

LGBT Asylum Seekers in Sweden

Conceptualising Queer Migration
Beyond the Concept of “Safe Third Country”



LGBT Asylum Seekers

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An Oxford Research report

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Preface

The past few years the debate on asylum in Sweden has focused on refugees from countries with ongoing armed conflicts. However, LGBTQ persons' need for protection can be very different and includes both countries with hostile laws and countries that are not able to ensure sufficient protection from persecution. This study attempts to illuminate the situation for LGBT asylum seekers, especially from the Western Balkans, to contribute to the knowledge about their situation, in the context of existing laws and the national immigration system.

At Oxford Research, our motto is "knowledge for a better society" and this is what we attempt to provide with this report. We had the fortune to collaborate with Enes Lukac who had both the academic background and personal experience to study the issue in depth and win the confidence of the very vulnerable community of LGBT asylum seekers. The study presented in this report was conducted during the summer of 2016 with the support of an Erasmus-grant offered Enes Lukac as an international student. Putting Enes in contact with RFSL was an obvious choice to make the most of our collaboration. I had the privilege to mentor Enes during this time to monitor the work and contribute to the preparation of this report.

Hjalmar Eriksson, Stockholm 24 July 2017

A note on the author

Enes Lukac is a graduate with a High Honors degree in Sociology from Bosphorus University in Turkey. She spent one year as an exchange student at UCL University in the UK, and completed an internship in the summer of 2016 as a social policy researcher with Oxford Research in Stockholm. She is currently a master student of Gender Studies at Lund University and transfeminist activist. In terms of her academic work, she is mostly writing within the area of transgender studies, eating disorder studies and queer studies. Since she moved to Sweden, Enes has been taking an active part in human rights initiatives in Sweden, specifically related to transgender rights and asylum rights. Presently, she is active in LGBT Danmark in Copenhagen while living and studying in Lund, Sweden.

1. Introduction

This section of the report introduces the study conducted during the summer of 2016. First the topic is defined, and related to its background and context. Then follows the purpose and motivation of the study. The third subsection describes the study methodology. Finally, the structure of the report is laid out.

1.1 TOPIC, BACKGROUND, AND CONTEXT

This report aims to reflect on the issue of ‘safe vs. non-safe countries’ in relation to LGBT individuals who are in the asylum process in Sweden, by introducing their personal experiences of being discriminated against and persecuted in their home countries because of their sexual orientation, gender identity, or gender expression. The country case studies chosen for this comparative report are two Western Balkans countries, namely Serbia and Macedonia, with the personal narratives based on one respondent from Serbia and two from Macedonia. The research has been done by Enes Lukac at Oxford Research in collaboration with Swedish LGBTQ organisation RFSL working with, among others, LGBT asylum seekers¹ as a target group.

The study was conducted in the context of a law proposal published by the Swedish government aimed at reducing refugee immigration in the summer of 2016. The proposal was ratified by the Swedish Parliament [Sveriges riksdag] on 21 June 2016². In limiting the possibilities of persons seeking refuge from armed conflict, the new law also limits LGBT asylum seekers’ possibilities of being granted a permanent residence permit, as well as the possibilities of the applicants’ families to come to Sweden. The amendments aim at adjusting ‘the asylum regulations to the minimal level permitted in the EU so that more people choose to seek asylum in other EU countries’³. Starting on 20 July 2016, the law is in force for three years.

The interviewees were chosen after initial data had been collected through participant observation and informal interviews during workshops and activities for LGBT asylum seekers organised by RFSL within the RFSL Newcomers project. Out of 39 individuals from 23 different countries, three interviewees from Serbia and Macedonia were selected for personal narrative studies. Newcomers is an RFSL project and support network group for LGBTQ refugees and asylum seekers in Sweden who come from all parts of the world and have often experienced persecution in their home countries. Newcomers is also a social meeting space with weekly get-togethers that include activities such as language courses, workshops, and legal advice sessions. Their goal is to strengthen the members’ identities and voices by creating meeting spaces where LGBTQ refugees and asylum seekers can share their experiences.

In preparing for the study we found that every LGBT asylum seeker in Newcomers who came from an ex-Yugoslav country had their asylum claim rejected at least once. This rejection was based on a

¹ In the context of this report “LGBT asylum seeker” is used to refer to a person seeking refuge from persecution based on being, or being perceived as, an LGBT person.

² Folkkampanj för Asylrätt, 2016.

³ Government.se, 2015.

reasoning that their home country was "safe" which was explicitly stated in their decision letters (the cases were treated as "manifestly unfounded"), despite Swedish national legislation not allowing a "safe country of origin" concept to be used and there not being a national list of safe countries of origin⁴. Consequently, the Swedish Migration Agency [Migrationsverket] put non-cis-hetero individuals from these countries in a more precarious and vulnerable position in comparison to asylum claimants belonging to the same minority group, who come from countries where homosexual acts are criminalised, such as Senegal, Egypt or Uganda.

1.2 PURPOSE AND MOTIVATION

The main purpose of this report is to reflect on discrepancies between Swedish law, EU law and international human rights law and how these legal frameworks are implemented by the Swedish Migration Agency. The report's goal is thus to explore how the uncovered discrepancies affect the human rights of LGBT individuals who are undergoing an asylum process in Sweden. In addition, the report will consider potential disparities between Serbian and Macedonian law on the one hand, and the prevalent social, cultural and individual norms, attitudes and actions of these countries in regard to LGBT rights on the other, as demonstrated through individual case studies. In addition, it aims to reflect on similar discrepancies among the legal framework of Sweden, EU law, international human rights law, and actions performed by the Swedish Migration Agency. In this respect, the goal of the research is to provide an answer to how mentioned discrepancies affect the realisation of human rights of LGBT persons who are in the asylum process in Sweden.

The practical purpose of this research is to inform and influence future legal and political decisions in Sweden that will affect LGBT refugees and asylum seekers, as well as to raise awareness about LGBT asylum seekers' legal and social vulnerability, and the discrimination, oppression and insecurity that have become part of their societal positions. Creating an academic and scientific space in which their personal stories become relevant, can help strengthen their voices and identities thus potentially raising awareness in the general public and encouraging policy-makers to approach minority rights with prudence and circumspection.

1.3 METHODOLOGY

This report employs a qualitative and interdisciplinary approach drawing from comparative law, sociology, and gender studies. Regarding comparative law, the legal frameworks of both Sweden and the EU on the one hand, and Serbia and Macedonia on the other, are analysed in terms of their structural conditions exemplified through articles, laws, regulations, declarations, and directives of national and intergovernmental actors. The document studies are focused specifically on human rights law, asylum law, and the protection of LGBT rights within these frameworks. The analysis of legal documents is supplemented by three personal narratives of LGBT asylum seekers as case studies based on in-depth and semi-structured interviews with three LGBT asylum seekers, in addition to an interview with a Gender, LGBT and Children Coordinator at the Swedish Migration Agency, as well as the interviews

⁴ European Council on Refugees and Exiles, 2015. P. 34.

with Patrick Bazanye, a lawyer in charge of providing legal counsel for LGBT asylum seekers on behalf of RFSL, and Jasminè Mehho the national coordinator for RFSL Newcomers.

In regard to the interviewees' life histories, a combination of narrative and content analysis is applied in order to reveal the social contexts of their home countries' and the usage of homophobic and transphobic language by Serbian and Macedonian individuals, groups, and institutions to refer to them. The report will combine interpretivism – exemplified through the respondents' views and the three critical case studies – as well as a feminist paradigm in terms of including multiple voices.

As a transgender person who has been born and raised in the context of a Muslim majority town in Serbia, I, the author of this report, am familiar with interplay among not just transphobia, physical violence, and death threats toward LGBT community, but also religious, ethnic and national tensions prevalent in the Balkans. This type of personal motivation and insiders' point of view has proven to be meaningful for research studies of this type and it has been used in research concerned with intersectional and transfeminist studies. The sampling technique which I applied in approaching LGBT participants for my research was snowball sampling where I used the social network available to me as a transgender researcher engaged with LGBT rights activism in approaching the network of LGBT participants.

To recruit respondents and gain a contextual understanding of the subject in focus, participant observation has been conducted during meetings, activities, and workshops where RFSL Newcomers' participants have been actively involved. Adhering to the Swedish Research Council's guidelines, both participant observation and interviews have been conducted using informed consent through either oral or written statements which have been approved by the participants, Oxford Research and RFSL. The agreement of participation specifically emphasizes that the identity of every subject that participates in the research is confidential unless the individual has explicitly requested to participate with identifiable information. The study was conducted during the summer of 2016.

1.4 STRUCTURE OF THE REPORT

The report starts with an analysis of the Swedish legal system related to asylum, human and minority rights followed by a detailed explanation of the asylum procedure in Sweden and an interview with a representative from the Swedish Migration Agency. The second section is concerned with legal texts, rulings, and directives from both international and EU law applicable in the context of Sweden which is a member of both the United Nations and the European Union. The section is followed by three personal case studies of LGBT asylum seekers in Sweden who come from Serbia and Macedonia, namely Igor, Haris, and Fifi, as well as an interview with RFSL's Legal Counsel and National Coordinator for the RFSL Newcomers project. Lastly, report concludes with a commentary on the combined findings of the comparative documents studies, participant observation and interviews, in addition to concrete recommendations for future policy decisions regarding LGBT asylum seekers in Sweden.

2. The Swedish Refugee Immigration System

This section of the report will present the legal regulations in Swedish law related to immigration, refugees, and asylum seekers and present a critical analysis of the immigration process with a focus on LGBT asylum seekers. First, the laws governing the process are presented: The Law on Reception of Asylum Seekers and Others⁵ which was amended on 1 June 2016 and the Act amending the Aliens Act⁶ which was implemented in 2009. The detailed explanation of the two legal documents is followed by an explication of the Swedish asylum process and a critical analysis of this. The section concludes with an interview with a Gender, LGBT and Children Coordinator at the Swedish Migration Agency.

2.1 LEGAL REGULATIONS

The Aliens Act with amendments is the legal document defining the status of aliens in Sweden. In it is given the legal definition of a refugee. The reception of asylum seekers is regulated in the Law on Reception of Asylum Seekers and others, which was amended in 2016, limiting the rights under the law. Below this 2016 amendment is summarised.

2.1.1 Aliens Act⁷, amended with Act amending the Aliens Act⁸

A refugee, as specified in the Chapter 4, Section 1 of the Aliens Act, is

an alien who is outside the country of the alien's nationality, because he or she *feels* a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group, and is unable, or because of his or her fear is *unwilling*, to avail himself or herself of the protection of that country. This applies irrespective of whether it is the authorities of the country that are responsible for the alien risking being subjected to persecution or whether these authorities cannot be *assumed* to offer protection against persecution by *private individuals*.⁹ [italics added]

There are two important aspects to the Aliens Act. Firstly, according to the above definition, LGBT asylum seekers are covered as belonging to a social group based on sexual orientation, gender identity, or as *being perceived* of belonging to such a group.¹⁰ The other important aspect of the Aliens Act is that of new circumstances preventing the enforcement of a deportation decision. A rejected asylum seeker is entitled to claim new circumstances, based on new grounds and evidence which point to an increased risk of persecution in the country of origin making it more dangerous to return. They may also present reasons and circumstances that, due to valid reasons, have not previously been assessed

⁵ Sveriges Riksdag, 2016a.

⁶ Regeringskansliet, 2009.

⁷ Sveriges Riksdag, 2016c.

⁸ Regeringskansliet, 2009.

⁹ Regeringskansliet, 2009.

¹⁰ As can be learned from the personal case studies in this report (see below), the interviewees' feelings and unwillingness to ask for protection by their respective governments due to assumption that they cannot protect them from private individuals was not accorded significant importance by the Swedish Migration Agency.

or submitted to the Swedish Migration Agency. If these criteria can be met, an asylum seeker will be provided with a new assessment under Chapter 12, Section 19-19a of the Aliens Act. Circumstances that could potentially change the enforcement of a deportation decision include inter alia: a) new legislation in the country of origin sanctioning the applicant's reasons for asylum, b) media attention in both Sweden and the country of origin regarding the applicant's story, or c) new evidence in the case.

2.1.2 Law on Reception of Asylum Seekers and Others¹¹

Per the amendment that came into force in 2016, an asylum seeker in Sweden does not have a right to assistance with accommodation, healthcare, or a daily allowance if they have received a refusal of entry, expulsion order, or if the deadline for voluntary return has expired.¹² A person who is in need of protection will only be granted a temporary residence permit instead of a permanent one as was previously the case. In practice, this means that those who are granted a one-year residence permit as persons eligible for subsidiary protection do not have the right to family reunification if they have sought asylum after 24 November 2015. The applicants are entitled to renew their residence permits when they expire, if they are able to prove that their reasons for asylum are still persistent and present. Asylum seekers can also apply for permanent residency if they are able to prove that they can support themselves, for example through a contract of employment. Residence permits based on refugee status have now been reduced to a maximum period of three years.

2.2 THE ASYLUM PROCESS IN SWEDEN

In total, an asylum applicant in Sweden goes through three interviews. The main interview is generally attended by the applicant and three officials, namely a case worker who makes the decision whether to grant asylum, the applicant's public counsel and an interpreter. The asylum procedure in Sweden begins with an applicant's registration at a reception unit and a short interview to establish their identity and determine whether their application for residency is an asylum application. If the applicant's claim is proved to be an asylum claim, the asylum seeker is entitled to choose between an assigned legal counsel or arranging one by themselves. At this point, the applicant must expound upon their reason for seeking protection, including details about their risk of persecution and potential consequences if they were to return to their home country. The burden of proof is on the applicant, who must demonstrate a well-founded fear of persecution beyond reasonable doubt by adducing the evidence of their situation to their case officer. As such, the applicant must prove the claims in their case, in line with the guidelines set by SR 38/2015, a legal regulation pertaining to sexual orientation as a ground for asylum¹³. The assessment procedures to be used in LGBT asylum cases are provided in the same regulation. These include assessing whether an applicant has stated their affiliation to a group at risk of persecution on grounds of sexual orientation (aka. whether an applicant is an LGBT person), and assessing the situation of the applicant's social group in their home country by reviewing the country information reports.

¹¹ Sveriges Riksdag, 2016a.

¹² Migrationsverket, 2016.

¹³ Migrationsverket, 2015.

If the asylum seeker is rejected by the Migration Agency, an appeal is submitted to the Migration Court of Appeal [Migrationsöverdomstolen]. The appeal must be submitted within 3 weeks of receiving a negative decision, as stated in Chapter 23 of the Administrative Law [Förvaltningslagen]¹⁴ and has a suspensive effect under the regular procedure, as specified in Chapter 12 of the Aliens Act. If the applicant desires an oral hearing in court, this must be specifically requested. Nevertheless, this process has proved to be far from flawless. According to data provided by the European Council on Refugees and Exiles (ECRE)¹⁵ within their Asylum Information Database (AIDA)¹⁶, there have been cases where a request for an oral hearing has been submitted and refused without the applicant having been informed by their legal counsel. The applicants thus continue to live in hope that they will be able to put forward their case to the court¹⁷.

When an initial decision is appealed, the appeal is first reconsidered by the Swedish Migration Agency. The Migration Agency has the discretion to either change its earlier decision or confirm the rejection. In the latter case, the appeal is directly forwarded to the Migration Court of Appeal. If they determine that the asylum seeker would be at risk of torture or other breaches of Article 3 of the European Convention on Human Rights¹⁸ upon return, the Swedish authorities must abide by their ruling. If the appeal is rejected, the asylum seeker may apply to the Supreme Administrative Court [Högsta förvaltningsdomstolen], although a leave from the Migration Court of Appeal is required to be granted permission to appeal. After three negatives by the three decision-making bodies, the case is considered closed. The Swedish Migration Agency then forwards the applicant's details to the Swedish police in order to put the deportation into effect. It should be noted however, that asylum seekers in Sweden also have the right to appeal to the European Court of Human Rights (ECtHR) if they are rejected on all national levels. By December 2015, a total of 9,753 appeals had been made to the Migration Court of Appeal, of which 7,704 cases were asylum claims. Of these, 71 cases were given leave to appeal (Asylum Information Database, 2015, p. 19)¹⁹.

2.3 CRITICAL POINTS ON THE IMPLEMENTATION OF ASYLUM LAW IN SWEDEN

The document studies have unearthed three problematic issues in relation to how Swedish asylum law is implemented. The first issue is related to the reimbursement of lawyers who work on the asylum cases in Sweden within the framework of free legal assistance provided by the Swedish authorities. The lawyers employed by the Swedish authorities as public counsels in asylum cases are not paid to investigate country of origin information²⁰. Since one of the main reasons for an asylum application to be rejected is lack of evidence concerning discriminatory cases in the claimant's home country, this often leads to negative decisions by the Swedish Migration Agency. In addition, other areas of legal

¹⁴ Sveriges Riksdag, 2014.

¹⁵ <http://www.ecre.org>

¹⁶ <http://www.asylumineurope.org>

¹⁷ European Council on Refugees and Exiles, 2015. P. 18.

¹⁸ Council of Europe, 2010.

¹⁹ European Council on Refugees and Exiles, 2015. P. 19.

²⁰ Asylum Information Database (2016) *Country Report: Sweden*, p. 24f

practice are often better remunerated than asylum cases, making migration law a less prestigious path to pursue for ambitious lawyers.

Secondly, there are no special requirements for appointed public counsels in Sweden with regard to their knowledge of asylum and migration law. To be appointed to asylum cases, which are distributed according to the lawyers' availabilities, it is sufficient to possess a law degree. Public counsels are not required to pass any tests in the subject area of asylum law, resulting in an uneven level of competence among the appointed legal counsels, which, in individual cases, has been detrimental to the asylum seeker. The asylum seeker is entitled to complain if the appointed legal counsel does not fulfil their duties and can request a new lawyer. Such a request is, however, not always granted, and often the reason may not be specified, as demonstrated in one of the case studies of this report. For a lawyer to be removed from a case, they must seriously breach their professional duties through, for example, 'drunkenness or other gross misconduct'²¹. Lastly, the free legal assistance does not cover representation during interviews so the lawyers might be absent in crucial moments for the asylum seekers.

The third problematic issue in the Swedish Migration Agency's implementation of asylum law is the prioritisation of asylum applications from Syria and Somalia where, in most cases, final decisions have been quick and positive. In contrast, asylum claimants from Serbia and Macedonia are often categorised as 'manifestly unfounded cases' and processed in an accelerated procedure which often results in negative decisions. Consequently, the applications submitted by asylum seekers from other, non-prioritised nationalities are often put on temporary hold by Swedish Migration Agency, resulting in a prolongation of the timeframe between lodging an asylum application and the actual interview.

2.4 THE POINT OF VIEW OF THE SWEDISH MIGRATION AGENCY

The following section is based on an interview with a Gender, LGBT & Child Coordinator employed by the Swedish Migration Agency. It is included in the report to provide detailed insights regarding the practical implementation of asylum law and new regulations concerning LGBT asylum seekers in Sweden. Three main topics are discussed: Firstly, LGBT persons' specific reasons for applying for asylum in Sweden, and the 'safe third country' principle. Secondly, the competency of the Swedish Migration Agency's staff when it comes to LGBT issues. Thirdly, the dialogue between the Swedish Migration Agency and human rights organisations such as RFSL.

The Gender, LGBT & Child Coordinator states that the most important change in terms of new legal conditions for asylum seekers in Sweden is the previously discussed issue of replacing permanent residence permits with temporary ones. The coordinator believes that LGBT asylum seekers are not more affected by this new asylum law compared to other types of asylum claimants in Sweden, stating that "LGBT asylum seekers still have the same importance as previously, per the Aliens Act". They also claim that the evaluation of asylum applications in Sweden is exclusively focused on the individual cases and not on the legal framework of the applicants' home countries: "Sweden does not apply the 'safe third country'-principle like some other countries in the EU". This is in sharp contrast to the case studies presented in this report, wherein all three interviewees had their asylum claims rejected on the basis of both Serbia and Macedonia having the legal framework to protect them as LGBT

²¹ European Council on Refugees and Exiles, 2015. P. 20.

individuals. The coordinator was, however, not willing to discuss individual cases, or the reasons for rejection as specified by the assigned case officers. In addition, the coordinator did not have any comments regarding the criticism that Sweden has received from domestic and international NGOs concerning their treatment of LGBT asylum seekers. Nor were they able to present any data relating to the number of approved or rejected LGBT classified asylum applicants that the agency had evaluated.

Given the ambiguous meaning that belonging to an LGBT minority group often entails in terms of self-identification and inconsistency of sexual orientation or gender identity over time, the mechanism of determining sexual orientation or gender identity is problematic by the very process of doing it. When confronted with this concern, the coordinator explains that the Swedish Migration Agency is only looking for ‘a low level of proof’, something that is contradicted by the experiences of all three interviewees in our case studies. In response to a suggestion that a specialized case officer for LGBT asylum claims should be mandatory for each LGBT-related asylum case, the coordinator clarifies that in many cases, the case officers do not know who they will meet prior to the first interview with the applicant, unless a non-heterosexual orientation has been stated on the initial application. While the coordinator agrees that ‘the LGBT case officer’ is a non-existent concept at the Swedish Migration Agency, they also claim that when it becomes clear that the asylum claim is LGBT-related, a person specialized in LGBT issues is always brought in. This specialist then follows the interview outside or inside the interview room, in order to verify that the right questions are being asked by the case officer. As a consequence, there are often breaks during the asylum interview wherein the case officer and LGBT specialist discuss which questions to ask based on their previous experience with LGBT asylum claimants. As stated by the coordinator: “Our knowledge is built merely from previous experience since there are no standard questions for assessing someone’s sexual orientation”.

The coordinator also points out that the Swedish Migration Agency took part in the activist movement related to LGBT rights in Sweden from the very beginning, participating in Stockholm Pride and organising training related to LGBT migrant issues in conjunction with RFSL. However, many LGBT activists have declared that there is no space for the Swedish police or the Migration Agency’s officials at these types of events and the agency has made a uniform decision to participate only if they are invited by the organisers. In 2016, representatives of the Migration Agency did not participate in either Stockholm Pride or the Asylum Forum organised by RFSL where the participant observation used in this study was conducted. The Asylum Forum was an event organised within the RFSL Newcomers project and consisted of seminars and panel discussions where migration and asylum politics were discussed from an LGBT perspective. It was an opportunity to reflect upon, and exchange, information on the challenges facing LGBT migrants and asylum seekers, as well as to demand answers and solutions from government agencies. According to the Migration Agency coordinator, the agency declined an invitation to participate by RFSL as they were invited to participate “just ten days in advance”. While the decision of the Swedish Migration Agency not to participate in the forum can be criticised, it should nevertheless be noted that several employees of the Agency participated as audience members during seminars and panels at the Asylum Forum. This demonstrates that, at the very least, some individuals at the agency consider NGOs a valid source of knowledge in terms of ensuring quality of their evaluations.

3. International Law in relation to LGBT Asylum Seekers

This section will present a short summary supranational declarations and directives which are relevant in the case of LGBT asylum seekers and apply to members of the United Nations and the European Union. In terms of the United Nations, the Universal Declaration of Human Rights and Convention and Protocol relating to the Status of Refugees will be analysed in relation to the articles that are relevant to the topic of LGBT asylum seekers in Sweden. In terms of the EU, the relevant paragraphs from both the EU Charter of Fundamental Rights and Qualification Directive, as well as an official stance of the European Parliament regarding LGBT asylum seekers in the European Union will be presented.

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR). Sweden voted in favour of the declaration and has continued to be a strong advocate of human rights, which as per the Declaration, all human beings are inherently entitled to. According to Article 2 from UDHR, ‘everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. Specifically related to asylum, Article 14 of the Declaration states that ‘everyone has the right to seek and to enjoy in other countries asylum from persecution’. In addition to this, the UN Refugee Agency (UNCHR) in its Refugee Convention from 1951 lists five grounds for refugee status where asylum is an international obligation for all signatories, including Sweden. These five grounds are race, religion, nationality, political opinion, and, of most relevance to LGBT asylum seekers, membership of a particular social group: Thus, one is a refugee if there are well-founded reasons to be afraid of persecution due to sexual orientation or other affiliation to some social group.

As a member of the EU, Sweden is obliged to follow the EU laws, regulations, rulings, and directives that are specified in the legal documents that are part of the EU Acquis. Article 18 of the Charter of Fundamental Rights of the European Union provides the right to asylum in the territory of the European Union and prohibits collective expulsions and refoulement as specified in the Article 19²². And the Charter offers right to physical and mental integrity, under Article 3, and respect for private life, under Article 7. Of particular importance in the EU Acquis is the Qualification Directive 2004/83/EC²³, a directive concerning the minimum standards for qualification as a refugee, and the Procedures Directive 2005/85/EC²⁴, offering standards on procedures for granting or withdrawing refugee status. Weighing the mentioned Directives and the Charter, the Court of Justice of the European Union has in a preliminary ruling of July 2014²⁵, relating to three cases, concluded that a delay in not declaring sexual identity at the outset cannot be considered to speak against the applicant’s credibility, as sexuality is an intimate aspect of identity and protected under the Charter articles 3 and 7, and the Directives require a competent and cooperative procedure and assessment of the need for

²² Official Journal of the European Communities, 2000.

²³ Official Journal of the European Union, 2004.

²⁴ Official Journal of the European Union, 2005.

²⁵ Court of Justice of the European Union, 2014a.

protection. If migration authorities justify their negative decisions related to LGBT asylum seekers by 'uncertainty' about their sexual orientation, it would violate the EU law applicable in all 28 Member States, as sexual orientation cannot be definitively determined, and it is thus the credibility of the applicant and their account that should be assessed.²⁶ It should also be noted that the official stance of the EU Parliament recognises LGBTI people as a particular group that may be subjected to abuse, even in countries which are considered 'safe'.²⁷

²⁶ Court of Justice of the European Union, 2014b. Par. 69.

²⁷ The European Parliament's Intergroup on LGBT Rights, 2016.

4. Personal Case Studies of LGBT Asylum Seekers in Sweden

This section of the report will give an in-depth view of the experiences of LGBT asylum seekers in Sweden. First, three subsections present the individual cases of three LGBT asylum seekers from Serbia and Macedonia. Finally, the views of RFSL staff working with LGBTQ asylum seekers is presented, reflecting on the case studies.

4.1 IGOR ĐOKOVIĆ, SERBIA

Igor Đoković is a 22-year-old Serbian gay man who applied for asylum in Sweden on 1 September 2014. After more than one year of living in uncertainty, he received his first negative decision from the Swedish Migration Agency on 22 September 2015. After appeals, this was followed by two additional negative decisions and he was deported to Serbia on the 8 July 2016. Before applying for asylum in Sweden in 2014, Igor had lived exclusively in Serbia. He was born in a small village called Gruža and completed the medical and healthcare programme in one of the high schools in Kragujevac, close to his hometown. After graduation, he enrolled at the University of Kragujevac where he began studying psychology. Per the Serbian Constitution, same-sex marriage is banned, there is no recognition of same-sex unions. In addition, the Gay Pride parade in Belgrade has been continuously attacked by members of Serbian neo-Nazi organisations and extreme religious groups.²⁸ Despite these circumstances, the Swedish Migration Agency stated in Igor's negative decision that Serbia is a 'safe country' for LGBT individuals which is not 'sufficiently dangerous' for asylum to be granted.²⁹

Igor states that his main reason for applying for asylum in Sweden was his hope that Sweden would be a place where he could live without fear and have the freedom he lacks in Serbia. He wants society to perceive him as a decent person and have the chance to express his full potential and be appreciated for the qualities he possesses. In his application, Igor stated that he had been physically attacked twice on the streets of Kragujevac, but had decided against reporting the incidents to Serbian police, as he lacks confidence in them, and their ability to protect gay rights. It should be noted that Igor not reporting these attacks to the Serbian police was stated as one of the reasons for rejecting his asylum claim. This sharply contradicts Chapter 4 of the Aliens Act, which asserts that refugee applicants are entitled to be *unwilling* to avail themselves of the protection of their home country if they *assume* that the authorities cannot offer them protection against persecution.

The first issue which frustrated Igor about his asylum process was how the Serbian interpreter did not show up during his first interview, forcing him to present his case in English. "Apart from not having my interpreter, I was shocked when my case officer asked me about my first sexual experience in Serbia. I didn't know in which way to respond and not sound vulgar at the same time", he states. The case officer also asked him which gay applications and websites he uses, which he could not answer given that few LGBT people use these in central Serbia. This points to one of the most problematic issues with the Swedish asylum process for LGBT persons and the information on which the decisions

²⁸ CNN, 2010.

²⁹ QX, 2016b.

are based: stereotypical questioning, detailed questioning about the applicant's sexual practices in order to prove their homosexuality, and allowing applicants to present – albeit of their own free will – visual materials that demonstrate their non-heterosexual practices, which Igor chose to do. Such practices are a direct breach of Article 7 of the EU Charter of Fundamental Rights concerning respect for private and family life. In terms of international law, the UNHCR Guidelines of International Protection explicitly state that “Decision makers should avoid reliance on stereotypes or assumptions” (Paragraph 49) and recognised that individuals may choose to avoid displaying characteristics that may manifest their sexuality or gender identity to avoid persecution. This has been demonstrated through a French ruling³⁰ wherein a gay man was recognised as a refugee despite that he had not claimed or manifested his sexuality openly in his home country.³¹ Despite these directives and precedents, these aspects of EU and international law do not seem to have been taken into consideration in the Swedish Migration Agency's assessment of Igor's case.

A third reason for Igor's rejection was that he had never attempted to move from the municipality of Kragujevac where he was born and lived throughout high school and university. As he states: “I remember my case officer telling me that my situation could be improved if I moved to Belgrade because it's the capital city and probably more open when it comes to LGBT rights than Kragujevac”. This statement also contradicts the above-mentioned 2009 French ruling wherein a gay man was recognised as a refugee based on the fact that showing his homosexual identity in public would have made him subject to harassment and discrimination, despite the laws of his home country banning discrimination on the basis of sexual orientation.³² As UN members, Sweden and France both adhere to the same guidelines on international protection specified by the UNHCR Guidelines for International Protection. Nevertheless, it seems that asylum decisions in the different countries are prone to be somewhat arbitrary, depending on the particular determinations of decision-makers involved in each specific asylum case.

“It really frustrates me to think about my case officer and how he claimed that the Serbian authorities could offer me protection from the discrimination I had experienced. In 2013, I visited the municipality offices to take a birth certificate that I needed for my undergraduate studies' coordinator. When I explained what I needed to the official, she started laughing at me and asked me in front of the other visitors if I was gay because of the makeup, clothes, and hairstyle I was wearing that day”. Igor continues, “I wonder what criteria the Migration Agency's uses when they assess whether the attacks come from individuals or the system? As someone who works in a state institution, this woman was a direct representative of the Serbian authorities and she was insulting me during her working hours. Despite this, the Swedish Migration Office categorised this incident as ‘an individual unreported attack’ in my decision letter”.

Igor also believes that his public counsel did not do enough. When he expressed dissatisfaction with the lawyer who had been assigned to him by the Migration Agency and requested a replacement, he

³⁰ Refworld, 2010a.

³¹ United Nations High Commissioner for Refugees, 2012.

was rejected. “I spoke with my lawyer about homophobic attacks that I experienced from other asylum applicants during my stay at the asylum centre but she did not include this in my application at all. It confuses me that they place LGBT asylum seekers in such a precarious situation by forcing them to share their living space with other types of claimants who, in many cases, come from countries where homosexuality is conceptualised as something unnatural and sick. These were the kind of people we fled from and came to Sweden to get away from.” Igor also points out that the decision-making process took longer than he had expected. “I really cannot understand why the process of reaching a decision took so long. I had to spend more than one year living with these people. I kept motivating myself by saying that it was temporary and that I would have a peaceful life in Sweden later. I find it very unfair that it took them so long to give me a negative decision when everything could have been done at a much quicker pace”, Igor concludes.

Igor is at the time of writing in the process of family reunification with his Swedish husband Martin whom he met in 2015 shortly after receiving his first negative decision. He does, however, emphasise that he did not decide to marry someone with Swedish citizenship in order to receive a permanent residence permit. Conversely, it was a mutual decision between him and his boyfriend to enable them to continue living together as they had for nine months prior to Igor’s deportation to Serbia and prevent any future separation. The couple met online when Igor lived in a refugee centre in Jönköping. In an interview with QX magazine, they explain that they first moved in together as friends as Igor could not remain living at the centre where he was being harassed by other asylum seekers. ‘After a few months, our relationship had grown and become serious’, states Martin.³³ Igor also applied for both a work permit and a residence permit while living with Martin, but since he was still in the asylum process, they were not approved. In April 2016, Igor and Martin got married at the City Hall in Malmö. Nevertheless, the Migration Agency ruled that their application for family reunification had to be done from Serbia by Igor. “I find it unfair that heterosexual couples with children are the only exceptional cases when it comes to applying for family reunification from the home country”, says Igor. Having returned to Serbia, Igor at the time of writing had the right to seek residency in Sweden due to his marriage to Martin. He was however experiencing daily violent attacks in his hometown where ten individuals recently gathered in front of his house and yelled that he should be killed for being gay.

An additional burden that increases the difficulty of Igor’s situation is that he suffers from latent tuberculosis, a disease which can be life-threatening without the proper treatment he was given in Sweden. On 1 September 2016, he missed a regular appointment with his doctor in Malmö which he missed due to his deportation to Serbia. “I continuously think about the day I was deported. I wasn’t even allowed to say goodbye to my husband due to the ‘security risk’”, he says and as he explains in his interview for QX magazine, no one will hire him as a trained lab technician in his hometown as his sexual orientation has become widely known.³⁴ “It seems that my lawyer was right when she said that only people from Syria and Uganda are entitled to international protection in Sweden”, he concludes.

³³ QX, 2016b.

³⁴ QX, 2016a.

4.2 HARIS ŠABOTIĆ, MACEDONIA

Haris Šabotić is a 23-year-old Muslim Macedonian gay person who arrived in Sweden as an asylum seeker in May 2014. He received his first negative decision in December 2014, with the second negative decision arriving in June 2016, almost 20 months after he appealed to the Migration Court. Haris was born in a small Macedonian village called Crkvina. He moved to Veles to pursue his undergraduate studies in 2011, and then moved to the capital city of Skopje where he spent almost three years prior to his departure to Sweden. His main reason for applying for asylum was that he did not feel safe as a gay person in Macedonia, neither in his family circle or during his studies of Information Technology in Veles where he was discriminated against by professors and colleagues. Prior to his departure to Sweden, Haris was physically attacked by a group of young men in Skopje, received death threats via social platforms by his peers, was fired by his employer due to being open about his sexual orientation, and exposed to death threats by his religious parents. The Macedonian Law on Prevention and Protection against Discrimination (2010) does not prohibit discrimination based on sexual orientation or gender identity, while the Law on Family 1992/80 explicitly prohibits same-sex marriage.

When Haris' family discovered his sexual orientation, his mother made him meet a girl she knew and tried to force him to marry her. "I remember my mother telling me that it would have been better if she had killed me on the very day I was born, rather than having a gay son", he says. He also received death threats from his father and two siblings who scorn homosexuality and believe it goes against the religion, customs, and traditions to which they adhere. Here it should be noted that 'family honour' is classified as the 43. international protection ground according to the UNCHR: family honour 'manifests itself in threats of serious physical violence or even murder by family members or the wider community, committed in the name of honour'.³⁵ Nevertheless, this issue was not considered in the negative decision that Haris received from the Swedish Migration Agency. "What is going to happen if the Migration Agency forces me to go back?" he says. "What is back? There is no back, and there is no place where I can go".

Haris states that he made the decision to leave Macedonia before he decided to go to Sweden. "At first, I really didn't know where to go. I started researching the topic and found out on the Swedish Migration Agency's website that Sweden is one of the most tolerant countries in the world when it comes to LGBTQ rights. Their Facebook page, almost looks like an advertisement for asylum where they invite people to come because the Migration Agency is so helpful and supportive". However, Haris found that the Swedish Migration Agency did not live up to his expectations. He encountered a situation where asylum seekers from the Middle East were prioritised over those from the Western Balkans. "The cause of this problem is not Syrians refugees as such, but the Migration Agency in itself. It is inefficient and lacks objectively designed programmes to deal with asylum seekers. Consequently, they are unable to meet the obligations in terms of respecting the basic human rights to which we should all be entitled as human beings". Haris also believes that the case officers at the Swedish Migration Agency lack knowledge regarding LGBT people, despite "literally having our lives in their hands". Per Haris' first decision letter, his asylum claim was rejected since the physical attack against him was perpetrated by individuals who were neither state representatives, nor belonged to a particular religious or nationalist group. "Around fifteen guys attacked me on the street, yelling 'fucking Muslim

¹² United Nations High Commissioner for Refugees, 2012.

faggot, we will kill you’, and threw a bottle at me which made me bleed. A taxi driver approached me, took me in his car, and drove me to hospital. Do I need to be targeted by the entire Macedonian Christian nation as a Muslim gay person in order to receive a positive decision? I wonder whether they are aware of how few people it takes to kill someone? Sometimes, no more than one!”, he declares.

The decision letter also claims that Haris did not report the violent attack to the Macedonian police and, if he had done so, they would probably be able to protect him from similar incidents. In his appeal, Haris responded that he does not trust the Macedonian police, especially when it comes to cases of discrimination and violence against gay persons. He also claims that he does not feel protected by the Swedish authorities, directly referring to his experiences from the asylum centre. “How can I trust the Macedonian system when even the Swedish system betrayed me?” he asks. “The Migration Agency gave me a room in an asylum centre with asylum seekers who sexually assaulted me”. Haris initially arrived in Gothenburg where he claimed asylum. From there he was sent to an asylum centre in Alfta, a small village almost 300 km north of Stockholm. “There, I encountered a situation that, despite coming from a homophobic village such as Crkvina, was worse than what I had experienced before. There were around 300 other asylum seekers with different backgrounds at the centre and many were homophobic. My visual appearance is different and I was discriminated against so many times until the actual sexual assault took place”. Haris was sexually assaulted by a man in his fifties who shared a room with him during his stay in Alfta. The owner of the privately-run asylum centre advised him not to report the incident to the police since it might lead to ‘other asylum seekers mistreating him even more’. Instead, he offered Haris a single room which he would not have to share with anyone else.

One very problematic issue in the Swedish asylum process is how an accommodation provider for asylum seekers can be any Swedish private individual without a criminal record who possesses the facilities to accommodate migrants. Consequently, many cases of discrimination, sexual assault, and mistreatment of asylum seekers belonging to specific social groups stay hidden from both the Swedish Migration Agency and the police. “When I told my case officer about my experience at the centre, she seemed disinterested, and like she was fed up of these kinds of stories. Can you imagine placing a 21-year-old in the same room as someone over 50? There was nothing I could do in beginning. I didn’t know my rights and no one had explained them to me. I was afraid that he would kill me if I reported it to the police, because that’s what he told me”, Haris concludes. After the incident, Haris moved to Stockholm where RFSL helped him to find private accommodation.

Similar to Igor’s case, Haris claims that he was asked about his sexual practices by his case officer, something he has also spoken to the free daily newspaper Metro about: ‘She asked me some really strange types of questions, such as have you slept with guys, what you did to each other and whether I am able to have sex with women. She also asked me which gay clubs in Macedonia I have visited and which gay dating apps I used there. The most awkward moment, however, was when she asked me why I did not submit any photographs or videos of the ex-boyfriends that I had mentioned during our interview’.³⁶ It can be learned from the *Essa v. Canada* (Minister of Citizenship and Immigration) case from 2011 that ‘an insistence on the applicant going to or have knowledge about gay venues in

³⁶ Metro, 2015.

the country of asylum in order to be gay was not reasonable³⁷. In addition to this, the *A, B, and C v. Staatssecretaris Van Veiligheid En Justitie* (2014) case in the context of the EU set a precedent and established that the asylum assessment of LGBT cases cannot be based on stereotypes, such as knowledge of gay organisations or notions of how gay people behave³⁸. As such, the assessment of the asylum claim must be based on the personal circumstances of the applicant, and evidence based on stereotypes cannot constitute sufficient grounds for concluding that the applicant lacks credibility. Requesting and using such evidence contradicts fundamental rights such as the right to respect for privacy and family life and infringes human dignity. When the Swedish Migration Agency uses this type of information to assess the credibility of asylum seekers, they are thus acting in discordance with international human rights law.

“I don’t know what to say anymore. If I get my third negative decision, I will certainly not try to marry someone here in Sweden just to get my permanent residence permit. I don’t want to be forced by the Migration Agency to marry someone that I don’t love. They’ve already forced me to be stuck in the system for more than two years here in Sweden”, Haris concludes.

4.3 FIFI JANEVSKA, MACEDONIA

Fifi Janevska is a 25-year-old Macedonian transwoman and singer who became famous as a participant in the Macedonian version of the X-Factor. After being publicly denigrated by Željko Joksimović, a Serbian Eurovision star and celebrity member of the X-Factor jury, who commented ‘you are a great singer, but I cannot let you go to the next round because your identity is not normal to me’, she has become a part of public debate and the subject of numerous death threats on social media platforms and her fan page. The “first transgender person on X-Factor”-mania was followed by the live public broadcasting of a Parliament debate in which the MPs discussed a proposal made by a minister from the leading Macedonian party that would lead to Fifi being permanently banned from television programmes in Macedonia. Thus, she came to Sweden as an asylum seeker in December 2014 and was, for almost 17 months, safe from the transphobic physical attacks she had experienced since she was 11. Fifi received a first negative decision letter in April 2016.

Fifi states that the transphobic attacks against her increased enormously after the premiere of X-Factor because she was made ‘to look as a freak’ by the production team on the Macedonian Sitel TV, who also made the decision to air the jury member’s transphobic comments. It should be mentioned that Sitel is a national broadcaster, owned by a member of the same political party to which the minister who started the Parliament debate about Fifi belongs, namely the Christian Democratic Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VRMO-DPMNE). Gjorge Ivanov, President of Macedonia since 2009, is also a party member.

Following Fifi’s participation in the X-Factor she became the subject of a ‘public hunt’, to the extent that a religious sect organised Facebook events where their members photoshopped photos of Fifi swimming in her own blood and stating her home address. Preceding her departure, Fifi was also subject to several incidents of severe discrimination. Approximately two months prior to submitting

³⁷ Refworld, 2011.

³⁸ Court of Justice of the European Union, 2014a.

her asylum application, she was denied access to a public beach owned by the municipality of Skopje, thrown out of a cab by a taxi driver because of her gender identity, and discriminated by her professors at The Saints Cyril and Methodius University of Skopje, where she studied Western Languages and Literature, for not being ‘dressed as a man’ during lectures. It should be noted that Fifi was denied access to the public beach by a private security company employed by the city of Skopje, whose mayor is a member of VRMO-DPMNE. The security guard, apart from refusing to let her enter also called her ‘a faggot’. Fifi also mentions how she applied 19 times for different jobs in Skopje and every time was rejected regardless of her qualifications. She vividly recalls the last rejection, in the summer of 2014 when she was rejected for a job for a Slovenian cruise ship company that recruited Macedonian employees. While the interviewer told her that albeit he had a high level of respect for her language skills – Fifi is fluent in English, German, French, and Macedonian – he considered it ‘impolite towards customers to be dressed as a woman’ Fifi was told that she could be offered the position, but would have to wear male clothes and ‘change her feminine attitude’. This frustrated Fifi, who that point strongly believed that the company would hire her: It is registered and operates in Slovenia, which is an EU member and the most progressive country in the Balkans when it comes to LGBT rights. It was not until she arrived in Sweden, that Fifi found employment: “I got the first job of my life as a 25-year-old in Sweden. Still, this was not enough for the Swedish Migration Agency, despite this being the only place I have lived so far where I’m integrated and able to earn a living”.

The Macedonian Labour Relations Law No. 80/93-2007 forbids ‘discrimination based on sexual inclination’. The term ‘sexual inclination’ is, however, an ambiguous term in a public law and Fifi was uncertain whether it would allow her to sue the cruise ship company, since it is unclear whether transgender persons are included in the concept. As demonstrated by the case of *Kadri v. Mukasey*, Attorney General from 2008, asylum has previously been granted grounded in international law when a member of the LGBT social group has been unable to obtain employment due to their sexuality, similar to Fifi’s experience. In this case, an Indonesian man was granted asylum in the United States despite not having suffered physical persecution, as the court determined that the ‘economic persecution’ Kadri suffered by not gaining employment constituted a valid reason for asylum³⁹. In addition, the Employment and Social Security Directive (2006/54/EC), clearly prohibits discrimination based on gender identity in the EU, making the Slovenian cruise ship company’s discrimination against Fifi unlawful.

As stated by Fifi’s assigned public counsel during our conversation in her Stockholm office, the Migration Agency’s decision letter was not written in grammatically correct Swedish which greatly surprised her. ‘I had to highlight some parts and analyse it later just to be able to understand what they were trying to say’, she states. The specific reason given for the negative decision was primarily that Fifi had lived for many years as a public person in Macedonia without suffering ‘serious attacks’, which would make it possible for her to return to her home country. Additionally, the decision declared, both homosexuality and non-cisgender identity had been decriminalised in Macedonia for a long time. There is, however, precedent for asylum to be granted to members of the LGBT social group despite decriminalisation in their home countries. An Australian ruling from 2010, RRT case No. 0905785,

³⁹ Refworld, 2008.

found that ‘decriminalisation of homosexual acts in a particular country is unlikely to have an immediate impact on how people view homosexuality’ and granted an Indian man asylum on this basis⁴⁰. The public outrage that Fifi experienced following her appearance on the X-Factor is a clear example of how Macedonian decriminalisation has yet to have had an impact on societal norms.

Similar to the decision letters Igor and Haris received, the Swedish Migration Agency’s decision pointed out that Fifi had not reported the violent incidents to Macedonian police who would have been able to provide her with protection. Finally, the letter states that Fifi did not ‘prove her illness’ to her case officer, referring to transsexualism as a disease without consideration of the fact that the Macedonian healthcare system will not diagnose it. “I can’t change my gender and start my hormonal therapy in Macedonia. Even if I do it somewhere outside Macedonia, I don’t want to live with a male ID. This is another area which is unregulated”, she declares. With help from RFSL, Fifi got an appointment for the sex reassignment therapy at the Karolinska Institute in Stockholm for which she waited more than six months. Since Swedish law does not cover healthcare for transgender asylum applicants seeking sex reassignment therapy, Fifi’s doctor provided her with a list of prices showing that she would be expected to privately visit different specialists at the Karolinska Institute, have twelve appointments during 2016, and pay around 5,000 SEK (529 EUR) for each appointment. “I’m really not able to pay for this, and it’s sad that I didn’t learn it until almost six months after applying for my first appointment. They told me that I waited so long because, as an asylum seeker, I just have a temporary personal identification number. Those who have a Swedish citizenship and a permanent personal identification number are prioritised in the healthcare system in Sweden. That’s unfair.”, Fifi concludes.

Fifi also mentions that during her first interview with the Migration Agency, she continuously had to interrupt the interpreter who was not translating everything that she was saying to the case officer. As research carried out by the European Council on Refugees and Exiles determines, the Swedish asylum procedure lacks a formal system that can guarantee the quality of the interpretation⁴¹. As such, the inherent risk of Fifi’s story being perceived as unclear and implausible was further increased by the Swedish-Macedonian interpreter that the Swedish Migration Agency had assigned to her. Nevertheless, Fifi’s interventions and additional explanations were not included in the official transcript of her first interview with the case officer, as the content of the written form of the asylum interview solely consists of what the interpreter has interpreted.

4.4 REFLECTIONS OF RFSL STAFF ON LGBTQ ASYLUM SEEKERS

This subsection is based on interviews with legal Patrick Bazanye (Asylum Lawyer, Legal Aid and Public Counsel for LGBTQ Asylum Seekers at RFSL) and RFSL Newcomers National Coordinator Jasminè Mehho. Having considered these three personal case studies and reflected on the situation experienced by many members of the RFSL Newcomers project in Stockholm, Jasminè declares that many LGBTQ asylum seekers receive negative decisions from the Migration Agency because homosexuality is not criminalised in their respective home countries. “The problem is, that the criminalisation of homosexual acts does not constitute persecution. It’s really important to focus on the practical

⁴⁰ Refworld, 2010b.

⁴¹ European Council on Refugees and Exiles, 2015.

occurrences in the respective countries and approach each asylum case on an individual basis. There are many instances when the asylum seekers from the so-called ‘safe countries’ have had more negative experiences than some of the applicants who come from countries where it is illegal to be an open LGBTQ person”, says Jasmine.

RFSL lawyer Patrick Bazanye, finds it notably problematic that certain asylum applications are perceived as ‘manifestly unfounded’ by the Swedish Migration Office. The concept of ‘manifestly unfounded’ involves the inability to make a clear assessment regarding the right to a permit without any further examination. As stated in AIDA’s country report, ‘many asylum applications from Western Balkan states are currently treated as manifestly unfounded’⁴². Patrick also adds that “only applications where the applicants give false information or where the application is completely unrelated to the right of asylum can be treated as manifestly unfounded. Many LGBT asylum cases from the Western Balkans that are treated as manifestly unfounded by the Migration Agency are not covered within any of these two categories”.

⁴² European Council on Refugees and Exiles, 2015. P. 25.

5. Conclusion

In this section, we comment on the results of the study and give recommendations to improve the quality of reception of LGBT asylum seekers in Sweden.

5.1 COMMENTARY

The main conclusion of this report is that there are several discrepancies between existing law and the practical implementation of these laws and policies by Swedish institutions when it comes to dealing with asylum claims from LGBT applicants. Most notably, in practice, a ‘safe third country’ principle, has been used to refuse asylum in decisions by the Swedish Migration Agency, despite lacking legal support. This has been noted by the European Council on Refugees and Exiles in their AIDA reports and is exemplified in the decisions on the interviewees’ asylum claims, in the form of arguments that the country is not sufficiently dangerous or that it can protect them. Apparently a ‘safe third country’ principle has operated in practice, even though Swedish asylum law does not recognise ‘safe countries’ and does not allow prioritisation of certain nationalities. Furthermore, the processing of asylum claims from LGBT applicants appear lacking in consistency and quality when measured to the standards set in international law.

The report has also illuminated discrepancies between the legal frameworks of Serbia and Macedonia, and the countries’ individual and social norms, attitudes and actions which are often expressed through homophobia, transphobia, and violent attacks against members of the LGBT social group. The Swedish legal discrepancies and Serbian and Macedonian social discrepancies has put the human rights of West Balkan LGBT asylum seekers in Sweden in jeopardy.

On a more general level, it seems that the EU refugee policies enacted in 2016 has put also LGBT asylum seekers from closely neighbouring regions in a more uncertain situation. LGBT asylum seekers from non-Member States or candidate countries do not enjoy equal rights to LGBT EU nationals, yet live under a constant threat of expulsion from the safe space where they have based themselves. As this report shows, Igor, Haris, and Fifi perceived Sweden as the safest place for them to invest their skills, abilities, and knowledge, to benefit both themselves and Swedish society. Despite this, with the 2016 update to the asylum law, they find it more difficult to confide in the authorities that they had previously perceived to be a leading force for the protection of human and minority rights.

5.2 RECOMMENDATIONS

The asylum system and migration policy of the whole of the EU has been under intense debate the past few years. This study further corroborates the need of a common European asylum system in all Member States to prevent discrepancies, prioritisation, and unfair treatment of asylum seekers. In this case we can especially point to differences between individuals from the Western Balkans compared to those from Middle Eastern and African countries. As stated in the AIDA report and by the report’s interviewees, certain nationalities are prioritised to the detriment of applicants from Western Balkan countries.

Also, on the international level, Sweden as well as the other EU member states should fight discriminatory practices performed by their institutions handling immigration and asylum issues, thereby taking a stronger stand to oppose discrimination of certain nationalities and truly safeguard human rights of LGBT persons. Since migration of LGBT persons from both Macedonia and Serbia is influenced by discriminatory practices toward these LGBT individuals in the Western Balkans, both Sweden and the remaining EU members should place a particular emphasis on detailed monitoring of the practical implementation of new, “pro-EU” laws in these candidate countries. As stated by this report’s Serbian and Macedonian interviewees, respect for LGBT rights seldom occurs in practice and state officials have expressed discriminatory behaviour toward LGBT individuals.

As regards the specific situation in Sweden, the following recommendations should be considered to ensure the consistency and quality of the asylum process for LGBT individuals:

1. Amendments to the Swedish Law on Reception of Asylum Seekers and Others emphasising permanent residence permits for persons who are in need for protection. Residence permits for trauma victims should be permanent as legal security in the form of a residence permit is a pre-condition for these individuals’ rehabilitation. As this report has shown, LGBT asylum seekers have often experienced traumatic events in their home countries, and also risk being subjected to abuse and harassment during their stay in Swedish asylum centres.
2. Safer housing for LGBT asylum seekers in Sweden that might be either state-owned or private. An option could be to either offer individual housing or separate asylum seekers according to their type of application. Individuals who are to provide the service should possess knowledge about the LGBT community to guarantee the safety of LGBT migrants, and thereby avoid the abuse presented in this report.
3. Gender reassignment and hormone therapy for transgender asylum seekers in Sweden should be considered as ‘care that cannot wait’ [vård som inte kan anstå]. The empirical case of Fifi demonstrates that the assessment process that takes place prior to the gender reassignment procedure is more complicated for asylum seekers compared to other residents in Sweden.
4. The introduction of mandatory training on LGBT issues for the Swedish Migration Agency’s case officers and interpreters who work with LGBT asylum seekers. As this report has stated, the Migration Agency does not at the time of writing have an LGBT case officer, and respondents were subjected to unpleasant questioning by the case officers who evaluated their applications.
5. Regulation and monitoring of public counsels appointed in LGBT asylum cases which should include obligatory training on LGBT issues and concrete legal regulations where the public counsels are paid by the Migration Agency to investigate country of origin information and present their findings at the interviews in LGBT asylum cases. Paying counsels to investigate this, which is not common practice at the time of writing, would decrease the risk of insufficient evidence being presented.
6. Monitoring of LGBT asylum cases from the Western Balkans, particularly the cases rejected as ‘manifestly unfounded’ by an independent governmental body external to the Swedish Migration Agency. This recommendation relates to Sweden’s legal obligation not to follow the “safe third country” principle and aims to prevent this in practice.

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