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LGBTQ asylum-seekers in Europe subjected to stereotyping and humiliation, rights group says



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LGBTQ asylum-seekers in Europe subjected to stereotyping and humiliation, rights group says

There's an "urgent need" for better protection and treatment of LGBTQ asylum-seekers in Europe, according to the Council of Europe.

Nov. 29, 2018 / 5:56 PM GMT

By Alex Cooper

Navid Jafartash fled Iran in 2014 because he feared for his life: He is gay, and homosexuality is illegal in Iran and in some cases [punishable by death](#). He went to Vienna, where he spent several years and had established a life for himself until his asylum-seeking journey hit a roadblock this year.

Jafartash had his [asylum application rejected](#) in June after he failed to explain to Austrian officials the meaning of the rainbow pride flag's six colors. Austria, as a European Union member, [offers asylum](#) to those who can prove that their sexual orientation would put them in danger if forced to return to their country of origin, like Iran or Afghanistan, that persecutes LGBTQ people.

Navid Jafartash, middle, with two members of Queer Base, an Austrian organization that works with LGBTQ asylum-seekers. Queer Base

With the help [Queer Base](#), an Austrian group working with LGBTQ asylum-seekers, Jafartash was able to appeal his rejection and was officially [granted asylum in August](#). However, such rejections are not uncommon for LGBTQ asylum-seekers in Europe.

A number of human rights activists, academics and lawmakers say that asylum decisions in Europe — a beacon for many fleeing countries where persecution based on sexual orientation and gender identity is common — are often based on discriminatory or ignorant attitudes, and that there is a need to redesign a system that tends to ignore the lived realities of LGBTQ asylum-seekers and makes the process unnecessarily isolating and dangerous.

At times, the system may erase their experience altogether. In Italy on Thursday, the government [passed a law restricting asylum rights](#) to war refugees and victims of political persecution. The E.U. member state said it will no longer provide "humanitarian" asylum, which was given to those who had "serious reasons" to flee their country and often included gay people fleeing harsh anti-gay laws in Africa.

"I'm willing to host women and children who are escaping from war," said Interior Minister Matteo Salvini, leader of the right-wing League party, "but all the others, no."

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In another asylum case out of Austria, an 18-year-old from Afghanistan, who had arrived in Austria as a minor, had his asylum application denied in August apparently because he did not seem gay enough.

"The way you walk, act or dress does not show even in the slightest that you could be homosexual," an Austrian official wrote in his assessment rejecting the claim, according to Austria's [Falter](#) newspaper.

A few weeks after his application was denied, a 27-year-old Iraqi man had his application rejected by Austria for being "too girlish," according to The Independent.

In Belgium, a lesbian couple seeking refuge reportedly faced anti-gay discrimination and violence in a unisex asylum center in the village of Kapellen.

"These are the two worst months in our lives," Marigona and Elisabeth, from Kosovo and Mexico, respectively, told the Dutch website Zizo. "We can not go to the shower in our hallway anymore. That is too

dangerous."

"Belgium is a fantastic country for LGBT people. But the asylum center of Kapellen is not Belgium," Marigona said. "I feel less safe than in Kosovo. We feel illegal here."

AN 'URGENT NEED'

Dunja Mijatovic, commissioner for human rights for the Council of Europe (CoE), a 47-member international organization aimed at upholding human rights and democratic values in Europe, recently issued a statement regarding the "urgent need" for better protection and treatment of LGBTQ asylum-seekers in Europe.

"In many states around the world, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons face serious violations of their human rights on account of their sexual orientation, gender identity or sex characteristics," Mijatovic stated. "These include [killings](#), violence, the [criminalization of same-sex relations](#) and severe discrimination."



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. @coe states should take steps to better protect #LGBTI persons who seek #asylum.

Better laws, interview processes, and safe reception conditions are urgently needed to ensure their protection and dignity

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Mijatovic also stressed that it's not just outside of Europe where sexual and gender minorities face danger — but inside as well. She specifically called out the [Chechnya](#) region of Russia and [Azerbaijan](#).

“Whilst we must work tirelessly for better protection of the human rights of LGBTI persons, we also need to be mindful and understanding of the fact that sometimes they have no other choice but to flee and seek safety outside their own states,” she continued. “In many Council of Europe member states, however, LGBTI asylum-seekers face a number of challenges to seeking such safety, which require urgent attention.”

Among the challenges Mijatovic specifically cited, is the lack of a uniform interpretation of international standards across Europe when addressing asylum-seekers.

“Explicit recognition in states’ domestic laws that sexual orientation and gender identity fall within the grounds set out in the Refugee Convention adds an important layer of legal protection for LGBTI asylum-seekers,” she explained. “Despite this, not all Council of Europe member states have [explicitly recognized](#) sexual orientation, gender identity, and/or sex characteristics in their asylum laws.”

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Senthoran Raj, a law lecturer at Keele University in the U.K., said this lack of uniformity across Europe is tied to rising xenophobia and racism, as well as “increasing militarization of borders.” These issues, Raj explained, contribute to countries failing to uphold commitments to international conventions on refugee laws.

“There is no simple answer for what we know is happening around the world at the moment,” he added. But he said this “hostility” toward asylum-seekers is “particularly acute” when it comes to “people who seek asylum on the basis of their sexual orientation.”

Another challenge Mijatovic outlined was stereotyping and the difficulty in convincing authorities of one’s sexual orientation or gender identity during the asylum procedure.

“Asylum decisions rely to a large extent on the authorities’ assessment of whether the claim made by the asylum-seeker can be considered credible,” she said, adding that interviews often play a central role in the process. “Interviewers often base their questions on stereotypes and unfounded assumptions about their countries of origin.”

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The three recent cases from Austria are all examples of interviewers using gay stereotypes during the asylum

process, and “these cases are not unusual,” according to Raj.

“We know from an enormous amount of research and work that has been done over the years that people who seek asylum on the basis of their sexual orientation or sexual identity often face kind of stereotypical questioning, intrusive interrogations about who they are, where they come from, what is their sex life like, who they are attracted to, why they’re ‘living a particular lifestyle,’” Raj said. “It’s disheartening when it happens, but it’s unfortunate that we are seeing this all over the world.”

But Raj added that there’s also a “painful irony” in the asylum process as well.

“We know from cases in the United Kingdom and in places like Australia that people who exhibit qualities we consider to be too stereotypical gay are dismissed as self-serving to simply prove their asylum status,” he explained.

Having photos at a pride parade or evidence of volunteering with an LGBTQ organization, for example, could be dismissed because officials may believe they are staged, according to Raj.

“It’s a real catch-22 for people who have to prove their sexuality,” he added.

Nuno Ferreira is a law professor at the University of Sussex and the head the [Sexual Orientation and Gender Identity Claims of Asylum](#) (SOGICA) project, which is based at the university’s School of Law and funded by the European Research Council. He said his research has shown that despite some improved laws and positive court decisions for asylum-seekers, there are often still terrible decision-makers implementing these laws during the asylum process.

“There’s a lot of scope for improvement,” Ferreira said. “There are decisions across Europe that completely fail to understand the cultural and social contexts of asylum-seekers.

“We have examples of lesbians being denied asylum because they had been married (to a man) in the past, but because they were forced to marry,” he explained. “We have decisions denying asylum to gay men who have had children in the past simply because a decision-maker could not comprehend a gay man having had one heterosexual relationship.”

Mijatovic also flagged as “particularly problematic” the practice of “applying humiliating tests or questioning to ascertain the sexual orientation of an asylum applicant.”

The European Court of Justice (ECJ) [ruled in 2014](#) against questions that dive too much into an individual’s sex life and against so-called arousal tests, where gay asylum-seekers are made to watch gay pornography to see if they react to it.

The ECJ again ruled against invasive tests in January, siding with a [Nigerian man who was denied asylum](#) in Hungary based on his sexual orientation after officials forced him to undergo a Rorschach inkblot test to prove his homosexuality.

MOVING FORWARD

Both Mijatovic and Raj called for an intersectional approach to the asylum process, with officials taking into account the unique vulnerabilities of lesbian, gay, bisexual, transgender and intersex asylum-seekers.

“LGBTI persons may have already had very traumatic experiences in their countries of origin and on their way to the country of asylum, such as sexual violence, trafficking or other physical or psychological abuse,” Mijatovic stated. “Authorities should thus ensure that specific needs, such as health care or psychosocial

assistance, can be identified as quickly as possible.”

Raj cautioned that those fleeing homophobic or transphobic countries may not automatically be comfortable saying “I’m trans” or “I’m same-sex attracted” right away.

“There’s an assumption that once a person comes to a new place that they will feel free off the bat,” Raj said. However, he noted, it may be “difficult for them to disclose their sexuality or gender identity.”

“There isn’t some simple transformation,” he added. “People’s experiences are very complicated and they vary enormously.”

In her call to action, Mijatovic outlined the importance of a “safe reception” for asylum-seekers.

“Even within the country of asylum, LGBTI persons’ safety may not be assured,” she cautioned. “LGBTI persons may face harassment, isolation and discrimination by other asylum-seekers in reception centers. Such problems may force them to avoid reception centers and therefore miss out on access to basic services.”

The experience Marigona and Elisabeth reported in Belgium is an example of what could go wrong if a safe reception is not prioritized.

While Mijatovic said there may not be a single “best model” to ensure the safety of asylum-seekers, she said providing information and better training for those involved in the asylum process — including interviewers, decision-makers and interpreters — are crucial.

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“Authorities should make full use of resources already available, such as those produced by the [International Commission of Jurists](#) and [ILGA-Europe](#), and cooperate with civil society groups to develop trainings, including those aimed at avoiding stereotyping,” Mijatovic stated. “This is crucial to ensure claims for asylum by LGBTI persons are approached with an open mind, and handled in a respectful, informed and sensitive way during the asylum procedure.”

Ferreira advocated for providing legal aid to asylum-seekers.

“There are many studies that show that not having legal representation at the state decreases immensely the chances of success,” he said. “If asylum-seekers make their initial claim without any support they are very unlikely to be successful.”

Mijatovic ended her 1,800-word call to action, which was published in October, on a cautionary note.

“The need to take these steps is especially pressing at a time when I see the institution of asylum under pressure across Europe,” she stated. “LGBTI asylum-seekers are particularly at risk of becoming victims of the rolling back of protection, with potentially disastrous consequences for their safety and dignity.”

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