQI+ specific accommodation cannot exist within camps as there is a risk that it would lead to further stigmatisation, isolation and risk to their safety. The alternative option, appropriate safe housing outside of camp, was rejected in the previous communication on the basis that *'it would be discrimination against other categories of vulnerable asylum seekers to establish one only for LGBTQI+ people'*. However, communities that face multiple forms of marginalisation, such as SOGIESC asylum seekers, are at an additional disadvantage and face additional threats to their safety. As a result, they require specific measures to mitigate this disparity. Whereas other groups of vulnerable asylum seekers are currently recognised as a 'vulnerable group' in accordance with the Asylum Code,[3] and are resultantly entitled to appropriate reception conditions or additional protections, LGBTQI+ asylum seekers are currently excluded from this.

Without appropriate shelter and services, people seeking asylum on the grounds of sexual orientation and/or gender identity are at a greater risk of becoming a victim of assault as well as homelessness, and subsequently vulnerable to exploitation.[4]

On account of the abovementioned, **it is recommended that:**

- Given the stark increase in assaults, LGBTQI+ asylum seekers are recognised in practice as a 'vulnerable group' within this context and subsequently provided access to the appropriate protections.
- In relation to housing LGBTQI+ applicants with non-LGBTQI+ applicants, communication is improved and more effective between the Reception and Identification Service, Vulnerability Focal Point and the Greek Asylum Service to prevent unnecessary repeated disclosures.
- Suitable housing outside of camp is provided to LGBTQI+ applicants on account of the additional vulnerabilities and threats to their safety. Such housing ought to consider the more-marginalised identities and be trans-inclusive.
- LGBTQI+ applicants transferred from the Aegean Islands to a camp on the mainland are placed near a city where they can access the necessary specialised support and services, and reduce the risk of assault.
- An appropriate complaint and protection mechanism is established for those reporting hate crime assaults based on their sexual orientation and gender identity whilst residing in the CCACs, in which there is a direct result, including a solution to provide safe accommodation, for the victim.

Asylum Procedure

The process required to assess asylum cases on the grounds of sexual orientation or gender identity can be inevitably uncomfortable for the applicant, as they may experience feelings of shame relating to their identity or be expected to relive their trauma in detail. As a result of the personal and sensitive nature of these claims, LGBTQI+ applicants are entitled to procedural protections and unique comprehensive standards for such assessments.[5] In line with this, we note the existence of guidelines available to caseworkers on claims with SOGIESC grounds and welcome the efforts made to remedy the concerns previously brought to your attention. However, the data collected from LGBTQI+ asylum seekers throughout Greece indicates that interviews conducted in 2023 fall short of the expected standard.

Prohibited Questioning

Most concerningly, there was a significant increase in the number of asylum seekers who were asked questions relating to sexual practices and/or behaviour in 2023.

Over half of the applicants who provided their data were asked questions relating to sexual practice and/or behaviour during their interview, including:

- *‘Which pornographic sites did you visit/ what pornography did you watch?’*
- *‘Did you have a sexual relationship with...?’*
- *‘Is there anything you and your partner did that made you realise you were a homosexual?’*

This line of questioning of LGBTQI+ applicants is expressly prohibited under EU and Greek case law,[6] and directly contrary to UNHCR and EUAA recommendations.[7]

Training and Competency

In the latest communication, it was assured that the ‘Greek Asylum Service has produced clear and updated internal guidelines for caseworkers on claims with SOGIESC grounds, signifying that SOGIESC is a material fact, and the credibility should be assessed (in an internal and external credibility assessment) in an individualised, sensitive and non-judgemental way’ in line with the European legal standards. The Asylum Procedure Directive and UNHCR guidelines provide that caseworkers conducting the interviews should be sufficiently trained in, and competent in relation to, assessing cases based on sexual orientation and gender identity.[8]

However, the transcripts of LGBTQI+ applicants indicate that applicants interviewed by the Greek Asylum Service are routinely asked questions which reveal a need for improvement regarding the inclusive knowledge of LGBTQI+ asylum seekers. Applicants reported encountering scepticism and prejudice upon sharing their sexual orientation.

65% of the participants were asked questions that show a lack of competence in assessing LGBTQI+ claims specifically, and a failure to align with the DSSH (Difference, Shame, Stigma, Harm) model provided by the EUAA.[9] Questions that demonstrate the necessary standards are not being met include:

- *“Why did you choose this lifestyle?”*
- *“You already knew that being homosexual is a risk. What made you decide to continue the relationship?”*
- *“Are there any reasons for which you identify yourself in that way as a homosexual?”*
- *“You lived in a country where homosexuality is a crime. Before proceeding to this sexual choice, have you been aware of the difficulties you'd have to face?”*
- *“You're an educated man, weren't you aware that homosexuality is a crime in [Country]?”*
- *“Since you love it so much, why haven't you practised here in Greece?”*

Given that many LGBTQI+ asylum seekers have been subjected to traumatic events and forced to flee their country because of their sexual orientation or gender identity, the framing of these questions places the blame on the victim. It implies that the traumatic instances and need for asylum were as a result of a badly made choice. Referring to LGBTQI+ identities as a choice or lifestyle is inaccurate, invalidating and a misrepresentation of sexual orientation and gender identity.[10]

Moreover, questions such as “You're an educated man, weren't you aware that homosexuality is a crime?” implies that the individual could have hidden their identity to avoid persecution. Expectations such as this are contrary to the European Union standards and case law.[11]

The Use of Stereotypes

According to the European Union case law and to the UNHCR Guideline no. 9 on international protection, decisions cannot be based on stereotypical notions.[12] The use of stereotypical notions imposes a Eurocentric expectation of what it is to be LGBTQI+ and fails to acknowledge the complexity, cultural considerations and intersectionality of people seeking asylum on the grounds of their sexual orientation or gender identity. Reliance on such questions fails to align with an individualised, sensitive and non-judgemental credibility assessment, thereby increasing the risk of wrongful decisions.

Despite this, almost 60% of LGBTQI+ applicants were asked questions based on stereotypes in the previous year. More worryingly, contrary to EU law,[13] applicants were rejected on the basis of stereotypical notions. At least one applicant has been rejected in the last year on the grounds that they had a child. Not only do decisions like this violate European standards, but it also demonstrates a severe lack of training. It fails to take into account the situation in the country of origin, the necessity of compelled concealment of one's sexual orientation and the likelihood of being a survivor of sexual violence.

On account of the above, it is **recommended** that:

- The training of caseworkers on sexual orientation and gender identity continues on a regular basis. Any training consists of LGBTIQ+ within the framework of relevant cultural considerations and understandings;
- The internal guidelines are updated to reflect the European and Greek legal standards, including;
 - The removal of questions based on sexual practices and sexual behaviour;
 - Ensuring the applicant receives individualised, sensitive and impartial lines of questioning;
 - Caution regarding the use of, and reliance on, Eurocentric stereotypical notions.

We thank you for your continued attention to this matter. We remain at your disposal for any further clarifications and continued constructive discussions.

Signatures:



Fenix Humanitarian Legal Aid



Dråpen i Havet / Stagona



Mobile Info Team (MIT)



European Lawyers in Lesbos



Boat Refugee Foundation (BRF)



Centre for Gender Rights and Equality DIOTIMA



I Have Rights



Samos Volunteers



Lighthouse Relief



Equal Legal Aid (ELA)



SafePlace International



Welcome the stranger.
Protect the refugee.

HIAS Greece



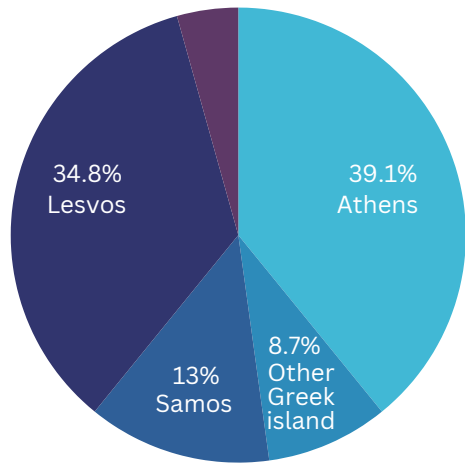
Yoga and Sports with Refugees



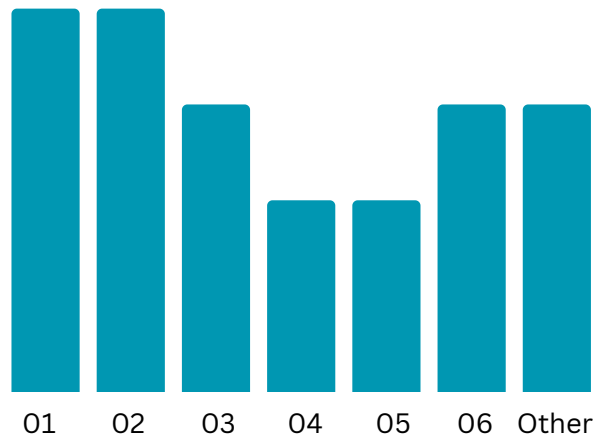
Lesbos LGBTIQ+ Refugee Solidarity

ANNEX I

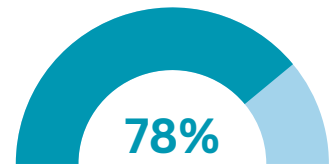
Demographics of Respondents



Location of Interview



Month of Asylum Interview (2023)



Responses informed via a transcript

Summary of Data: Key Findings



Over half of SOGIESC applicants were asked **explicit questions relating to sexual practice** and/or sexual behaviour during their asylum interview



Almost 60% of SOGIESC applicants were asked questions based on **stereotypical notions**



20% of participants faced **scepticism and discriminatory questioning** during their interview because they had **children** as an LGBTQI+ individual.



65% were asked questions which demonstrated a **lack of training** or understanding by the caseworker



Over 50% of participants were asked questions that **place the blame on the applicant**, such as questioning why the applicant chose this lifestyle.

[1] B and C v Switzerland (Applications nos. 889/19 and 43987/16) (ECtHR, 2020); James Michael Brennan (2021), 'Hiding the Authentic Self: Concealment of Gender and Sexual Identity and its Consequences for Authenticity and Psychological Well-being', Available at: <https://scholarworks.umd.edu/cgi/viewcontent.cgi?article=12892&context=etd>; 'X, Y, Z v Minister voor Immigratie en Asiel' (2013, CJEU); Greece, Special Appeal Committee (A.G. v.the General Secretary of the former Ministry of Public Order, No. 95/56266)(Special Appeals Committee, 2012).

[2] Asylum Code (Law 4939/2022).

[3] European Parliament and Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 189 (Asylum Procedures Directive), Articles 15(3)(a) and 21(7)(b). Asylum Code (Law 4939/2022).

[4] As revealed by organisations throughout mainland Greece.

[5] See Joined Cases C-148/13 to C-150/13, A, B, C v Staatssecretaris van Veiligheid en Justitie, (2014) (ABC decision); Joined Cases C-199/12 - C-199/12 - C-201/12, X, Y, Z v Minister voor Immigratie en Asiel (2013) (XYZ decision); European Parliament and Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 189 (Asylum Procedures Directive).

[6] See Joined Cases C-148/13 to C-150/13, A, B, C v Staatssecretaris van Veiligheid en Justitie, (2014, CJEU) (ABC decision); Applicant (Iran) v Asylum Office (Greece). Case no: 16937/2019.

[7] See UNCHR, "Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", HCR/GIP/12/09 (2012), §§ 62, 63.vii, available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/50ae466f9.pdf>; EUAA, Quality Assurance Tool, standard 6.5, available at: <https://euaa.europa.eu/sites/default/files/EASO-Quality-Assurance-Tool-EN.pdf>.

[8] See Asylum Procedures Directive, Article 4(3) and 15(3); United Nations High Commissioner for Refugees (UNHCR), "Guidelines on international protection no. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees" HCR/GIP/12/09, §§ 60.iii, 60.iv., 23 October 2012.

[9] See EUAA, "Judicial Analysis -Evidence and credibility assessment in the context of the Common European Asylum System", Table 32, p. 180, 2018, available at: https://euaa.europa.eu/sites/default/files/easo-evidence-and-credibility-assesment-ja_en.pdf ["Why did you choose this lifestyle?" is contrary to the DSSH model which explicitly indicate that "there is rarely one 'turning point'"]; see also UNCHR, "Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", HCR/GIP/12/09 (2012), § 12, available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/50ae466f9.pdf> ["the sexual orientation and/or gender identity are fundamental aspects of human identity that are either innate or immutable". Thus, sexual orientation and/or gender identity are never a choice, and to suggest otherwise is to deny a person's fundamental identity.].

[10] Brunilda Nazario, 'Sexual Orientation', (WebMD, 2022). Available at: <https://www.webmd.com/sex-relationships/sexual-orientation>.

[11] Joined Cases C-199/12 - C-199/12 - C-201/12, X, Y, Z v Minister voor Immigratie en Asiel (2013) (XYZ decision).

[12] See Joined Cases C-148/13 to C-150/13, A, B, C v Staatssecretaris van Veiligheid en Justitie, (2014, CJEU) (ABC decision); UNCHR, "Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", HCR/GIP/12/09 (2012), §§ 4, 49, 60.ii., available at: <https://www.unhcr.org/sites/default/files/legacy-pdf/50ae466f9.pdf>.

[13] Joined Cases C-148/13 to C-150/13, A, B, C v Staatssecretaris van Veiligheid en Justitie, (2014, CJEU) (ABC decision).