

Improving SOGI Asylum Adjudication: Putting Persecution Ahead of Identity

Moira Dustin * and Nuno Ferreira **

ABSTRACT

This article addresses the concern that decision-making in sexual orientation or gender identity (SOGI) asylum claims in Europe is often unfair, and that one way to remedy this is by improving the guidance provided to decision-makers when interpreting the Refugee Convention in respect of these claims. We begin by interrogating a number of different decision-making guidelines and models to assess whether they contribute to a fairer asylum system. We show that, for claims based on SOGI, success invariably depends on the decision-maker's assessment as to whether a claimant is, or would be perceived in their home country to be, a member of a SOGI minority, and so belongs to a Particular Social Group. Such focus risks neglecting analysis of the actual risk of persecution. We set out our own recommendation for a fairer approach based on prioritising SOGI-specific Country of Origin Information (COI) and the risk of persecution, rather than focusing on whether applicants are 'genuinely' members of a SOGI minority. We argue that this will lead to fairer outcomes that are less likely to be overturned on appeal and more consistent with the Refugee Convention's spirit and letter.

KEYWORDS: asylum, decision-making, gender identity, guidance, identity, intersectionality, LGBTIQ+, model, persecution, queer, refugees, sexual orientation, SOGI

* Lecturer in Law, University of Sussex, Brighton, BN1 9QE, UK

** Professor of Law, University of Sussex, Brighton, BN1 9QE, UK. Email: n.ferreira@sussex.ac.uk

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