

BELGIAN BRUSSELS PRIDE

- CROSSING BORDERS -

Theme The Belgian Pride 2017

LGBT+-refugees: rightful
procedures and inclusion with
respect for identity.



More than one third of all countries considers consensual homosexual acts as criminal acts in 2017¹. In many countries, adjusting the sex determination on official documents remains impossible or results in infringements of the rights and/or dignity of those individuals². The pathologizing or criminalization of people because of their sexual orientation, gender identity or -expression is manifested around the globe and in the majority of countries. In addition, very few countries provide protection against discrimination or violence on these grounds. According to the ILGA/RIWI survey, a third of the respondents worldwide are very or somewhat uncomfortable with a neighbour who identifies as LGBT+³. The risk of persecution because of sexual orientation, gender identity or -expression is significant in many countries, due to both government and 'non-state' actors.

The 1951 Refugee Convention provides protection to persons who are persecuted in their home country and who are not protected against their government. Although the Convention does not refer to sexual orientation or gender identity, they are recognized by the European Union as persecution grounds since the Qualification Directive⁴ was renewed in 2011. Theoretically this has been the case in Belgium for about a decade. In practice, hundreds of asylum seekers have been granted refugee status on the basis of their sexual orientation or gender identity. However, there still remains a long way to go before we can get to a correct reception and a just procedure.

Procedures and determination of credibility

Upon their arrival in a country, LGBT+ refugees are interrogated to find out their reasons for fleeing their country of origin. The asylum authorities have to determine the credibility of the persecution stories of these persons. This procedure contains questions directly concerning the sexual practices of the refugees, not their orientation. Self-identification is not always accepted as a valid criterion, both in terms of sexual orientation and gender identity.

Asylum authorities and lawyers must be able to take into account the sexual orientation and gender identity in the asylum procedure without relying on Western stereotypes or theoretical models; They must respect the fundamental rights of the applicants⁵. Therefore, they must be trained for this purpose. In regards to trans*

¹ http://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf

² http://ilga.org/downloads/TLMR_ENG.pdf

³ http://ilga.org/downloads/Ilga_Riwi_Attitudes_LGBT+I_survey_Logo_personal_political.pdf

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>

⁵ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-12/cp140162nl.pdf>

people, the asylum procedure must respect the right to self-determination of their gender identity.

Safe countries

Just because a country is legally considered 'safe' for the LGBT+ community does not mean that refugees from that country should automatically be rejected.

Persecutions can occur even in countries that do not have a law explicitly criminalizing LGBT + individuals.

The absence of such a law should therefore have no effect either in assessing the merits of individual asylum claims nor in drawing up the list of so-called 'safe countries'.

Reception conditions

The authorities have the obligation to prevent violence and stigmatization in reception centres. LGBT + claimants, particularly trans* people, are vulnerable to exclusion and violence from other residents. The reception conditions must be adapted to meet the specific needs of these applicants to ensure their inclusion. Reasonable accommodation must be provided to give them access to an individualized reception where their privacy can be guaranteed.

The common asylum policy in Europe

European right for asylum is the subject of a revision procedure launched in 2016. Belgium must take a pioneering role in these negotiations. It must defend the explicit consideration of the needs of people persecuted on the basis of their sexual orientation, gender identity or gender expression. It must ensure that the common European asylum system translates into effective access to rights, without giving way to arbitrary interpretations. The European Asylum Support Office and other European institutions must continue to monitor this.

A required effort for inclusion

Beyond the asylum procedure, the authorities have a duty to ensure the refugees' inclusion. In theory, international protection opens up access to a set of fundamental rights. But in practice, efforts are needed to ensure that LGBT+ refugees do receive the right to maintaining family unity, a residence permit and valid travel documents. They must also have equal access to employment, education, recognition of their qualifications, social protection and health care, as well as to relevant housing and integration arrangements.

For these rights to be effective, the authorities must ensure compliance with anti-discrimination laws and prevent and punish racist, xenophobic, homophobic and transphobic crimes and discourses while acknowledging multiple discrimination cases.

Beyond the existing legislation, achieving these objectives involves a systematic effort to train the concerned staff, develop accessible solutions for the filing and follow-up of complaints and regular publication of reliable data on registered cases and their handling by the responsible institutions.

For a real solidarity with the LGBT+ community

Organizations within the LGBT + movement also have a responsibility to welcome and include asylum-seekers and refugees. The Belgian Pride and the three umbrella organizations of the Belgian LGBT+ movement commit themselves, on the occasion of the Pride 2017, to promote the recognition of asylum seekers and refugees in their community.

This Pride's program will include concrete initiatives for the direct participation of these people in our activities and in the defence of our claims. It will offer moments of reflection and sharing to create a real inclusion of diversity.

Beyond the Pride 2017, by involving the minorities, the three umbrella organizations commit themselves to a process of developing concrete action plans for representativeness and inclusion.