



# Naming and Shaming

Harmful asylum procedures for sexual orientation and gender identity claims on Lesbos

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## **ABBREVIATIONS, DEFINITIONS AND TERMINOLOGY**

### **Abbreviations**

APA	<i>American Psychiatric Association</i>
CEAS	<i>Common European Asylum Service</i>
CJEU	<i>The Court of Justice of the European Union</i>
COI	<i>Country of Origin Information</i>
CoO	<i>Country of Origin</i>
DSM	<i>Diagnostic and Statistical Manual of Mental Disorders</i>
EASO	<i>European Asylum Support Office</i>
GAS	<i>Greek Asylum Service</i>
ICD	<i>International Statistical Classification of Diseases and Related Health Problems</i>
MHPSS	<i>Mental Health and Psychosocial Support</i>
MPSG	<i>Membership of a Particular Social Group</i>
PPG	<i>Penile Plethysmography</i>
PTSD	<i>Post-traumatic Stress Disorder</i>
SGBV	<i>Sexual and Gender-based Violence</i>
SOGIESC	<i>Sexual Orientation, Gender Identity, Expression and Sex Characteristics</i>
VPG	<i>Vaginal Photoplethysmography</i>

### **Definitions<sup>1</sup>**

- Sexual orientation: A person’s physical, romantic and/ or emotional attraction to a gender(s) or sex.
  - Heterosexual: people whose attraction is to people of the opposite gender or sex.
  - Gay: people whose attraction is to people of the same gender or sex. Can be used for gay men specifically or as an umbrella term.
- Gender identity: An individual’s own, internal sense of being a man, a woman, or outside of that gender binary.
  - Cisgender: A term used to describe people who are not gender diverse.
  - Transgender: An umbrella term for people whose gender identity differs from the sex they were assigned at birth.
  - Non-binary/ gender-queer: People who experience their gender identity and/or gender expression as falling outside the categories of man and woman.
- Gender expression: External manifestations of gender.
- Sex: The classification of a person as male or female; determined via a combination of bodily characteristics including one’s chromosomes, hormones, reproductive organs, and secondary sex characteristics.

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<sup>1</sup> This is not an exhaustive and comprehensive list of definitions - it aims to ensure the understanding of the report. GLAAD, ‘GLAAD Media Reference Guide’, (10th Edition, October 2016), <https://www.glaad.org/sites/default/files/GLAAD-Media-Reference-Guide-Tenth-Edition.pdf>; International Organization for Migration (IOM), ‘SOGIESC Full Glossary of Terms’, (November 2020) <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/IOM-SOGIESC-Glossary-of-Terms.pdf>.

- Sex characteristics: traits indicative of biological sex.
  - Intersex: An umbrella term describing people born with reproductive or sexual anatomy and/or a chromosome pattern that cannot be classified as typically male or female.

### **Preferred terminology:<sup>2</sup>**

- ‘Same-sex’, ‘gay’ or ‘lesbian’ are the preferred terms instead of ‘homosexual’. On account of the clinical history of the term ‘homosexual’, and its later adoption by anti-gay extremists to suggest non-heterosexual people are diseased or psychologically ill, it has since been considered a loaded and offensive term.<sup>3</sup>
- ‘Sexual orientation’ is preferred over ‘sexual preference’ as the latter suggests orientation is a choice.
- ‘SOGI(ESC)’ is the preferred term over LGBTQI+ in cross-cultural and international contexts as it is more inclusive, fluid, and less culturally dependent.

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<sup>2</sup> GLAAD, ‘GLAAD Media Reference’, (2016), pp. 8-9; IOM, ‘SOGIESC Full Glossary of Terms’, (2020), p. 13.

<sup>3</sup> In some non-English speaking contexts, the word ‘homosexual’ is considered acceptable (IOM, ‘SOGIESC Full Glossary of Terms’, (2020), p. 2). In practice, it is possible that it may be used for ease of communication and/or translation.

### INTRODUCTION

The process of claiming asylum entails sharing information about private, sensitive, and often traumatic experiences. This may be especially true for claims on the basis of sexual orientation, gender identity and expression, and/or sex characteristics (SOGIESC). An applicant seeking asylum on the grounds of their SOGIESC must demonstrate that they are at risk of persecution based on their actual or perceived orientation or identity, which is inherently personal. Since it is unlikely that much, if any, external evidence would be available to support a SOGIESC claim,<sup>4</sup> there is an even greater emphasis on the applicant's testimony.

Numerous laws and standards have been introduced at the national, European, and international levels to protect the rights of people with diverse sexual orientation and/or gender identity.<sup>5</sup> In the context of asylum, one of the most prominent contributions has been the UNHCR's *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity*. Regional obligations and recommendations include the Council of Europe's 2010 commitment to combat SOGI-related discrimination.<sup>6</sup> Decision-makers are tasked with the responsibility of adhering to procedural regulations while weighing asylum applications fairly, with respect to human dignity, self-determination, and the right to privacy. Despite the various standards and guidance that exist on how to approach SOGIESC claims with sensitivity - while ensuring asylum procedures are trustworthy and robust - there is cause for concern when the process risks (re)traumatisation and marginalisation of the very people it is meant to protect.

Reflecting on the successes and challenges of the asylum system is a critical part of the work at Fenix - Humanitarian Legal Aid (Fenix) to promote a fair, equitable, and effective European asylum process. Perspectives on the asylum procedure shared in this report stem from our collective experience as a holistic legal aid organisation working on the island of Lesbos since 2018. In addition to providing legal services, our in-house Mental Health and Psychosocial Support (MHPSS) and Protection teams ensure that clients have access to comprehensive, person-centered care as they navigate the asylum system.

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<sup>4</sup> 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' (UNHCR SOGI Guidelines), HCR/GIP/12/09, 23 October 2012, <https://www.unhcr.org/509136ca9.pdf>. There may be no evidence of persecution available if it has been perpetrated by members of a person's family or community (para 64).

<sup>5</sup> These include the 2006 Yogyakarta Principles and additional principles adopted in 2017, <https://yogyakartaprinciples.org/>. Since 2016, OHCHR has also appointed an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

<sup>6</sup> Council of Europe, 'Recommendation of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity', CM/Rec(2010)5, 31 March 2010, <https://www.refworld.org/pdfid/4bc32b292.pdf>.

From a legal standpoint, this report examines and contributes to the discussion surrounding the prevalence and consequences of procedural violations during asylum interviews and in the assessment of SOGIESC claims in Europe,<sup>7</sup> with a focus on process rather than outcome. Insights from our MHPSS team provide a complementary frame of reference, drawing attention to the detrimental impacts that flawed and unlawful procedures have on the wellbeing and mental health of people seeking international protection. Based on these observations and concerns, this report concludes with a number of recommendations aimed at improving procedures for SOGIESC asylum claims.

### *Scope of the report, limitations and the Lesbos context*

From January to November 2021, Fenix supported 17 clients from 5 different countries seeking asylum in Greece on the basis of their SOGIESC. Whilst all 17 clients sought asylum on the basis of their sexual orientation, 2 of the clients also had a claim on the grounds of their gender identity and/or expression. Our report is informed by an interdisciplinary, socio-legal approach that takes into consideration diverse scholarship, relevant case law and institutional frameworks, recent policy developments, as well as our own fieldwork in the context of Lesbos. Our findings derive from an in-depth content analysis and coding of 16 asylum interview transcripts, conducted by 13 different caseworkers from the Greek Asylum Service and European Asylum Support Office, as well as 6 first-instance rejection decisions. Further details on the clients' demographic information will not be shared to preserve their anonymity. Well-documented observations from working with the 17 clients with diverse SOGIESC further contributed towards the findings in this report.

Given that our sample was drawn from SOGIESC claims on Lesbos, there needs to be reference to the particularities of this context in 2021 and its impact on asylum seekers' mental health and wellbeing. The precarious nature of the asylum process is magnified by social and environmental factors,<sup>8</sup> many of which are well-represented in Greek and international news media. Six years

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<sup>7</sup> Many publications highlight the problematic ways that SOGIESC claims are handled in the EU and abroad, such as the comprehensive comparative analysis offered in Carmelo Danisi, Moira Dustin, Nuno Ferreira, and Nina Held, *Queering Asylum in Europe: Legal and Social Experiences of Seeking International Protection on grounds of Sexual Orientation and Gender Identity*, (IMISCOE Research Series, 1st Edition, Springer, 2021). For insight into the situation in Greece, see Sophia Zisakou, 'Credibility Assessment in Asylum Claims Based on Sexual Orientation by the Greek Asylum Service: A Deep-Rooted Culture of Disbelief', (2021), *Frontiers in Human Dynamics*, art. 693308, <https://www.frontiersin.org/articles/10.3389/fhumd.2021.693308/full>. See also: Sabine Jansen and Thomas Spijkerboer, 'Fleeing Homophobia, Asylum Claims Related to Sexual Orientation and Gender Identity in Europe' (2011), Vrije Universiteit Amsterdam (VU University Amsterdam), <https://www.refworld.org/docid/4ebba7852.html>, and UNHCR, 'Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report', (Brussels, May 2013), <https://www.refworld.org/docid/519b1fb54.html>.

<sup>8</sup> 'Moria 2.0: Trapped refugees at the mercy of winter' (Refugee Support Aegean, 1 December 2020), <https://rsaagean.org/en/moria-2-0-trapped-refugees-at-the-mercy-of-winter/>; 'Greece: Lead Poisoning Concerns in New Migrant Camp' (Human Rights Watch, 8 December 2020), <https://www.hrw.org/news/2020/12/08/greece-lead-poisoning-concerns-new-migrant-camp>; 'The Cruelty of Containment: The Mental Health Toll of the EU's 'Hotspot' Approach on the Greek Islands' (International Rescue Committee, 17 December 2020), <https://eu.rescue.org/report/cruelty-containment-mental-health-toll-eus-hotspot-approach-greek-islands>; 'Five Years of Unfortunate Events, or Deliberate Policy Making?' (Fenix, 30 March 2021), <https://www.fenixaid.org/articles/five-years-of-unfortunate-events-or-deliberate-policy-making>; 'Constructing Crisis at Europe's Border' (MSF), 9 June 2021), <https://www.msf.org/constructing-crisis-europe-border>

after the beginning of the European asylum system crisis, basic needs are often not met in a dignified manner, beginning with wildly overpopulated refugee camps that lack the necessary infrastructure to accommodate vulnerable asylum seekers. Sanitary facilities are often limited and poorly maintained, electrical outages are frequent, violence and general unsafety are an everyday occurrence, and the environment is wholly unsuitable for anyone with significant health or mobility issues. With few exceptions, asylum seekers on the island are subject to a 'geographical restriction' preventing them from leaving Lesbos until their asylum procedures have concluded. For those who are granted refugee status or subsidiary protection, gaps in assistance and continuity of services create additional roadblocks. Conversely, rejection notices are issued along with a deportation order, and a lack of clarity around how or when this might be enforced can generate further anxiety.

The harmful practices endured by asylum seekers with a SOGIESC claim are not limited to the procedural violations highlighted in this report. To the contrary, the lack of a SOGIESC trauma-informed approach is prevalent throughout the asylum process on Lesbos and it is enhanced by the absence of official programs to support applicants with specific needs based on their diverse SOGIESC. Further research and study is required to address these shortcomings.

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[migration-report](https://www.fenixaid.org/articles/turkey-as-a-safe-third-country); 'Turkey As A 'Safe Third Country'' (Fenix, 11 June 2021), <https://www.fenixaid.org/articles/turkey-as-a-safe-third-country>; 'European Court of Human Rights Grants Interim Measures for Three Fenix Clients' (Fenix, 22 July 2021), <https://www.fenixaid.org/articles/interim-measures-for-three-clients>; 'From Arrival to Rejection in One Week' (Fenix, 13 August 2021), <https://www.fenixaid.org/articles/from-arrival-to-rejection-in-one-week>; 'Joint NGO Briefing on the situation in Greece' (Fenix, 1 November 2021), <https://www.fenixaid.org/articles/joint-ngo-briefing-on-the-situation-in-greece>; 'NGOs raise alarm at growing hunger amongst refugees and asylum seekers in Greece' (Fenix, 25 November 2021), <https://www.fenixaid.org/articles/ngos-raise-alarm-at-growing-hunger-amongst-refugees-and-asylum-seekers-in-greece>.

## **1. PARTICULARITY OF SOGIESC CLAIMS**

**SOGIESC applicants may face particular barriers in articulating their claim:**

- Stigma and/or personal feelings of shame
- Identity may have previously been hidden in CoO and no safe space to explore one's identity
- Experience of trauma related to their identity which is further compounded by potential feelings of shame deriving from the identity that the trauma was related to
- The personal and intrusive questions asked in the asylum interview

Special protections are established in case law; however, these are not always translated into practice

As a result of the personal and sensitive nature of these claims, people with diverse SOGIESC may be asked particularly intrusive and personal questions that would not otherwise be part of an asylum interview. At the same time, the sensitive nature of the claim affords special protections with regards to both the adjudication and assessment of the case,<sup>9</sup> although this does not always apply in practice. This includes prohibition of certain evidence and questioning; certain justification for concluding the applicant lacks credibility; and expectations around the possibility of returning to a country of origin and living 'discreetly'. These protections are even more necessary as the weight placed on the testimony is often greater due to the lack of external evidence available.

### **1.1. Barriers to articulating a claim**

People seeking asylum on the grounds of their diverse SOGIESC may face a compound of personal barriers to articulating their claim during registration or the asylum interview. Experiences of stigma around their orientation or identity are likely, whether through personal persecution or from discriminatory rhetoric in society. They may have also been prevented from living freely and openly in their country of origin (CoO) and/or during transit because of the prevalence of discrimination and persecution against people with diverse SOGIESC. Transcending societal norms or expectations in this regard can place someone at risk of serious harm, torture, and/or imprisonment.<sup>10</sup> Without a safe environment, people seeking asylum may

<sup>9</sup> See 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); Joined Cases C-199/12 - C-199/12 - C-201/12, X, Y, Z v *Minister voor Immigratie en Asiel* (2013) (XYZ decision); Joined Cases C-148/13 to C-150/13, A, B, C v *Staatssecretaris van Veiligheid en Justitie*, (2014 ) (ABC decision).

<sup>10</sup> 70 UN Member States still criminalise "consensual same-sex sexual acts" in some way. Lucas Ramon Mendos, Kellyn Botha, Rafael Carrano Lelis, Enrique López de la Peña, Iliia Savelev and Daron Tan, 'State-Sponsored Homophobia 2020: Global Legislation Overview Update', (ILGA, Geneva, December 2020), [https://ilga.org/downloads/ILGA\\_World\\_State\\_Sponsored\\_Homophobia\\_report\\_global\\_legislation\\_overview\\_update\\_December\\_2020.pdf](https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf), p. 330.

not have explored the nuances of their identity or orientation, or classified themselves in a way that the asylum interview seems to expect.

Persecution based on one's diverse SOGIESC does not exist within a vacuum; many people seeking international protection are also survivors of sexual violence.<sup>11</sup> This may have occurred in their country of origin, in transit, after having arrived in Greece, or some combination of these. People with diverse SOGIESC are at particular risk of violent acts such as 'corrective' or 'curative' rape.<sup>12</sup> Following such incidents, the survivor may feel multiple layers of shame; on account of their orientation or identity itself, feelings that can accompany the experience of being a victim of such an act, and the notion that they may have been targeted on account of their identity.

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<sup>11</sup> UNHCR, 'LGBTIQ+ Persons in Forced Displacement and Statelessness: Protection and Solutions', (Geneva, June 2021), <https://www.refworld.org/pdfid/611e16944.pdf>. The cases at Fenix support this finding: in 2021, clients with SOGIESC claims were over 3 times more likely to be survivors of sexual violence than clients seeking asylum on other grounds.

<sup>12</sup> Diana Navas and Jacqueline Zamarripa, 'Breaking the Silence on Human Rights Violations in Sierra Leone under the International Covenant on Civil and Political Rights: A Shadow Report on Discrimination and Violence Based on Sexual Orientation and Gender Identity', (African Men for Sexual Health and Rights Network, Concerned Women's Initiative of Sierra Leone, Dignity Association of Sierra Leone, Heartland Alliance's Global Initiative for Sexuality and Human Rights, International Human Rights Law Clinic of American University Washington College of Law, The Initiative for Equal Rights, West African Youth Network, Geneva, 2014), [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SLE/INT\\_CCPR\\_CSS\\_SLE\\_16487\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SLE/INT_CCPR_CSS_SLE_16487_E.pdf), pp. 19-20; Committee against Torture (CAT), 'Concluding observations on the fifth periodic report of Cameroon', CAT/C/CMR/CO/5, (Geneva, 2017), <https://digitallibrary.un.org/record/1485438?ln=en>.

## 1.2. Lack of external evidence

**SOGIESC applicants may have difficulty obtaining external evidence:**

- Applicants may have been forced to hide their identity in CoO
- There is a lack of relevant COI available or applied in the decisions

In order to qualify for refugee status under the 1951 Refugee Convention, an applicant must have a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion."<sup>13</sup> In 2013, the XYZ decision supported the analysis of asylum claims on the basis of sexual orientation as particular social group in accordance with Article 10 of the Qualification Directive.<sup>14</sup> Under the membership of a particular social group (MPSG) category, applicants are required to prove the genuineness of their actual or perceived sexual orientation and/or gender identity, their fear of persecution on this basis, and the lack of protection in their countries of origin. This is particularly challenging for SOGIESC clients on account of the difficulties in obtaining such evidence, and the lack of country of origin information (COI).

Under Greek and European law, people seeking asylum are required to submit any document in their possession as it relates to the examination of the application.<sup>15</sup> Claiming asylum on other grounds might offer more opportunities to corroborate fear of persecution, such as obtaining proof of affiliation with a particular political party, even if the person has not been personally persecuted on this basis. However, such proof is not always an option for SOGIESC claims, so the credibility assessment of fear or threat of persecution is often reduced to an evaluation of the particular situation in a CoO. The UNHCR Handbook emphasises that "knowledge of conditions in the applicant's country of origin - while not a primary objective - is an important element in assessing the applicant's credibility,"<sup>16</sup> though the examination of some cases may be further complicated by scarcity of related and reliable COI.<sup>17</sup>

Rejection decisions for Fenix clients from 2021, all from countries where criminalisation and human rights violations against people of diverse SOGIESC are well-documented, provide a

<sup>13</sup> UNHCR, 'Convention and Protocol Relating to the Status of Refugees', (Geneva, 2010), Article 1(A)(2), which the CEAS interprets differently than UNHCR through its "cumulative approach". EASO, 'EASO Guidance on membership of a particular social group', (2020), <https://www.easo.europa.eu/sites/default/files/EASO-Guidance-on%20MPSG-EN.pdf>, p.11; Carmelo Danisi et al., *Queering Asylum* (Springer, 2021), pp. 263-264.

<sup>14</sup> XYZ decision (2013), para 46-49.

<sup>15</sup> Law under NO 4636/2019 of 1 November 2019 on International Protection and other provisions, Government Gazette 169 (IPA), Article 78(4).

<sup>16</sup> UNHCR, 'Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees', HCR/IP/4/Eng/REV.1, (Geneva, 1992), [https://www.unhcr.org/\\_/4d93528a9.pdf](https://www.unhcr.org/_/4d93528a9.pdf), para 42.

<sup>17</sup> UNHCR, 'Guidelines on international protection no. 9', (2012), p. 17; EASO, 'COI Research Guide on LGBTIQ', (2021), [https://coi.easo.europa.eu/administration/easo/PLib/2021\\_11\\_EASO\\_COI\\_Research\\_Guide\\_on\\_LGBTIQ.pdf](https://coi.easo.europa.eu/administration/easo/PLib/2021_11_EASO_COI_Research_Guide_on_LGBTIQ.pdf), pp. 15-16.

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window into the decision-making process and how COI is used in particular.<sup>18</sup> The number of references cited in evaluating external credibility typically varied from as few as one to two sources in some cases to more than seven in others. One decision cited a news article as the *only* source of “available general information about the applicant’s country of origin,” but it was a credibility assessment without any references to COI at all that stood out from the rest. Inconsistent research and application of COI does not instill confidence in the decision-making process,<sup>19</sup> and suggests that improvements are needed to ensure SOGIESC asylum procedures on Lesbos are being carried out with due diligence. Taking into consideration the mental and physical demands placed on a person as they navigate the asylum system and gather related evidence, it is those seeking protection who ultimately endure the burden of proof.

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<sup>18</sup> Positive refugee status decisions do not provide the justification for the decision or COI references.

<sup>19</sup> Similar issues were identified with inconsistent and inadequate research and application of COI in other Member States. UNHCR, ‘Beyond Proof’, (Brussels, May 2013), pp. 128-130.

## **2. THE RESIDUAL EFFECTS OF MEDICALISATION: AN OUTDATED SYSTEM**

### **Medicalisation of SOGIESC in the context of asylum**

- ICD-10 codes are used to diagnose 'disorders' related to sexual orientation.
- Classification of SOGIESC fails to recognise the fluidity and nuance of orientation and/or identity.
- Reliance on biomedical classifications reinforces the narrative that SOGIESC needs to be verified by an external source to hold weight.

Although contemporary official discourse has evolved in recent years, the medicalisation of sexuality and gender expression still serves as an ongoing force of repression that has far-reaching ramifications in the context of SOGIESC claims. The biomedical model has been the defining institutional approach to Western medicine for the past two centuries; it strips the person of the complex intersection of systems and needs that define them, reducing them to diagnostic categories. In this context, health-trained professionals are deemed expert authorities of human experience and individuals are seen and analysed through a lens of biophysical malfunctions.<sup>20</sup> 'Expert' psychological assessments of diverse SOGIESC and corresponding documentation have historically been considered another piece of evidence in support of claims for international protection; however, these evaluations impose on applicants criteria that may not be relevant to or reflective of their SOGIESC identity as they experience it, as sexual orientation and gender identity are neither rigid nor readily classifiable.

Particularly intrusive and degrading practices previously used by some Member States to attest to an individual's gender identity and/or sexual orientation during SOGIESC asylum proceedings have since been prohibited.<sup>21</sup> For example, the practices of penile plethysmography (also known as "phallometry" or "PPG") and vaginal photoplethysmography ("VPG") were among the most extreme manifestations of the biomedical model in refugee status determination.<sup>22</sup> Such protocols stemmed from the medicalisation of SOGIESC identities, including the classification of "homosexuality" as a mental disorder in the earliest editions of the Diagnostic and Statistical Manual of Mental Disorders (DSM), and the assumption that persons with diverse SOGI must be dealing with severe psychological symptoms.<sup>23</sup> Although the American Psychiatric Association (APA) removed the diagnostic category of homosexuality in 1973 from the manual's third and

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<sup>20</sup> William J. Spurlin, 'Queer Theory and Biomedical Practice: The Biomedicalization of Sexuality/The Cultural Politics of Biomedicine' (2019), vol. 40, no. 1, *The Journal of medical humanities*, <https://doi.org/10.1007/s10912-018-9526-0>, pp. 7-20.

<sup>21</sup> ABC decision, para 53; 65-66; 72.

<sup>22</sup> Organization for Refugee, Asylum & Migration (ORAM), 'Testing Sexual Orientation: A Scientific and Legal Analysis of Plethysmography in Asylum & Refugee Status Proceedings' (California, December 2010), <https://www.refworld.org/docid/524c0d274.html>.

<sup>23</sup> Jack Drescher, 'Out of DSM: Depathologizing Homosexuality' (2015), vol. 5, no. 4, *Behavioral Sciences*, pp. 565-575.

subsequent editions,<sup>24</sup> the National Public Health Organization in Greece, commonly known as EODY, still uses certain International Classification of Diseases (ICD-10) codes that reflect these outdated and stigmatising practices.

At least three people supported by Fenix in the past year were assigned an ICD-10 code related to their sexual orientation (F66.2 - 'Sexual relationship disorder')<sup>25</sup> following a health assessment by EODY. While the ICD explicitly states that "sexuality itself is not to be regarded as a disorder,"<sup>26</sup> the use of F66 classifications by EODY staff is nonetheless problematic.<sup>27</sup> It promotes the notion that individuals with diverse SOGIESC identities must be dealing with mental disorders or relational difficulties on the basis of their sexual orientation, rather than as a result of particular life circumstances and environmental or systemic factors such as social rejection or discrimination. It also places sexual orientation within a professionalised framework of therapies and diagnoses by creating a cause and effect relationship with mental health, suggesting that sexual orientation can be changed and requires 'treatment'.<sup>28</sup>

In the context of the asylum procedure, this promotes the idea that a person's sexual orientation or gender identity is subject to classification by a regulatory body. Suggesting that an expert opinion is required in order to establish sexual orientation rather than relying on someone's statements and COI creates a hierarchy of knowledge in which the so-called expert's attestation is elevated above the claimant's self-knowledge. For SOGIESC claims, this supports the notion that a narrative only holds weight when it is verified by an external source, even if that source has little to no insight into the real-life experience of the individual in question.<sup>29</sup>

Asylum claimants with diverse SOGIESC are "at particular risk of discrimination, exclusion, harassment and violence, including sexual violence, in reception and detention centres, and when being interviewed,"<sup>30</sup> and according to European standards should be afforded special

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<sup>24</sup> Ronald Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (1st Edition, Basic Books, 1981), p. 148.

<sup>25</sup> The ICD-10 F66 categories refer to 'psychological and behavioural disorders associated with sexual development and orientation,' while F66.2 - 'Sexual relationship disorder' is defined as follows: "the gender identity or sexual orientation (heterosexual, homosexual, or bisexual) is responsible for difficulties in forming or maintaining a relationship with a sexual partner". American Medical Association (AMA), 'ICD-10-CM 2021: The Complete Official Codebook with Guidelines', (AMA, 2020), p. 566.

<sup>26</sup> AMA, *ICD-10-CM 2021: The Complete Official Codebook with Guidelines* (2020), p. 566.

<sup>27</sup> Susan D. Cochran, Jack Drescher, Eszter Kismödi, Alain Giami, Claudia García-Moreno et al., 'Proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11)' (2014), 92 (9), *Bulletin of the World Health Organization*, pp. 672 - 679, <https://www.who.int/bulletin/volumes/92/9/14-135541.pdf>.

<sup>28</sup> Conversion therapies have been deemed ethically unacceptable and illegal in several countries. "Cures" for an illness that does not exist. Purported therapies aimed at changing sexual orientation lack medical justification and are ethically unacceptable.' (Pan American Health Organization, Regional Office of the World Health Organization, 2012), <https://www.paho.org/hq/dmdocuments/2012/Conversion-Therapies-EN.pdf>.

<sup>29</sup> Derek McGhee, 'Accessing Homosexuality: Truth, Evidence and the Legal Practices for Determining Refugee Status - The Case of Ioan Vraciu' (2000), 6 (1), *Body & Society*, SAGE journals, <https://journals.sagepub.com/doi/10.1177/1357034X00006001003>.

<sup>30</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Union of Equality: LGBTIQ Equality Strategy

reception conditions and protection support.<sup>31</sup> However, the obligation to identify special reception and protection needs cannot justify the use of outdated and stigmatising diagnoses. EODY staff conducting assessments and screening people to identify their vulnerabilities and particular needs – a standard procedure that every person should go through when lodging a request for asylum – do not necessarily have specific, SOGI-informed training. Through the application of diagnostic categories in a manner that is inconsistent with good clinical practice, improper, sporadic, and unclear, SOGIESC claimants continue to be classified and pathologised based on an archaic framework.

The outdated system is not limited to the EODY screening; improper terminology and concepts are prevalent in the asylum interview (Section 3 and 4). All of this creates a hostile environment that fails to acknowledge particular vulnerabilities and creates further barriers for people navigating the system.

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2020-2025', COM(2020) 698 final, [https://ec.europa.eu/info/sites/default/files/lgbtiq\\_strategy\\_2020-2025\\_en.pdf](https://ec.europa.eu/info/sites/default/files/lgbtiq_strategy_2020-2025_en.pdf), p. 20.

<sup>31</sup> European Parliament and Council Directive 2013/33/EU of 26 June 2013 on laying down standards for the reception of applicants for international protection (recast), (2013) OJ L 180 (Reception Conditions Directive), Article 17(2).

### **3. PROHIBITED EVIDENCE AND QUESTIONING**

#### **Legal framework**

- Intrusive tests, submission of intimate evidence, and questions about sexual practices are prohibited.
- The applicant cannot be expected to hide their orientation to avoid persecution in their CoO.

#### **In practice**

- Despite the legal framework, applicants are asked about sexual practices and relocating to their CoO during the asylum interview.
- These questions can make the applicant feel violated, uncomfortable, anxious, and frustrated.

#### **3.1 Legal framework**

The Court of Justice of the European Union (CJEU) began defining the parameters for examining SOGIESC claims through the XYZ<sup>32</sup> (2013) and ABC<sup>33</sup> (2014) decisions. Pursuant to the XYZ decision, gay applicants cannot be expected to conceal their sexual orientation in order to avoid persecution. Thus, caseworkers can no longer suggest that someone could be returned to their CoO and live in relative safety if they hide their sexual orientation, otherwise known as the “discretion requirement” or “discretion reasoning”.<sup>34</sup>

The ABC decision placed certain restrictions on national authorities when assessing the credibility of an applicant’s sexual orientation. Intrusive tests, the submission of intimate evidence, and questioning about sexual practices were all explicitly prohibited as they infringe on a person’s rights under the EU Charter. In 2018, the CJEU further clarified which evidence is permitted in assessing asylum claims based on sexual orientation.<sup>35</sup> Expert reports can be used but they cannot be the sole basis for a decision, nor is the caseworker bound by the outcome of the report. Moreover, national authorities cannot use projective personality tests to determine a person’s sexual orientation.

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<sup>32</sup> XYZ decision.

<sup>33</sup> ABC decision.

<sup>34</sup> XYX decision. However, in 2014, the European Court of Human Rights, in the case *M.E. v Sweden* considered that short term concealment of sexual orientation would be tolerable. *M.E. v Sweden* App no 71398/12 (ECtHR, 26/06/2014) (*M.E. v Sweden* decision).

<sup>35</sup> Case C-473/16 F v Bevándorlási és Állampolgársági Hivatal, (2018).

### **3.2 Prohibited questions in the asylum interview**

While expressly prohibited, five Fenix clients were asked questions related to their sexual practices, both directly and indirectly. Direct questions in the transcripts are more obvious, but others elicit a response about sexual practices in a more subtle way, often framed in terms of what the applicant *does* that makes them a sexual minority. Whether this line of questioning is pursued consciously or not, or is due in part to a lack of training, it is clear what the caseworker is referring to. It is particularly obvious when an applicant offers a non-sexual response and the caseworker proceeds to reformulate a question multiple ways. One transcript shows that someone was asked a series of prohibited questions relating to sexual practice four different ways during their interview. SOGIESC applicants supported by Fenix were asked questions<sup>36</sup> such as:

- “Did you have a sexual relationship with...?”
- “Did you get any stimuli to find out [you were gay]?”
- “You identify yourself as a homosexual, could you tell [me] what steps you have followed towards this?”
- “Since you love it so much, what is the reason you haven’t practiced [your sexual orientation] here in Greece?”
- “Is there something you do now here in Greece in order to adopt your lifestyle as a homosexual?”

Though SOGIESC applicants cannot be expected to return to their CoO and hide their identity, some form of ‘discretion reasoning’ seems to be “very persistent and appears in many forms and with many different faces”.<sup>37</sup> In practice, caseworkers frequently explore the possibility of internal relocation, the extent to which a person wishes to openly express their sexual orientation, or if they would be safe returning to another area of their CoO. Whether discretion reasoning is in fact a thing of the past is questionable, as 75% of clients were asked questions such as:

- “How important is it for you to express your sexual orientation?”
- “Do you believe you could return to [city in CoO] and settle there?”
- “What do you think could happen to you if you were to return to [your CoO]?”
- “Do you think that if you could go to another place of [your CoO] you could express yourself freely?”

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<sup>36</sup> The applicants whose interview transcripts are quoted throughout this report have given their informed consent. All personal information has been deleted to preserve anonymity.

<sup>37</sup> Sabine Jansen, ‘Good Practices related to LGBTI Asylum Applications in Europe’ (2014), International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), [https://www.ilga-europe.org/sites/default/files/good\\_practices\\_related\\_to\\_lgbti\\_asylum\\_applicants\\_in\\_europe\\_jul14.pdf](https://www.ilga-europe.org/sites/default/files/good_practices_related_to_lgbti_asylum_applicants_in_europe_jul14.pdf).

## **4. USE OF STEREOTYPES**

- Stereotypes are a generalized belief or expectation about a particular group of people.
- In the asylum interview gay applicants are expected to not have children, to have knowledge about SOGIESC meeting places, have knowledge about the 'LGBT community'. SOGIESC is described as a 'choice' and 'lifestyle'
- Applicants felt their story was met with skepticism and their individual credibility was being questioned. For some applicants the process was akin to an 'interrogation'

Stereotypes can occur in the form of questions, expectations on sexual minority lifestyles, or presumptions about appearance, demeanour, or behaviour.<sup>38</sup> Over the last decade, concerns have been consistently raised about their significant presence in the asylum interview and the decision-making process.<sup>39</sup> Reliance on stereotypes may be, in part, a product of asylum system procedures in that caseworkers are charged with assessing the credibility of a claimant's statements and, in so doing, trying to build evidence of a person's sexual orientation. When a caseworker examines the internal or subjective reliability of a person's claim regarding their actual or perceived SOGIESC identity, it effectively translates into a judgment on whether or not a person's sexual orientation or identity is as they state.

The eligibility process to prove a person's sexual orientation and/or gender identity typically entails highly normative questioning that compels asylum seekers to conform to Eurocentric and heteronormative narratives of what it means to be SOGIESC, while affirming orientalist depictions of refugee flight and the spectacularized figure of the 'suffering gay refugee'.<sup>40</sup> Stereotypes also presume SOGIESC homogeneity, and altogether this approach erases the diversity and individuality of each person seeking asylum. As articulated in the *UNHCR SOGI Guidelines*, "[t]here are no universal characteristics or qualities that typify LGBTI individuals any more than heterosexual individuals. Their life experiences can vary greatly even if they are from

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<sup>38</sup> Sabine Jansen and Thomas Spijkerboer, 'Fleeing Homophobia' (2011).

<sup>39</sup> Sabine Jansen and Thomas Spijkerboer, 'Fleeing Homophobia' (2011); Sabine Jansen, 'Good Practices related to LGBTI Asylum Applications in Europe' (ILGA, 2014); Sophia Zisakou, 'Credibility Assessment in Asylum Claims Based on Sexual Orientation by the Greek Asylum Service', (*Frontiers in Human Dynamics*, 2021); Carmelo Danisi et al., '*Queering Asylum*' (Springer, 2021).

<sup>40</sup> Eric Fassin and Manuela Salcedo, 'Becoming gay? Immigration Policies and the Truth of Sexual Identity' (2015), vol 44, *Archives of Sexual Behaviour*, pp. 1117-1125.

the same country.<sup>41</sup> It is therefore unsurprising that studies have shown decisions based on stereotypes are more likely to be flawed.<sup>42</sup>

### **4.1 Legal framework**

Although self-identification is not enough to prove an applicant's orientation or identity, it serves as a starting point.<sup>43</sup> Since external evidence is frequently difficult to obtain and self-identification is not sufficient, caseworkers often resort to stereotypes to aid their assessment.<sup>44</sup> Following the ABC decision, stereotypes can be used to assist the caseworker; however, decisions cannot be solely based on stereotypical notions since this does not allow for a fulsome analysis of individual and personal circumstances as required by the EU Charter and the Asylum Procedures Directive.<sup>45</sup> The decision further clarified that an assessment based on a person's knowledge of SOGIESC organisations suggests that the authorities are basing the decision on stereotypes.

The *UNHCR SOGI Guidelines* specify that stereotypes and misconceptions jeopardise the objectivity of a caseworker's assessment, and that they are problematic not only in the way particular questions are phrased but also in how they might be received by the person being interviewed. Consequently, there is a significant risk of doing harm to an applicant because of real or perceived judgment from the caseworker and/or interpreter.<sup>46</sup>

### **4.2 Stereotypes in the asylum interview**

Numerous examples of prejudice and stereotypical expectations are found throughout the interview transcripts of claims assessed this year.<sup>47</sup> It is a worrisome trend that they clearly remain woven into the asylum process through interviews and credibility assessments currently being carried out in Greece. Some examples include:

- "You have a daughter, can you explain that since you are a homosexual?"
- "Did you ever have a relationship with a [man/ woman]?"
- "Did you ever have a heterosexual relationship?"<sup>48</sup>
- "LGBT stands for lesbians gay bisexual and transsexual people. How is it possible to be a homosexual that is speaking English and not being aware of how the community sexual minorities is called?"

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<sup>41</sup> UNHCR SOGI Guidelines (2012), para 60.

<sup>42</sup> Erin Gomez, 'The Post-ABC Situation of LGB Refugees in Europe' (2016), vol 30, issue 3, *Emory International Law Review* 497.

<sup>43</sup> ABC decision.

<sup>44</sup> Carmelo Danisi et al., '*Queering Asylum*' (Springer, 2021), pp. 303-307.

<sup>45</sup> ABC decision, §62; Erin Gomez, 'The Post-ABC Situation of LGB Refugees in Europe' (2016), p. 495.

<sup>46</sup> UNHCR SOGI Guidelines (2012), para 60/ii & iii.

<sup>47</sup> Nine of SOGIESC clients at Fenix were asked questions based on stereotypes at least once during their interview.

<sup>48</sup> Seven of Fenix's clients with SOGIESC claims were asked some variation about their relationship or attraction to the opposite sex.

- “How was it possible to be an in an age that you were having your first sexual experiences but you didn’t know that your preferences were different from the couples role model in [your CoO]?”

In certain instances there is no doubt that the credibility of a person’s stated sexual orientation is being judged based on flawed and Eurocentric preconceptions, as was the case when an applicant was pressed about how they could be unfamiliar with the term ‘LGBT’ given that they spoke English. These types of questions also suggest a general lack of awareness or understanding around the possibility that someone may have grown up in an environment where their sexuality and/or gender identity was considered shameful or taboo, as well as a general failure by the authorities to recognise or understand the diversity and individuality of people with diverse SOGIESC.

Other stereotypes employed by caseworkers may center on a person’s previous relationships and parental status, with many questions demonstrating preconceived ideas that sexuality as being static and measurable based on specific indicators, such as behaviours or means of self-expression. In answering questions framed around same-sex and opposite-sex relationships, asylum seekers are compelled to categorise themselves as gay or lesbian. There is no room for fluidity of any kind, including previous relationships that do not conform to a person’s currently stated sexual orientation, such as when a client was asked to explain having a child given that he identified as a gay man. This echoes findings from the *Fleeing Homophobia* report, which concluded that “in many Member States, marriage and children and being an L, G, B, T or I person are deemed incompatible.”<sup>49</sup>

In addition, the transcripts reveal that caseworkers often explore a person’s knowledge of, or participation in, organised SOGIESC groups and activities in both the country of origin and since seeking asylum.<sup>50</sup> The questions appear to be laced with underlying assumptions about one’s ability, need, or desire to openly express their sexual orientation or gender identity, and be actively engaged with some form of community, even though EASO guidelines state that “[c]ohesiveness among members of the group is not a requirement. Members of a particular social group do not need to know each other, nor do they need to be connected in any way.”<sup>51</sup> Some clients were asked for this information multiple times during their interview, with 10 individuals posed questions such as:

- “Do you know if there are LGBTI organisations in your country?”
- “Did you go to any LGBTI organisations to request assistance?”
- “Do you know any websites or apps where sexual minorities can virtually meet each other?”
- “How do like-minded people find company in your country of origin?”

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<sup>49</sup> Sabine Jansen and Thomas Spijkerboer, ‘Fleeing Homophobia’ (2011), p. 60.

<sup>50</sup> 86% of clients represented by Fenix were asked about SOGI meeting places, organisations or similar questions.

<sup>51</sup> EASO, ‘EASO Guidance on membership of a particular social group’ (2020), p. 16.

- “As far as we know, there is a community for homosexual people in [your CoO] but you didn’t get connected with any...”
- “Are you aware of any organisations assisting sexual minorities?”

An emphasis on the person’s knowledge of and affiliation with ‘LGBTI organisations’ could be a symptom of the Common European Asylum System (CEAS) requirements for a particular social group and the need to fulfill the criteria of having a distinct identity. Even though the XYZ decision clearly states that sexual orientation does constitute a particular social group, misinterpretation of the ‘distinct identity’ requirement could reinforce the misconception that people must be part of a cohesive group, hence the caseworkers’ attention to knowledge of or involvement with ‘the community’ or particular organisations. Moreover, despite the clear decision in the ABC judgement, which states that an applicant cannot be rejected for lacking credibility on account of not having knowledge of SOGIESC organisations, one client was rejected largely for this reason.

### **4.3 Sexual orientation as a ‘choice’ or ‘lifestyle’**

Reliance on stereotypes in the assessment of SOGIESC claims is just one symptom of inadequate training and knowledge among the authorities and caseworkers conducting these assessments. According to the Asylum Procedures Directive, applications should be examined and decisions taken, “individually, objectively and impartially”. Caseworkers conducting these interviews should be sufficiently trained in SOGIESC asylum claims and competent in relation to sexual orientation and gender identity.<sup>52</sup>

There is a clear expectation around professional standards for caseworkers assessing these claims. However, clients represented by Fenix have routinely been asked questions that demonstrate prejudice and/or a lack of knowledge. The transcripts show a dominant vocabulary that conveys an individual’s sexual orientation and/or gender identity is something they have deliberately chosen, and that there is particular way that a person with diverse SOGIESC lives their life. The framing of SOGIESC as a choice implies that a person is partially to blame for their need to seek asylum. These types of questions were found in 6 of the transcripts:

- “You live in country where homosexuality is a crime. Before proceeding to this sexual choice, have you been aware of the difficulties you'd have to face?”<sup>53</sup>
- “Since you felt pain, why did you choose this lifestyle?”
- “You are an educated man. Weren't you aware that homosexuality is a crime in [CoO]?”
- “Didn't that [traumatic] event make you consider your choice?”
- “Is there something you do now in order to adopt your lifestyle as a homosexual?”
- “Who knew about your lifestyle?”

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<sup>52</sup> Article 4(3) and 15(3), Asylum Procedures Directive.

<sup>53</sup> This particular question was asked to three different clients.

#### **4.4 Navigating a pre-defined narrative**

The examples above demonstrate how caseworkers responsible for assessing SOGIESC asylum claims misunderstand the organic nature and complexity of gender identity or sexual orientation. There is an expectation of a before and after ‘coming out’, and a lack of space for fluidity or exploration. SOGIESC is considered as all or nothing; however, understanding one’s sexual orientation or gender identity is a complicated, nuanced process that is different for every person. For some applicants, ‘coming out’ may not be desirable at all, and many have been accustomed to hiding their sexual and gender identities in order to survive. Yet, proving an affiliation with ‘the LGBTQ+ community’ and that they are ‘out’ and engaged in activities, even if they are not ready or interested in doing so, is anticipated by caseworkers in order to construct a credible SOGI narrative.<sup>54</sup>

Research on SOGIESC asylum claims in Greece and other EU Member States has shown that caseworkers may also expect complex and painful processes of self-realisation and embarrassment, and emotions that demonstrate precisely suffering, shame, or self-hatred.<sup>55</sup> An inability to do so might result in a person’s claim being considered not credible,<sup>56</sup> as would describing pure sexual practices as nationals from countries in which such practices are punishable.<sup>57</sup> This was very clear during one applicant’s asylum interview when asked, “How was it possible to be in an age that you were having your first sexual experiences but you didn’t know that your preferences were different from the couple’s role model in [CoO]”. While people seeking asylum need to be candid about who they are or what their sexual orientation is, they are also expected to show discretion and suffering.<sup>58</sup>

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<sup>54</sup> Carmelo Danisi et al. emphasize this as well in ‘*Queering Asylum*’ (Springer, 2021), pp. 311-12.

<sup>55</sup> These expectations have been linked to the Difference, Stigma, Shame and Harm (DSSH) model in credibility assessments. Zisakou, ‘Credibility Assessment in Asylum Claims Based on Sexual Orientation by the Greek Asylum Service’, (*Frontiers in Human Dynamics*, 2021).

<sup>56</sup> Carmelo Danisi et al., ‘*Queering Asylum*’ (Springer, 2021), pp. 309-311; Sophia Zisakou, ‘Credibility Assessment in Asylum Claims Based on Sexual Orientation by the Greek Asylum Service’, (*Frontiers in Human Dynamics*, 2021), pp. 8, 10.

<sup>57</sup> Carmelo Danisi et al., ‘*Queering Asylum*’ (Springer, 2021), pp. 309-310.

<sup>58</sup> “The credibility of the sexual orientation can be jeopardised if asylum seekers speak too much about sex and too little about emotions. Physical desire is called ‘vague and superficial’. To be believed, the feelings must be deep. On the one hand, the asylum seeker has to communicate openly but, on the other hand, they should not speak about sex too much, even though it is simultaneously clear that sex plays a major part in the interview, even if it is implicit.” Sabine Jansen, ‘Pride or Shame? Assessing Asylum Applications in the Netherlands following the XYZ and ABC Judgments’ (2018), COC Netherlands, <https://www.refworld.org/docid/5c6eb3344.html>, p. 78.

## **5. CONSEQUENCES FOR PEOPLE SEEKING ASYLUM: MENTAL HEALTH, WELLBEING, AND THE RISK OF (RE)TRAUMATISATION**

The UNHCR SOGI Guidelines clearly state that, “[d]iscrimination, hatred and violence in all its forms can impact detrimentally on the applicant’s capacity to present a claim.”<sup>59</sup> Beyond how procedural violations can impact a person’s ability to tell their story in order to satisfy a caseworker’s assessment, this can also have very real and personal consequences for the individual that should not be underestimated. Feelings of denial, anguish, shame, isolation, and even self-hatred may build up in response to an inability to be open about one’s sexuality or gender identity. Despite the availability of guidance on how to account for this in interviews, it seems entirely disregarded in the asylum process. Conversely, there is a lack of agency and discretion in the decision of asylum seekers to disclose their sexual orientation or gender identity on their own terms. Being compelled to reveal this in the context of an asylum interview can be violating in itself and risks causing significant psychological suffering and a profound sense of powerlessness.<sup>60</sup>

Several Fenix clients reported encountering skepticism and doubt upon sharing their sexual orientation, which deepened their perception of the interview process as being akin to a “forced interrogation”. This was particularly disempowering given that many applicants felt their personal sense of identity was being questioned when caseworkers implied their sexual orientation was a choice rather than part of their identity.

In addition, intrusive questions about a person’s sexual relations or their history of persecution are so pervasive within the transcripts that a trauma-informed framework adhering to contemporary standards of practice is clearly lacking within the Greek asylum system. Fenix clients recounted experiences in which they felt violated during the interview process and forced to share intimate details of their private life in a highly stressful, unfamiliar context that they had no control over. Many reported feelings of discomfort and increased anxiety with having to disclose their sexuality to people in a position of authority, while others described frustration with the perceived lack of sensitivity or appreciation by the asylum authorities toward the difficulty sharing such sensitive information.

Negative interactions during interviews can also impact how a person sees or expresses themselves after the experience, including if someone receives a rejection decision that indicates in bold lettering that their stated sexual orientation or gender identity is not believed to be true. In other instances, the pressure to conform to a narrow perception of otherness has prompted asylum seekers to want to alter their appearance and manner of dress in order to be perceived

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<sup>59</sup> UNHCR SOGI Guidelines (2012), para 59.

<sup>60</sup> Ariel Shidlo and Joanne Ahola, 'Mental Health Challenges of LGBT Forced Migrants' (2013), no. 42, *Forced Migration Review*, pp. 9-11.



## **Naming and Shaming**

as more 'gay',<sup>61</sup> and some Fenix clients reported a similar experience following a negative interview outcome.

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<sup>61</sup> Claire Bennett and Felicity Thomas, 'Seeking asylum in the UK: Lesbian perspectives' (2013), FMR 42, *Forced Migration Review*, p. 42, 26-28.

## **CONCLUDING STATEMENT AND RECOMMENDATIONS**

This report presents a number of concerns regarding how SOGIESC asylum claims are being handled on Lesbos and how asylum procedures are compromising the wellbeing of many people seeking international protection today.

Even though the number of cases that Fenix supported throughout 2021 constitutes a small sample that cannot be considered representative of certain SOGIESC identities, the trends identified in the interviews and those observed by our mental health practitioners suggest that these are not isolated events, but institutionalised bad practices that result in clear procedural violations while bringing about retraumatisation and stigma. This is evidenced by very similar (inappropriate and/or prohibited) questions and the use of identical wording throughout different interview transcripts conducted by different caseworkers. Our findings echo conclusions from recent research that caseworkers are largely preoccupied with assessing the credibility of a person's sexual orientation or proving someone's 'true' identity, rather than making a "forward-looking assessment"<sup>62</sup> regarding their fear and/or risk of persecution if they return to their country of origin. A fulsome analysis of the decision-making process is not possible as positive decisions do not include the legal reasoning and credibility assessment.

The fact that some of our clients received a positive decision on their asylum applications should not serve to dismiss or lessen the importance of building good practices for interviewing and assessing the credibility of SOGIESC claims. The pervasive use of stereotypes and prohibited questions demonstrate first and foremost the need for comprehensive improvements in local Greek asylum procedures. Beyond the impact that inappropriate or illegal questioning can have on the applicant's wellbeing and mental health, poor practices usually lead to poor decision-making.<sup>63</sup> That these types of violations are continuing years after the XYZ and ABC decisions not only infringes on the rights and dignity of individual asylum seekers under the EU Charter, but also erodes the integrity of the Common European Asylum System.

Fenix has been providing holistic legal aid to asylum seekers on Lesbos since 2018 and is eager to see concrete improvements in asylum procedures for SOGIESC claims. These are our recommendations to contribute to the creation of good practices in the assessment of SOGIESC asylum claims:

1. Guidelines
  - The European Asylum Support Office and the Greek Asylum Service should issue clear, updated and publicly available internal guidelines on how to conduct personal interviews for applicants with SOGIESC claims, using a trauma-informed survivor approach;

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<sup>62</sup> Carmelo Danisi et al., *'Queering Asylum'* (Springer, 2021), p. 272.

<sup>63</sup> Erin Gomez, 'The Post-ABC Situation of LGB Refugees in Europe' (Emory International Law Review 475, 2016), p. 497.

- The guidelines should hold up to the standards set by EU and relevant case law and should include a shift in the terminology that is respectful of the diversity and individuality of each person and that leaves room for fluidity;
- Staff working with SOGIESC claimants should be aware of key structural supports, including SOGIESC-specific agencies in Greece working with people with diverse sexual orientation and gender identities.

### 2. Training

- In line with its LGBTIQ Equality Strategy 2020-2025, the European Commission should support Greece to facilitate additional training of staff charged with assessing asylum claims for people of diverse SOGIESC (such as caseworkers, interpreters, decision-makers, doctors and psychologists intervening in medical screenings and vulnerability assessments);
- At minimum, it should cover the standards set out by the ECHR and the CJEU on assessing SOGIESC claims, special considerations on evidence assessment, relevance of COI and particularities of SOGIESC claims, and how to conduct interviews with gender perspective and a trauma-informed approach;
- To ensure the interview is conducted with a trauma-informed, person-centered approach that acknowledges the fluidity and nuances of SOGIESC, whilst avoiding the imposition of Eurocentric notions that pathologise identities,<sup>64</sup> it is good practice for the caseworker to adopt the word or phrase used by the applicant when self-identifying, assuming that the meaning of the word or phrase is established and understood.

### 3. MHPSS

- The revision and amendment of mental health guidelines is strongly encouraged, as necessary, in order to follow good clinical practice and international human rights standards. Guidelines should aim to guarantee access to special reception conditions and protection support and should put the needs and wellbeing of SOGIESC claimants at the forefront. They should ensure that diverse sexual orientations and/or gender identities are not deemed a pathology, disorder, or abnormality;
- Medical and mental health practitioners working with SOGIESC applicants, particularly within Greek public agencies, should receive SOGI-specific training and a clearer, evidence-based framework that facilitates the ethical and proper identification of SOGIESC asylum seekers;
- Training should include the use of proper terminology and inclusive language; historical context and considerations; an intersectional understanding of SOGIESC identities, with an emphasis on health disparities disproportionately impacting SOGIESC people; strategies for responding to discrimination and stigma; as well as best practices in medical/psychological conduct, including deconstructing myths, stereotypes and common misconceptions.

### 3. ICD codes

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<sup>64</sup> See Sections 2 and 4.

- The use of F66 ICD-10 codes in vulnerability and mental health assessments should be discontinued;
- For anyone who meets the diagnostic requirements of a mental health disorder such as depression, anxiety disorder, and post-traumatic stress disorder (PTSD), mental health staff should implement existing ICD-10 codes under the umbrellas of F30-F38 ('Mood [affective] disorders')<sup>65</sup> or F40-F48 ('Neurotic, stress-related and somatoform disorders')<sup>66</sup>;
- For individuals who do not meet these criteria but are seeking health services and/or counselling related to sexual concerns, it is appropriate to use the existing Z70 code 'Counseling related to sexual attitude, behavior and orientation' under the Z00-Z99 umbrella ('Factors influencing health status and encounters with health services').<sup>67</sup>

#### 4. Complaint mechanism

- EASO and GAS should implement accessible and effective complaint mechanisms to report staff misconduct, particularly during asylum interviews;
- For staff charged with assessing asylum claims for people of diverse SOGIESC, informing applicants about the existence of such mechanisms and how to use them right before the asylum interviews can serve as another strategy to strengthen accountability and transparency;
- Collection and publication of information related to complaints of misconduct and how those complaints have been addressed is encouraged for transparency purposes.

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<sup>65</sup> AMA, 'ICD-10-CM 2021: The Complete Official Codebook with Guidelines' (2020), p. 560-561.

<sup>66</sup> AMA, 'ICD-10-CM 2021: The Complete Official Codebook with Guidelines' (2020), p. 562-563.

<sup>67</sup> AMA, 'ICD-10-CM 2021: The Complete Official Codebook with Guidelines' (2020), p. 1243.

# RESOURCES



## ATHENS

Safe Place International  
Athens Housing Collective  
info@safespaceinternational.org  
+30 2108617898; +30 6980544538

Za'atar NGO  
ATLAS LGBTQ Support Group  
contactezaatarngo.org  
+30 6940671666

Emantes International LGBTQIA+  
Solidarity Emantes' Support Line  
info.emantes@gmail.com  
+30 6971693446; +30 6971693446

Ministry of Education, Research & Religions  
LGBTQI+ Psychological Support Line  
"Dipla Sou"  
diplasou@11528.gr  
11528

CRWI Diotima  
Legal aid & support for male GBV survivors  
urban.athens.diotima@gmail.com  
+30 2108816405

## LESVOS

Lesvos LGBTQI+ Refugee Solidarity  
LGBTQI+ solidarity collective  
lesvos.lgbt.r.solidarity@gmail.com

## SAMOS

Samos LGBTQI+ Group  
Community support group for  
LGBTQI+ individuals in Samos  
samoslgbtqigroup@gmail.com

Orlando LGBTQI+  
Specialized mental health support  
contact@orlandolgbt.gr

Greek Transgender Support Association  
Legal counselling & support to LGBTQI+ refugees  
transgender.support.association@gmail.com  
+30 2109210697; +30 6944820441

Greek LGBT PwD  
Support to LGBTQI+ individuals with disabilities  
info@loatamea.gr

Proud Seniors  
Support to LGBTQI+ individuals aged 50+  
proudseniorsgreece@gmail.com  
+30 6973355124

## THESSALONIKI

CRWI Diotima  
Legal aid & support for male GBV survivors  
urban.thessaloniki.diotima@gmail.com  
+30 2310534445