



LGBTI+ refugees in Greece: The EU-Turkey deal and beyond

PROJECT: «LGBTI+ refugees in Greece: The EU-Turkey deal and beyond»

PROJECT IMPLEMENTATION: TRANSGENDER SUPPORT ASSOCIATION | GREECE.

PROJECT IMPLEMENTATION PERIOD: JUNE 2020 - APRIL 2021.

PROGRAM SUPERVISOR: MARINA GALANOU

SCIENTIFIC PROJECT DIRECTOR: VASILIS SOTIROPOULOS

RESEARCH ASSISTANT: ANNA KONSTANTINIDI APERGI

PROJECT COORDINATOR: ATHANASIOS VESSIS

TRANSLATIONS : KIMON MELIKERTIS

FUNDING: OPEN SOCIETY FOUNDATION



GREEK TRANSGENDER SUPPORT ASSOCIATION

Syggrou 79, 3rd floor, Athens, Greece, 11745

Tel. +30 210 92 10 697

<http://www.transgender-association.gr>

<http://www.tgender.gr>

transgender.support.association@gmail.com

contact@tgender.gr

April 2021 | Greece

With the support of



CONTENTS

INTRODUCTION	4
THE RESEARCH	5
Part A: LGBTQI applicants and recognized refugees.....	5
Part B: The professionals.....	8
RECORDS OF CASES	12
A.- Asylum Decisions.....	12
B.- Decisions on Legal Recognition of Gender Identity in trans refugees.....	27
C.-A case of unaccompanied intersex infant.....	28
LEGAL COMMENTS ON CASES OF APPLICANTS FOR INTERNATIONAL PROTECTION FOR REASONS OF SEXUAL ORIENTATION AND GENDER IDENTITY	
1. The institutional framework	29
1.1. International Law	29
1.2. Treaty on the Functioning of the European Union	29
1.3. Charter of Fundamental Freedoms of the European Union	30
1.4. European Convention on Human Rights	30
1.5. Yogyakarta Principles for the Application of International Human Rights Law Without Discrimination inRelation to Sexual Orientation and Gender Identity	31
1.6. Council of Europe Recommendation CM/Rec(2010)5 on Sexual Orientation and Gender Identity	33
2. The case law of the ECtHR	33
3. The case law of the ECJ	34
Individual issues of legal comment on cases	36
Terminological observations	36
Stereotypical questions and prejudices related to the life of LGBTQI persons	37
Prohibited examination of sexual practices	37
Cases of subsequent declaration of sexual orientation	38
Need to simplify the process of legal recognition of gender identity	38
Need for specific legislation for intersex persons	38
PART C: Legal commentary on interviews	39
Physical and mental abuse	39
Lack of trust and information about the asylum recognition process	39
CONCLUSION – ACKNOWLEDGEMENTS	40

INTRODUCTION

The present project entitled: "LGBTI + refugees in Greece: The EU-Turkey deal and beyond", was undertaken by the Transgender Support Association (GTSA), a recognized organization for the support and promotion of the rights of trans, gender diverse, intersex and LGBTI persons in Greece, in general.

The Transgender Support Association since its foundation in March 2010, long before the vertical increase of migration and refugee flows in Greece in 2015, very quickly developed intense activity in support of the rights of LGBTI refugees, due to the great needs.

In this direction, and especially after January 2015, and in the light of urgent needs, it established a Special Secretariat for LGBTI Refugees Support, at four levels:

- a) To support the asylum claims of LGBTI applicants through its members who have already been trained in these specific subjects as experts as well as through lawyers,
- b) For the psychological support especially of the LGBTI applicants who needed it, both because of those who have already suffered in their countries of origin, and because of the double stigma they experience even in Greece due to the refugee status, on the one hand and their identity, on the other (sexual orientation or gender identity),
- c) To cooperate with other organizations that focus their activities on refugees for the purpose of housing and their decent living in general as the GTSA does not have similar structures, and,
- d) The activation in claiming at the political level the rights of LGBTI refugees in Greece.

In this direction, and with the funding of the Open Society Foundation, the present program was undertaken, whose objectives are:

1. Raise awareness of the obstacles faced by LGBTI refugees in the protection status procedures.
2. Increase commitment to best practices in order to better address the gaps and challenges faced by LGBTI refugees in protection status procedures.

In the direction of its implementation, the Transgender Support Association, conducted the first research focusing on LGBTI refugees by anonymously interviewing seventeen (17) persons seeking international protection or recognized refugees for reasons of sexual orientation and gender identity, although the original plan was for only for ten relevant interviews.

At the same time, five (5) interviews were received - as originally planned - from professionals, each of whom has worked in LGBTI cases of applicants or recognized refugees, highlighting the particular problems that they (also) record and concern the dimension of sexual orientation or gender identity of these persons.

Following, is the presentation of the research carried out by: Program Supervisor: Marina Galanou, Research Assistant: Anna Konstantinidi - Apergi, Project Coordinator: Athanasios Vessis and Translations: Kimon Melikertis, followed by twenty (20) LGBTI cases of applicants for international protection, and, finally, an extensive legal analysis by the scientific director of the program, lawyer of the Supreme Court, Vasilis Sotiropoulos.

Apart from this deliverable report, a relevant guide regarding the rights of LGBTI refugees in our country will be delivered by May 31, while at the same time and not among of this program, the Transgender Support Association has scheduled the publication of a book in Greek where on the one hand, the particular problems faced by LGBTI refugees in Greece will be analyzed, the results of the present research, a legal analysis of the dimension of the LGBTI refugees as well as the proposals of the GTSA to the Greek State.

THE RESEARCH.

Part A: LGBTQI applicants and recognized refugees.

In this part of the research, 17 applicants or recognized refugees for reasons of sexual orientation and gender identity participated.

Of these, 10 persons for reasons of sexual orientation and 7 persons for reasons of gender identity. It was not possible for an applicant to participate for reasons of sex characteristics, although the initial provision was for 10 LGBTQI refugees. Also, although the initial provision was for representatives of GTSA to travel to Lesbos, Chios and Samos and Thessaloniki to interview applicants living there, this was not possible due to the restrictive measures of the COVID-19 pandemic.

The characteristic of anonymity was observed in the research, while the questions were common to all persons. They concern the whole spectrum of their life from the moment they entered our country, their residence in Turkey, if they encountered problems based on the fact of their LGBTQI identity by interpreters and the police, if they were adequately informed about their rights, about the residence in the camp, regarding housing, possible help from any LGBTQI organization, regarding survival and medical care, generally throughout their lives.

Regarding their residence in Turkey, a wide range of abuse cases is reported. Here are some typical answers:

"Some incidents that happened to me there, I am ashamed to tell you. I can tell you that my trafficker, when he realized that I am trans, used me sexually and raped me." -

"I worked in a clothing factory and I lived in there as well. He treated me like a slave, he just gave me some money. But I was patient to be able to raise money to leave Turkey." -

"I do not want to stay there. If I was to stay in Turkey I would stay in Pakistan as well, it's the same thing. They are both Muslim states. It is not safe for an LGBTQI person to be there " -

"I was beaten and raped because I am trans. When you are trans everyone thinks they can do whatever they want to you. There were days when I slept with seven men together. If I refused to do so I would be beaten. I was told that now that we are here, it means nothing to them to kill me and throw me somewhere where no one would find me. I could not stay in that country." -

"Personally, nothing happened to me, but I have heard about incidents that happened to LGBTQI persons in Turkey. A trans girl was set on fire in her body and they tried to burn her alive in a club, simply because she was trans. We also heard very often about corpses of LGBTQI people who were found thrown in deserted areas. " -

It is interesting to note the experience of a trans refugee, who records when she was arrested after her entry into our country, an incident of push back attempt:

"I was very anxious. I caught by the police without my other compatriots being in front of me and I begged them with tears not to send me back to Turkey with the others because my life is in danger because I am trans and I want to seek asylum in Greece " .

as well as testimony after entering our country:

"When we arrived in Thessaloniki, they took us to a place outside the city. It is a relatively deserted location. They put us in a house as big as a warehouse that had rooms. There was the trafficker's collaborator who took the last money to pay the trafficker. Those who paid were allowed to leave, the others had to stay there until they pay the trafficker. I had paid him immediately. He told me that in the afternoon towards evening I would be free to leave. He came to the room he had for me and instead of letting me go he started raping me sexually. I cried and begged him to let me go as I had paid him, but he was not listening to me. The next day he told me again that he would let me go in the afternoon, but it happened again. This torment lasted for three days. On the fourth day, he took me on the train and I left for Athens " .

All the persons record that the sums they paid to come to our country paid sums between 1,000 and 2,000 euros from Turkey, 3 of them dangerous conditions during their trip ("We were about sixty (60) people. All together in a small boat with water coming in from everywhere. We also had young children with us, it was very dangerous. Fortunately Kastelorizo is very close from there otherwise I do not know if we would live"says a gay refugee"), while 9 of them said that they didn't provided them with interpretation in their language other than English during the recording.

Regarding whether they felt safe during the interpretation, one gay person of the participants in the survey stated that:

"No. I could not express myself as I would have liked. I was afraid. I was ashamed to speak openly and share things about myself. I didn't felt safe to speak. I was afraid to speak specifically of everything I have been through because I am an LGBTQI person. The courage to speak openly about me has been with me ever since I came to GTSA. From here I got the strength to speak and later in the interview about my asylum", gay refugee,

while another person states:

"It was a very small place and in addition to me, there were 4-5 other people of my nationality. They had us all together. How could I speak openly after being heard? I was afraid that my compatriots would hurt me if they heard something about me. The interpreter was shouting and he was very sharp," gay refugee.

Also, in the question if they were informed about their rights, only 1 person answered positively. We quote characteristically:

"No, they did not inform me about anything. All they did to me was to put a black liquid on my hands and take my fingerprints and then send me to a camp," gay refugee.

"No, no one told us anything. All they did was give us this paper to leave Kos. We were not even told that we had the right to seek asylum. This paper they gave us was valid for thirty (30) days, but no one told us that. I did not even know what this paper was. I learned from some of our own people that this paper is something temporary and is valid for only thirty (30) days. We had no information from the police. As soon as they gave this paper to someone, they released him," trans refugee.

It was in Greek only. I didn't understand what it was saying, nor did anyone ever told me what it was writing," gay refugee.

In the question if they declared their identity during the registration, 14 answered negatively and only 3 positively. Here are some typical answers:

"No, i didn't said anything to anyone. I didn't felt safe to speak. They had us all together, if I said something the others would listen to me and then I would have problems. I may have been beaten or raped. How could I speak, it was not possible. It was all unorganized ", gay refugee.

"Yes I told it. I was scared but I had to say it. I couldn't hide it even if I wanted to, I looked like a trans ", trans refugee.

In the question about the reasons why they were forced to leave their countries of origin, all participants spoke of persecution, rapes, but also severe abuse due to their sexual orientation or gender identity. Here are some typical free answers:

"My brothers threatened to kill me if I did not become "normal". I was constantly shouted at, insulted and beaten. I have no parents and my family is only my brothers. They wanted to marry me to a woman because they told me that people should not notice that I am "abnormal". I ran away from the house I lived in with them and went to Baghdad. But there I was afraid that my brothers would find me and kill me, so I decided to leave for Europe so that they would not find me. Iraq as a country is not good for a trans. There you are afraid if you are trans because they will kill you. These are forbidden there. They consider you to be "abnormal" and "sick", that you are not a human being ", trans refugee.

"I have seen my best friend who we were like sisters killed in front of my eyes. I have not yet overcome this, the image of my dead friend next to me will forever be in my mind. We went to dance at an event. After the

dance, the men wanted to rape us. My friend resisted. Then a man pulled out a gun and started firing. I ran to hide, but my friend did not catch up", trans refugee.

"My brothers were constantly beating me. They even broke my arm and told me they would kill me if I did not change. I was forcibly married to another woman. I run away and left my house," gay refugee.

My cousins, as I got older, saw my difference, and they started abusing me, beating me constantly and bullying me. I left my home at a young age to get rid of all this and went and stayed with a group of trans girls. After a while I was there with them, we heard about a trans friend of ours who was murdered. I was afraid for my life and so I decided to leave Pakistan. You cannot be safe there. They are killing you and no one will look for you", trans refugee.

In the question about their housing, 9 of them reported their homelessness, while all to the catalytic contribution of Civil Society organizations when either from the beginning or later they were able to be housed in a structure, but especially of LGBTQI organizations, both in the mediation for finding housing, in the guidance for their request, as well as in the interview process (representation several times by the GTSA expert who provided clarifications), but also in the preparation of their file. It is worth noting that, especially with regard to trans refugees, not all trans women were housed with same-gender persons, and in 2 of them there were incidents of sexual harassment.

In relation to the interview process, only 5 of them stated that they felt comfortable and safe based on their identity, 7 that the questions and the way they were asked in relation to their identity (sexual or gender identity) made them feel very uncomfortable and feel ashamed, and the other 5 persons that at first really felt uncomfortable but then (and especially in cases where there was a representation of an organization) were able to overcome it. It is worth noting that among the trans persons seeking international protection, only 2 trans persons felt that they could speak comfortably and in security conditions, especially when a female interpreter was requested to participate. However, all participants agree with the statement that it is absolutely necessary to have an expert organization in the interview process, precisely because of their LGBTQI identity.

All participants agree on the difficulty of finding information about the whole process, in particular as to whether they can apply for international protection on grounds of sexual orientation or gender identity, or whether their identity would be respected.

In the question to trans persons about their access to health services, despite the fact that out of 7, 5 of them they sought gender reassignment services (3 of them had already started it earlier), but none of them could access them, despite the fact that all international organizations urge states specifically for trans persons to ensure that they have access to gender reassignment procedures (hormones, etc.).

In the question if they had support in relation to their social inclusion or from a social worker, the answers of all participants in the research were negative, in 3 cases they even referred to negative treatment by social workers based on the gender identity of trans participants in the research, while in relation to the workplace inclusion, the answers of all were that they are excluded, except for 2 of them, 1 who works in an organization as an interpreter and 1 more person who works as a waiter, while only 3 persons and only after direction and help provided by the GTSA they were able to enter the process of learning Greek, and 1 person to be able to apply for admission to a school of practice for the direction in the workplace area.

In a question about the sense of security they now feel based on their identity, 7 of them answered that they feel safe, 6 not so safe, and 4 that they feel intense fear as they know incidents of abuse due to their identity.

Finally, in relation to their dreams for the future (free question), 6 of them answer that they would like to be able to travel to another European country, 9 to be able to have a job that will allow them to survive, while 2 out of trans persons express their strong desire to proceed as quickly as possible in the process of reassignment their gender.

Part B: The professionals.

Part of the research was the interviews of professionals who, through their profession, were actively involved in issues of international protection for reasons of sexual orientation, gender expression, or gender identity.

As part of this research, five persons answered our questionnaire anonymously:

- A person operating asylum cases,
- A person belonging to the administrative staff of the asylum service,
- A person on behalf of the United Nations High Commissioner for Refugees,
- A healthworker, and
- A lawyer who has handled asylum cases for reasons of sexual orientation, gender expression, gender identity or sex characteristics.

The same questions were asked to all five participants. The questions concerned:

- a) How many and what kind of cases did they come in contact with?
- b) The reasons for prosecuting the applicants
- c) Countries of origin
- d) Whether the disclosure of the identity by the applicant persons was done reluctantly or if it was done from the beginning
- e) If they felt that there was a problem with the interpreter's involvement related to the identity of the person
- f) Free reference to a case that is typically remembered due to its peculiarity or cruelty
- g) If they believe that the applicants' cases for reasons of sexual orientation, gender identity or sex characteristics, have some specific features, and if so, which ones.
- h) If in the past they have attended special seminars on the dimension of sexual orientation, gender identity or sex characteristics in the asylum
- i) If in the cases they were involved they encountered characteristics of post-traumatic stress and particularly strained mental health or rapes that were found in persecution for reasons of sexual orientation, gender expression, gender identity or sex characteristics
- j) If they had identified in cases that worked abuse by the Greek authorities.
- k) If in the cases worked the applicants encountered problems from other compatriots
- l) The particular problems that in their opinion they face in our country.
- m) Legislative gaps that have been identified
- n) If they believe that safe country lists help or further complicate the outcome of LGBTQI applicants
- o) If LGBTQI civil society organizations contribute positively or negatively to their work
- p) Problems in the specific area of integration and especially in the workplace.

The two persons on behalf of the Asylum Service (one operator of asylum and one administrative staff) had handled 3-5 asylum cases, the lawyer 3 cases, the person working at the United Nations High Commissioner for Refugees did not have direct involvement with specific cases, however, had dealt with a number of specific cases, while the health worker with 22 persons in need of mental health support (3 trans women, 1 trans man, 1 non-binary person, 15 gay persons, 2 bisexuals).

Regarding the type and scope of cases:

- All five respondents were concerned that LGBTQI applicants were persecuted by the authorities of their country on the basis of their sexual or gender identity,
- the lawyer states that in all 3 cases he worked on were victims of torture,

- The person working at the UNHCR also adds the feature of brutal violence suffered by applicants from military or paramilitary groups in the country of origin solely on the basis of their identity, but also the feature of forced marriage to conceal their identity and avoid persecution or violence,
- The health worker mentions all the above features, while adding the feature of imprisonment in the country of origin due to the identity of the applicants.
- One of the persons working in the Asylum Service identifies the feature of particularly harsh domestic violence.

The countries of origin mentioned by the 5 respondents were in a wide range of countries. Specifically: Syria, Iran, Iraq, Afghanistan, Pakistan, Morocco, Tunisia, Congo, Ethiopia, Bangladesh and Turkey.

Of the respondents, 3 out of 5 report difficulty and hesitation in revealing their identity (and therefore the real reason the person is seeking international protection), while the Asylum Service finds that LGBTQI applicants are open and speak out freely about identity only if they feel that they are in a protected environment and after the operator has built a relationship of trust and confidentiality.

4 out of 5 respondents answered that they have not identified any problems in the involvement of interpreters based on the LGBTQ dimension of the cases (eg prejudices), nevertheless the health worker notes that:

"In most cases I needed not a mere interpreter, but an intercultural mediator. Throughout the period I offered services to LGBTQI refugees I had at my disposal two intercultural mediators trained in the LGBTQI refugee approach. I had a case where the interpreter was not trained in LGBTQI issues and did not have intercultural ability and competence".

When the respondents were asked for a free report in cases that were particularly peculiar or cruelty, the answers are of particular interest, as a wide range is given: kidnappings, rapes, sexual abuse by traffickers, abuse by compatriots in our country, pecificity report of a trans woman who was afraid to reveal her identity and had initially stated that she was applying for financial reasons, **while the report on the case of a trans woman who was brutally abused in Greece by her compatriots and raped by a dog is shocking**. Also interesting is the report by the UNHCR:

In identifying vulnerabilities by the housing partners, we came to know cases of trans persons who were not included in the exemptions from the exits according to the categories of vulnerabilities of the new legal framework and therefore were at risk of exiting and possible homelessness. One case involved a trans woman from Iran who had been repeatedly abused on the street before being housed in ESTIA and was suffering from post-traumatic stress. She was recognized as a refugee but did not take any pre-accession action due to her bad psychological condition. She had no support network and was mistreated by her compatriots in Greece. The case, like that of other trans persons, was included in the list submitted to the Ministry by the UNHCR and the housing extension was approved.

In the question if they believe that the cases of applicants for international protection or recognized LGBTQI refugees for reasons of gender identity and sexual orientation have specific peculiarities in their handling and if so what are they, all respondents agree that special attention and sensitivity is needed as if not given special attention there is a serious possibility of re-injury, emphasize the sense of trust that must be developed by the professional, the need for training of the working staff (as reported by the Asylum Service that there has been trainings) but also the necessary interviewing skills to help the individual to narrate all the important facts about the case but at the same time with respect to the traumatic experiences (UNHCR), as it is especially identified by the lawyer and it is emphasized that in some cases they are so ashamed to talk about their identity who say the exact opposite about their identity".

4 out of 5 professionals state that they have been trained in issues of LGBTQI applicants for international protection, and 1 professional state about training through informal groups, while all persons note the great need for continuous training seminars.

All 5 professionals state that in all cases of LGBTQI refugees they have encountered strong characteristics of post-traumatic stress, they note the special physical and mental strain, the lawyer points out that in the category of LGBTQI applicants and refugees meet more often, while it is worth noting the statement of the health worker:

The violence (physical, verbal, psychological) that exists throughout this path revives and strengthens the trauma, resulting in the appearance of psychological and physical symptoms.

The LGBTQI refugees feel weak, confused, passive and have a heavy sense of loss in a constant state of alertness.

The intense memories that invade their minds, the nightmares, the resurgence of the traumatic event, the depression, the anxiety, the feelings of guilt and shame, the loss of self-esteem, the passivity, the sleep disorders, the irritability, the outbursts of anger, the difficulty concentrating and problems with self-image, the depersonalization, the de-realization, the confusing situations and disconnection were symptoms of post-traumatic experiences. But they also showed depression and anxiety disorders, suicidal ideation and self-destructive tendencies.

In the question about LGBTQI applicants who have been raped, 2 of the 5 respondents report cases of rape, while in the question about ill-treatment by the Greek authorities, the health worker notes that: "All LGBTQI refugees who came in contact with me reported verbal, emotional violence and two persons physical violence by the Greek authorities at the place of reception (RIC) ", the lawyer in the finding that " they were not adequately protected from homophobic or transphobic attacks in the camps by other refugees ", while the respondent on behalf of the UNHCR that: "Records often describe experiences of ill-treatment by the Greek authorities, including incidents of verbal violence by police officers during street checks, verbal violence or discrimination by civil servants during LGBTQI service, mockery, lack of respect on gender identity and/or during gender reassignment ", as well as five respondents confirm homophobic and transphobic treatment by other refugees - the lawyer adds that it happens even by "community leaders", as well as **gang rapes by compatriots**.

In the question what are the biggest problems that the LGBTQI applicants themselves have conveyed that they face, they are located in the following categories:

- Lack of state social support after the recognition of the status.
- Problematic asylum procedures.
- Lack of integration policies, language learning, vocational guidance
- Lack of job opportunities to ensure the safety and dignity of LGBTQ persons.
- Lack of education in schools but also lack of information of the refugee population in order to acquire knowledge and cultivate sensitivity and understanding about the issues of LGBTQI individuals in society as a whole.
- Problems accessing health services and housing and lack of a supportive environment.

Regarding the legislative gaps, the respondents who have a professional activity related to LGBTQI applicants, point out the following:

- Legal gaps in relation to access to allowances and social benefits (the few that exist in Greece) in order for recognized refugees, including LGBTQI, to have effective access,
- Obligation and special mention in the civil service code for the need to respect LGBTQI individuals,
- Lack of clear instructions and institutional guarantees when recording that guarantee their safety,

- Clear legislation and instructions for recording the personal data of trans people - operators do not know if they should use the desired gender or the gender existing in documents in the asylum decision and accompanying documents.

In the question if safe country lists help or further complicate the outcome of LGBTQI applicants, the respondent on behalf of the UNHCR replied that:

Given that this is a European trend towards faster asylum cases, we believe that whenever such lists are adopted and if there are reasons, there should be clear exceptions for specific identifiable profiles and the lists should be adopted with the exceptions explicitly mentioned. The basic principle is the possibility of individual examination of each case in the case of safe countries of origin. This means that applicants must be given the opportunity to reverse that the country is safe for them.

On the same, the mental health worker, that regardless of whether one country can be classified as safe or not, can be safe in one part of the country, while in another it is not always clear, while on behalf of a respondent Asylum Service points out that:

Lists of safe countries of origin can help authorities to speed up asylum procedures in some cases. However, it can negatively affect the judgment of an asylum application if the operator has no experience so that can quickly detect possible 'hidden persecutions'. Currently, for Greece, LGBTQI persons are a profile for which the instructions are of particular interest to operators in most of the safe countries of origin.

Even in the question if LGBTQI civil society organizations contribute positively or negatively to their work, all 5 respondents agree that in all cases where the contribution of LGBTQI organizations in the field was needed, it is particularly helpful.

In the question about the integration of LGBTQI refugees with an emphasis on the workplace, all 5 respondents agree that multiple stigma, both because of their refugee status and because of their identity, multiplies the problems of integration, especially in the field of work in exclusion. It is noted that they are not preferred in jobs, not even in those where the other refugees work, while the respondent on behalf of the UNHCR adds that:

The LGBTQI refugees are often excluded from the few language programs if they are afraid of coexisting with their compatriots. As a result, they experience double exclusion and multiple difficulties in living independently and with dignity.

While the respondent on behalf of the Asylum Service, emphasis is placed on trans persons seeking international protection:

Trans people in particular face extremely difficult situations. Rejection, humiliation. The most important thing is of course the legislation but also the change of mentality and the avoidance of stereotypical approaches.

RECORDS OF CASES.

This section will present the records of twenty cases of applicants for international protection on grounds of sexual orientation and gender identity, followed by legal commentary on the cases.

Necessary notes: 1) All the case records listed are copied from the relevant decision, therefore we do not bear any responsibility for the terminology used (incorrect in many cases and which largely indicates the training gaps in LGBTQI issues of asylum case operators) , 2) In some cases the extensive citation of records was judged due to the involvement of other factors, complexity, while in others a more limited citation. In some others, the criterion is the rejection of the request, or the short page decision.

A.- Asylum Decisions.

Record No1.First Degree.

This case concerns an applicant for international protection on grounds of sexual orientation, originating in Iran. It was examined by the Regional Office of Lesbos.

When filing the application, the applicant stated that he had left his country of origin and did not wish to return to it because he was gay and feared that he would be arrested, as his partner had already been arrested. Specifically:

When the applicant was first asked about the reasons for his leaving from his country of origin, he stated verbatim: "My life was in danger there because my partner was arrested 3-4 months ago and because he was pressured too much to mention my name to reduce his sentence I was warned to leave the country. We had a relationship for a very long time, after one night a third person came and he was a friend of my partner and it was to sit down and have a drink together. He, because he was a supplier of my friend's alcoholic beverages because he had been arrested - a long time ago, of course - once and because he wanted his sentences to be reduced, had given some information to the police, some names and one of the names he had given as information to police were my friend's name".

In particular, the applicant initially claimed that his partner had a friend, who was an illegal supplier of alcoholic beverages and whom he had met only once at his partner's house. The applicant alleged that this friend of his partner had been arrested for the illicit trade in alcoholic beverages and that in order to reduce his sentence he had given the applicant's partner the name of a homosexual. The applicant claimed that because alcohol was generally banned in Iran, its sale was illegal and that was probably the reason why his partner's friend was arrested. The applicant claimed that he did not know how this man knew that his partner was homosexual and that he suspected that he might have had a photograph of them. In addition, the applicant alleged that he had not had any relationship with him other than the time he met him and that the man was unaware of his own homosexuality. Regarding his love affair, the applicant claimed that he had been in a relationship with his partner from the age of 17-18, while their acquaintance and friendship started from the first High School, when they went to the internet cafe, ie from 13 -14 years old. The applicant claimed that the first step in their relationship was taken by his partner, who is two years older. The applicant claimed that he realized his homosexuality in adolescence because he had no feelings for girls and always played with boys. The applicant claimed that from a young age he always played football with the boys, "golia puts", hide-and-seek and that he did not want to have any contact with the girls.

The applicant claimed that his family had suspected him of homosexuality, as a problem had arisen in his neighborhood and a rumor had circulated that he was a pedophile, because he only hung out with boys and having this relationship with his friend, they kept making fun of them and so they became the "black sheep". The applicant claimed that he did not remember when his friend was arrested because he was at sea at the time, but he considered that it was probably 3-4 months ago. The applicant claimed that he had been informed of his friend's arrest by acquaintances and friends as he has no contact with him since his arrest. The applicant claimed that the reason for his friend's imprisonment is probably homosexuality, which in his country is considered a crime and anyone charged with this is considered an "apostate".

In the question by the operator why the police after the arrest of his friend and given that they were close friends and in the neighborhood they kept seeing each other, did not proceed to his own search and arrest, the applicant claimed that the supplier of alcoholic beverages who gave the partner's name in the police only knew about his friend as they themselves had not revealed their relationship so that it could be perceived by the rest of the world. Asked about the above allegation that the people in their neighborhood were teasing them about their relationship and that some comments had reached his parents, the applicant claimed that the supplier was the one who gave his partner's name to the police without however to know how to prove his homosexuality. The applicant claimed that because he had no contact with his partner he did not know that the supplier had proved his partner's homosexuality and from what he had probably heard the supplier had a photograph in his hands. The applicant claimed that his friend would report his name to the police because he was being harassed and tortured in prison and had been told that if he confessed to his friend's name, his sentence would be reduced and he would be released. The applicant claimed that he had gathered all the information about his friend's imprisonment from his partner's cousin, as his family learned about his homosexuality after his imprisonment.

Regarding the reaction of his friend's family when they were informed of the reason for his arrest, the applicant claimed that he did not know why he was in the area where he was working at the time. The applicant also claimed that he knew his friend's family as he was coming and going to their house and two months after he returned to his hometown his friend's family called him and asked him why he had been imprisoned and if the applicant knew his name of his partner in order to reduce his sentence. The applicant claimed that his answer was that he did not know anything.

In the question by the operator why the police did not suspect him since he could get information from the neighborhood that they were friends and they did company, the applicant claimed that they had suspected him but had no name and no proof. The applicant claimed that there was no police warrant for him and through his partner cousin he was informed a week before he left Iran that his partner would tell his name to the police so it would be better for him to leave. The applicant claimed that he had been removed from his family because after all this they considered that he had ashamed them, as a result of which he left without saying anything. The applicant claimed that on his possible return to Iran, because he was sure that his friend would reveal his name to the police, he would be arrested and imprisoned for an unknown period of time. The applicant claimed that he had spoken to his friend's cousin only once since he left and that he knew nothing about the progress of his case, i.e. whether his friend had confessed his name, whether his sentence had been reduced and whether he had released. The applicant claimed that he had deleted all data relating to his relationship.

Regarding the applicant's acquaintance with the alcoholic beverage supplier, the applicant claimed that he had met him about a year ago at the house of some friends where he had brought them drinks. The applicant claimed that the supplier was arrested 3-4 days before the arrest of his friend, as when someone "snitches" a name to the police, this person is arrested after 3-4 days. The applicant claimed that their friends knew they were close, made fun of their relationship, as well as some people from the neighborhood but did not know about their relationship nor did they have any proof. The applicant further alleged that a group of BASIJ surrounded him in a strait and beat him. The applicant claimed literally: "It's too long I cannot tell you 2-3 years ago and I just want to add for the BASIJ that they do not belong to any organization just go to the mosques become members. When you become a member of BASIJ, six months are automatically deducted from your military service and in order to get a job in a service, you precede and also they cooperate with the police and other organizations. They are generally used in many ways, such as participating in demonstrations, helping the police and religious celebrations, and helping the people in mourning, in general. "

Finally, regarding his military service, the applicant stated verbatim: "Because when I wanted to go as a soldier and because I was homosexual I wanted to get discharged from the doctor and when my family learned that I wanted to do this thing I had reactions from them and I had learned, I had read that in the army if someone is passive gay gets discharge in the Iranian army while if he is active he cannot get discharge after I left it and forgot it. I went to the army anyway and by the time I was done my depression got worse. There they do not ask at all, they do not ask such a question but according to the martial law there is a discharge. I went to the army 4 years ago as a soldier, I did not even fill in that point that you note on the military paper after the reactions of my family".

The assessment of the applicant's claims alleges, in principle, that the applicant's claims concerning his identity, personal and family status, education and religious beliefs are admissible as there are no grounds for dispute.

Regarding the applicant's credibility, it is noted that the applicant showed great willingness throughout the interview, answering all the questions asked. However, it is reported that his critical claims about his sexual orientation were not sufficiently coherent and lacked sequence and coherence. In particular, the applicant was not able to analyze in detail the evolution of his sexual life nor to adequately describe the difficulties he encountered in expressing and showing his sexual preferences. Finally, his claim of revealing his sexual identity and the danger he faces as a result of it is riddled with elements of vagueness and ambiguity, as reported.

Continuing, there are data that shows the fact that indeed, as stated: Homosexuality, according to the laws of this country, is a crime punishable by imprisonment or corporal punishment or, in some cases sodomy, even by the execution of the accused.

However, as stated in the decision: Although the applicant's claims are fully substantiated in his country of origin, a number of observations are highly problematic as to his overall credibility. In particular: 1) the claim of the applicant that he realized that he was homosexual in adolescence because he never hung out with girls and had no contact with them, instead playing football, hide and seek and other games with his peers, cannot be taken as reliable as lacks a chronological sequence, while at the same time all the necessary details are completely absent which document the tendency of his sexual identity towards persons of the same sex, 2) the applicant presents his relationship with his partner as a kind of joke common proof from his friendly and social environment, which is inconsistent with the above relevant information regarding the treatment of LGBT in their country of origin, 3) the applicant was not able to describe how the alcoholic beverage supplier proved to the police authorities that his partner was homosexual, no part of the interview revealed that anyone might have known about their love affair, and the reference to a photograph lacks clarity, 4) the applicant claimed that the police did not proceed with his own arrest, as there was no evidence or proof of his relationship with his friend, however the applicant throughout of the interview claimed that they received multiple teasing and jokes from persons in the neighborhood about their relationship and given that in Iran a simple suspicion of homosexuality is enough to arrest and imprison someone, the police would be very easy to substantiate his arrest, 5) the applicant's claim of a reduction in the sentence of someone in case of confession of another name regardless of category is not substantiated by any source of information on the police methods of obtaining additional information, 6) the applicant's claim that he was informed from his partner's cousin that he will confess his name to the police to reduce his sentence is unreasonable, since, his cousin knew about the relationship between them he could have reported him to the police in order to reduce of the sentence of his relative.

In view of the above claims of the applicant, as well as the identified serious lack of clarity, vagueness and space-time ambiguities, there is an attempt by the applicant to claim that he is at risk of arrest because of his homosexuality, but fails to provide all the necessary information and clarifications towards in this direction. His statements do not fully coincide with the reports of international sources of information about his country of origin, while there is no clear evidence to support his claims. Therefore, the claim of the applicant that he is homosexual and risks arrest because his partner will report his name to the police in order to reduce his sentence, is not accepted by the service and is rejected as unfounded. In view of all the above, the applicant's claims concerning the facts and circumstances relating to the reasons for leaving his country of origin are not accepted, as these claims are considered unreliable and the applicant's internal credibility is affected to such an extent that he cannot, on the basis of the recording of the interview, be recognized for the benefit of the doubt.

Furthermore, in the decision, the de facto subjective element of fear of the applicant is recognized, however, on the assessment of the objective element based on the above reasoning, it rejects the request.

Record No2. First Degree.

In this case the applicant was an applicant on grounds of sexual orientation, born in Syria, of Kurdish origin. At the age of 14 he met a much older man (about 28-30 years old) at a local party, and they were together for about 2 years. At a time when his friend was missing in Lebanon, a friend of his partner took him to a house where he raped and abused him with the threat of a knife. In Syria, he never openly expressed his sexual orientation, on the one hand because he feared for his life and on the other because he had already experienced horrific abuse and rape that had left him with deep wounds. In addition, due to his Kurdish origin, he experienced multiple incriminations of his identity and a strong stigma.

From a very young age he had a self-perception of his sexual orientation and as he states he felt from a very young age an emotional attraction for the other boys while playing at school only with girls. The first time he tried to leave Syria where with the help of a trafficker, he crossed the border and went to Turkey, along with two other boys and a girl. He decided to leave his country when he enlisted in the army as his country was at war, as it was impossible for him to serve due to his sexual orientation and the multiple injuries he had suffered on the ground of his sexual orientation, but also due to his Kurdish origin.

There, however, the Turkish army caught them, took all their money, beat them very badly and left them in an area near the Syrian border. The applicant was hit in the head, causing him to lose consciousness. When he woke up he was in a hospital in the Alkamisli area, where he remained for 15 days, after which he was monitored by doctors for three months. About a year later he made his second attempt to leave Syria. He found a trafficker who was paid by his sister's man, who took him to the Turkish border from there by car to the first Turkish city. From there he took a bus and went to Istanbul to a friend where he hosted him for about 1 ½ month. He never worked in Istanbul while he was supported by some money he had with him from Syria.

Because he is homosexual and Kurdish, he was afraid to stay in Turkey because his life was in danger both because of his origin and because of his sexual orientation, and in a communication he had with his family he told them that he wanted to leave for Greece. From Istanbul he passed to Edirne and from there by boat he went out to Evrosriver. There, in an area he don't know, a car was waiting for them, taking them to Thessaloniki, cutting a ticket with the KTEL and getting off in Athens. His first recording was made via Skype from the GTSA office, while he is hosted in a Solidarity Now structure.

Due to the beating to the head by the Turkish soldiers from the first time he tried to leave Syria, he has severe headaches, while he is monitored by a psychologist and psychiatrist by Doctors Without Borders, due to panic attacks and agoraphobia. This is also certified by a certificate confirmed by Doctors Without Borders. In this context, the person applied for international asylum protection due to multiple abuses, violence up to the point of rape, which he lived in his country of origin, but also due to his origin (Kurdish origin).

The case was examined by the Regional Asylum Office of Attica, in the presence of an expert of the Transgender Support Association, while a relevant Memorandum was submitted by the GTSA, and as stated in the two-page decision: "From the above claims, as they were assessed, it follows that the above has a well-founded fear of persecution in Syria due to certain political beliefs, membership in a particular social group, as a homosexual and of Kurdish ethnic origin, within the meaning of the abovementioned provisions. "

Case No. 3. Second Degree.

This case came to the attention of the GTSA, when it had already been rejected in the first degree. We present the background of the case, and then the claims of the applicant originating in Pakistan before the Board of Appeal in the second degree, which again rejected his request, and is now pending before the court.

The applicant claimed that when his family found out about his homosexual relationship, they cut him off from school, beat him and sent him to Karachi to work. In his work environment, however, the money was withheld at the

request of his father, so that he could not have the activities he wanted. The applicant, in parallel with the relationship he maintained in Karachi, used to come and go to his birthplace in order to see his former classmate with whom he had a relationship. At their last meeting, however, they were arrested on the spot by fellow villagers, locked in separate rooms and the mullah of the area decided to kill them in the morning. The applicant managed to escape, to go to Lahore and with the help of a trafficker to leave Pakistan. He stated that he did not know what happened to his partner.

In the decision in the first degree, it is noted that: the applicant's reports about the events that happened to him, although due to his clear personal experience there is no question of an objective intersection and it is found that his narration has a specific internal coherence and time continuity, his claims are vague and not plausible. Then, as stated: the claims of the applicant regarding the fact that he continued to visit his parental home even though his parents were violent against him appear unrealistic. It also does not describe in detail the experiential way and the erotic encounter which, as he claims, was perceived by the locals and the mullah. Finally, the lack of effort to communicate with his partner after his escape shows a lack of plausibility.

The rejection decision also states that: With regard to the applicant's main claim that he is sexually attracted to persons of the same sex, the Service takes into account that his narration, which is the main evidence in assessing his claims of sexual orientation and gender identity, is general. Especially when the applicant was asked to describe the feelings he felt when he discovered his sexual identity, he said: "at first I sat with girls and they called me a tomboy and later when I went to the boys I felt attracted to them and I felt happy with it".

It also continues saying: The applicant's claims of social stigma from the local Pakistan community are also vague as he generally states that "my classmates made fun of me for behaving like this", without giving specific facts.

At the same time, however, it is stated that:

(a) concerning the attachment of a homosexual relationship in Karachi (where the rejection decision states that there are gaps), the applicant: (i) states how he was introduced to him, (ii) states that all persons living in the room knew about him, (iii) his employer who even contacted his parents about this and later stopped paying him for his work and was in a peculiar regime of incarceration and deprivation of his liberty, generally answers clearly to whatever is asked.

(b) it is also stated that his claims about the social environment and the reactions of his employer present gaps, however he refers in detail to the fact that he was incarcerated by his employer and mainly that he was not paid for his work, while he repeatedly refers to saying that Karachi is a dangerous city where his life was in danger.

(c) it is stated that it is plausible that he was still visiting his paternal home even though his parents were abusive to him, nevertheless the applicant accurately describes the fact that he was neither paid while in forced labor and confinement and the only way out was or to return home hoping that he might eventually find the signs of humanity (which he not only did not find but was physically abused by his father) or escape by leaving the country altogether after being abused in all areas of his life ((which he eventually did by leaving his country, no longer enduring to it).

The following is all the evidence that homosexuals are persecuted in Pakistan and the objective fear is met, and based on the above, the Service taking into account the internal and external dimension of the applicant's credibility combined with available information from sources, acknowledges that there is violence against homosexuals in Pakistan. Further, however, as stated, no individual discrimination or persecution has been proven, which constitutes persecution or cruelty or degrading treatment on a personal level. Therefore, as stated in the decision: we cannot consider that there is evidence of past persecution, based on the criteria and conditions of the Geneva Convention.

Case No. 4. First Degree.

This case concerns a Syrian applicant for international protection on grounds of sexual orientation. According to his interview: he has been the victim of repeated rapes in his country of origin (about eight times as he states). He also points out that if he returned to his country because he is now wanted by the regime, he will be imprisoned and possibly killed. It is reported that the rapes he experienced were from a regime officer, while in many parts of his interview (as recorded between and at the end of it) he bursts into tears.

The interview of the applicant was attended by an expert on behalf of the Transgender Support Association, while the GTSA had submitted a relevant memorandum in support of his request. The decision is only three pages long, and all that is mentioned is: During the above procedure the applicant made his claims, as they appear from the recording of the applicant's personal interviews, which were accepted by the service, and then that: From the above claims, as assessed, show that the applicant has a valid reason to be prosecuted in Syria for membership in a particular social group.

Case No. 5. First Degree.

This case concerns trans woman seeking international protection on grounds of her gender identity, originating in Pakistan. This trans woman, as she reports when she was three days old, her parents had a car accident and lost their lives. She was taken to live with her uncle and aunt in the city. She stayed with them and her cousins until the age of 10, and then they sold her (way of adoption without papers) to a family that had no children. At the age of 13-14 and while she had never been to school, she was put to work in a hair salon while learning the art. Many times when she took leave from work she visited her aunt and uncle. At the age of about 16 on a visit, her uncle, seeing her difference, did not let her go and kept her there by force, while abusing her sexually and physically.

Her aunt realized that her husband was abusing her and helped her return to the family that had "adopted" her. Her uncle went and found her and poured a caustic liquid on her body, burning her legs and abdomen, shouting to the family not to feel sorry for her because she is "abnormal" and that she only deserves to be raped. The family who lived seeing her difference was advised to either stay there while working as a dancer (it is a way for trans women to work in Pakistan) or to leave for Europe.

She stayed there while she was taken over by another trans woman with her partner who had a kind of group and employed trans women who sent them and danced at weddings and events, while keeping them half the money they received. He stayed and worked there for about 3 years, where he managed to raise some money and left for Oman, a city near Dubai. She lived there for about 6 years, where she worked in the morning in a hair salon, while in the evening her boss sent her to forced sex work and kept all her money. He abused her sexually and physically every day, raping her, extinguishing lighted cigarettes on her body and burning her with hot irons (there are obvious wounds on her body which she showed us).

One night when she was sent to dance with other trans girls at a private party, they were caught by the police, who told her that if she said her boss's name they would release her. The applicant, in order to be able to escape, gave his name to the police and left for the city of Lahore. Her boss learned from the other trans women what had happened and found her in Lahore, forcibly locking her in a hotel where he beat and raped her, bringing other men in continuously for 2 days. One morning when he was missing from the hotel, she managed to escape and went to Iran with the help of a trans friend. She stayed there for about 2 years where she worked in a hair salon and managed to raise money and left for Turkey and then entered our country.

In the three-page decision, the expert representation of the Transgender Support Association is mentioned, while it is worth mentioning that it is noted that: It is noted that the Service, based on law 4491/201765, regarding respect for the personality of transgender persons, conducted the oral interview in the female gender, by which the applicant identifies herself. Although the applicant was registered with her biological male sex, she stated that she identifies herself as female and therefore the decision will refer to the gender she identifies with, without this meaning a change in the registration of her data, for which a court decision is required¹.

The decision concludes that: During the above procedure the applicant developed her claims, such as resulting from 23.10.2017 recording of personal interview, which were accepted by the Service. It follows from the above claims, as assessed, that the applicant has a well-founded fear of persecution in Pakistan for her membership in a particular social group within the meaning of the abovementioned provisions.

¹ It is noted that this point of the specific decision was used as an evidence in a case of legal recognition of gender identity of trans refugee by the Magistrates Court of Thessaloniki <https://tgender.gr/press-release-extremely-important-case-law-changing-gender-marker-registration-for-transgender-refugees/>.

CaseNo. 6. FirstDegree.

The case concerns a trans woman, originating from Iraq, from childhood who felt the gender incongruence (anatomical-social) and came out to her family, relatives, friends, was not accepted by her family, and especially by her father. Indicative of this, the abuse, and the unsafe climate she experienced in her family, is the fact that she could not finish school because her father had learned about a relationship she had with a partner and forced her to drop out of school, while her father had appealed to the police, when she could not stand the climate of abuse she was experiencing, with the request to be searched and caught "dead or alive", with the sole reason that she is a trans woman.

Due to this climate of insecurity and abuse that prevailed both in her family and in an Islamist organization called AL MAHDI, which persecutes LGBTQI people, she was initially forced to leave Iraq and seek refuge in Syria. There she lived in Damascus with her partner where she was hosted by the UNHCR. She then fled to Lebanon for about three months, where because she could not survive, she fled to Bahrain and Turkey, but then due to financial difficulties, returned to her homeland, Iraq, where she was arrested in 2016 by the AL MAHDI army, a murderous organization that persecutes LGBTQI people. She was horribly tortured for two months and repeatedly raped.

As she noted: "One night when I was returning home, I was abducted by men from the AL MAHDI organization and I was imprisoned. I was beaten and raped every day, and then I was taken to a place in Kurdistan called Arbil. There I lied to one of these men that if he helped me leave I would give him \$ 60,000. Of course, this never happened because I did not have the money. A friend of mine there managed to contact me and gave me \$ 300 to go back to Turkey. And I left."

Thus, through Turkey, she fled to our country, seeking international protection of asylum, having suffered initial abuse from her family, a climate of insecurity where she sought, but mainly persecution, kidnapping, arrest, torture and repeated rapes by one of the most criminal Islamist organizations in the country, which commits arrests, torture, rapes but also mutilation and murder of gays, lesbians and trans people.

It is worth noting that as she states: "during the trip I was threatened by the trafficker that he will kill me if I did not allow him to have sex with him. Later, he handed me over to another man and he took me to Turkey. I stayed there at the camp and one night later for 4 days I was taken to the hospital. Then I went to Izmir, where I stayed for 3 weeks. I was beaten in this city."

The interview was conducted with the representation of an expert of the Transgender Support Association, where there is also the report of the trans woman's self-determination, it is only three pages long and in conclusion it is stated in the decision that: From the above claims, as assessed, it appears that the above has a well-founded fear of persecution in Iraq for membership in a particular social group within the meaning of the abovementioned provisions.

CaseNo. 7. FirstDegree.

The case concerns a transwoman applicant from Iraq, who from childhood felt the gender incongruence (anatomical-social) and this when it became known to her family, relatives, friends, was not accepted by her family and especially by her brother, but also her social environment. She managed to go to school until the 3rd High school. Regarding the insecurity she felt due to her gender identity, as she notes she had received many threats to her life and physical integrity from her brother, she left her family and left for Baghdad.

Characteristic of the climate she experienced in her family when they were alive was that they forced her to get married after enormous pressure, in order to "protect the honor of the family", a marriage that lasted only months, as it was impossible for her to hide her innate gender identity, to pretend, and this marriage worked abusively for her.

For about a year until 2005 she worked in Baghdad as a waitress in a cafe. Due to her gender identity, she received a lot of racism from the wider society, but also violent attacks. One night when she was finished her work, she was stabbed by strangers and robbed.

In addition, it is worth noting that as she notes in the interview given by her in Chios, she also complains that she was raped in her country of origin. Specifically, as she states, she was raped three times: the first time by three persons in a car where she was forcibly pulled, she could not escape and after she was raped she was thrown out of the car badly injured, while she did not report the rape to the police, as she was in danger of being arrested and imprisoned because of her gender identity. The second time by a taxi driver who attacked her threatening with a gun, drove her to a deserted location and raped her, and the third time by a colleague at her workplace, and that was the reason she quit her job.

The applicant's interview was conducted with the representation of an expert of the Transgender Support Association, while the three-page decision concludes: From the above claims, as assessed, that the above has a well-founded fear of persecution in Iraq, due to membership in a particular social group within the meaning of the abovementioned provisions.

Case No. 8. Rejection in the second degree - a request is pending for humanitarian reasons.

The case concerns an applicant for international protection on grounds of sexual orientation originating in Pakistan. As mentioned, at a very young age he had a strong sense of difference. He always liked to play only with girls whom he saw only as friends, while he felt erotic and emotional attraction only for boys. In fact, he liked to dress like girls at his age and walk like them, even though he did not see himself as a transgender/trans person, but a gay man.

All this behavior of his, which was internal and source and therefore impossible to hide and internalize, in a country that is not only conservative but particularly aggressive against homosexual persons like Pakistan, was the cause and the ground of overt discrimination, harassment, bullying but also violence he faced both at school and in his neighborhood and in his family environment, but also throughout public life in his country.

The other boys made fun of him for playing with the girls, while in his family he saw them behaving differently. He characteristically states: "My parents did not love me like the rest of my brothers, they treated me differently because they saw me behaving like a girl. There were many times when my siblings and my parents hit me and told me to walk like a man," he says, and all this happened solely because of his sexual orientation and gender expression.

When he was about 16 years old, he tried to change some things in his appearance so that he would not be bullied. He says: "I started to grow a beard and behave as much as I could like the other boys because I could no longer stand the harassment and violence I was experiencing. Nevertheless, nothing could change the fact that I was gay and the erotic and emotional attraction I felt for boys."

He finished school and continued at the University in a pedagogical school. "When I finished school I made a fake Facebook account and from there I met some other gay boys," he said. While living in his origin country, Pakistan, he was financially dependent on his parents for studying. In 2015 he met a boy from his area with whom he had a relationship. One day his family left home to go to a wedding and so he took the opportunity to invite his partner to sit at his house.

"I thought they would be too late and I called him to sit at home. We were alone in my room naked and kissing, we had not yet started having an erotic intercourse, when suddenly my brother came home and caught us. He started insulting me and my friend, locked us in my room and called my father. When my father arrived at the house, they entered the room angrily and started beating me and my friend with two sticks like bats they were holding in their

hands, while they were insulting me. They shouted loudly that I was abnormal and it was better that my mother had never given birth to me. They hit us all over our body except our head, arms, ribs, abdomen, legs, everywhere. Then they threw the sticks and started punching and kicking us. They took my partner and threw him out of the house, while I was still in the room. They came back and started beating me again." The above incident happened in 2015, since then they had him locked in the house and did not let him go out at all. "They beat me every day telling me that I ashamed them, that I was abnormal and feminine. My brother used to tell my father that it was better to kill me."

For about two and a half months his parents had locked him in the house with only water and some food given to him by his mother and one of his sisters. "My grandfather and uncle were like chanters and they used to tell my father that it is a great shame and sin to have an abnormal child and that they should either "cure" me and marry me to a woman or take me and leave me on top of a high mountain or kill me. I shouted at them that I did not want to get married and that I wanted to live with a man. They took me to some priests there in the area to "make me well" and leave as they said the evil spirit from inside me. They told everyone that I had a bad spirit inside me so that they would not become a disgrace because I was a homosexual. The priests read me with some prayers through the Quran, they gave me something to wear amulets while they also read a water that I had to drink something like sanctification," he said.

In early November 2015, one of his sisters, unable to bear to see the torture he was going through, decided to help him leave home to escape and so he gave him some jewelry he had to sell and leave the city.

"I never dared to go to the police and report the abuse I had suffered. If I went or they would put me in jail because I'm gay, because there they think a man should stay a man and get married, or they would call my family and hand me over to them again and kill me," he said.

He sold some of the jewelry and gave money to a trafficker, who smuggled it to Iran and from there to Turkey. This trip lasted about fifteen days. He stayed in Turkey for about a month. He lived in a house with some other people from Pakistan who did not know he was homosexual. "I was afraid to speak. I know that if I said I was gay I would be raped and killed," he said. He did not dare, as he notes, to talk to anyone about his sexual orientation, because he was afraid for his physical integrity and even for his own life.

As stated in the first degree rejection decision: The applicant appeared cooperative and willing to answer immediately any questions submitted to him. The assessment of the applicant's credibility took into account the consistence and coherence of his critical claims, in relation to his personal profile, as well as the available information on the situation in the country of origin.

The objective facts concerning his country of origin are then examined and the persecutions of the LGBTQI persons in it are ascertained. However, despite the fact that homosexual persons in Pakistan face discrimination and persecution, the applicant did not give a detailed and convincing account of the ways in which his sexual identity was showed and the problems it caused him, nor of the controversial incident of a love intercourse at home. As for the general problems he had faced, he generally said that his parents and classmates accused him of "behaving like a girl" - without mentioning any specific incident from his childhood or adolescence, in which the expression of his sexuality, caused him embarrassment or other difficulty. Regarding the specific incident of August 2015 - in which his brother caught him during the sexual act with another man - he stated that, before that, he had not had any kind of sexual contact or relationship with another man, while it was the first time he met the specific person - whom he had met through facebook. However, it does not seem reasonable that a person without previous relevant experience and with the fear of his social environment attempted such a meeting in his paternal home and without first meeting him in person his potential love partner in a more neutral and public place. Finally, answering a relevant question, the applicant stated that he did not know what the fate of his sexual partner was, as he had no contact with him after the incident of their arrest - because, as he said, he did not remember the password of his facebook account. This also does not seem plausible, as the applicant could seek him out through a new or different

account - an act that would have been expected, following the high-intensity incident they experienced together. In view of the above, the applicant's claim that he left his country because of the threat faced by his family due to his particular sexual orientation is not accepted.

In the second decree, before the committee, the same reasoning is followed, nevertheless, the referral assistance for humanitarian reasons is examined as it recognizes that there are grounds for a residence permit in accordance with the current legislation, recognizes the indicative nature of the conditions of the law, and finally recognizes, in the present case, from the documents submitted that the applicant is experiencing problems due to his sexual orientation but also due to his vulnerable psychosomatic condition, and also if he returns to his country of origin he may be the victim of inhuman and degrading treatment, and concludes: Decides to refer the case to the Ministry of Interior, in order to duly examine the possibility of granting the applicant a residence permit for humanitarian reasons.

The case came to the attention of the GTSA when it had already been rejected in the first degree, it was supported in the second with a memorandum submitted before the committee, while the decision of the Ministry of Interior is now pending.

Case No. 9. First Degree.

The case concerns an applicant on the grounds of sexual orientation, originating in Syria. According to the person's background: The city where Al Raqqah lived, which during the civil war in the country, was occupied by ISIS. According to the person himself, he was arrested by ISIS for six months for the sole reason of his sexual orientation and was even tortured in many ways.

As the person notes: "When I managed to escape, I went to my family, but they did not accept me. My time was limited because I could not serve in the army and so I left Syria as soon as possible. While I was in Turkey, I worked in a hotel, where I met some people from my city, who kidnapped me, were drug traffickers, I was very scared, and they raped me, they stole everything from me (phone, money) and after 3-4 days I was told I had to leave. I went to the police station but they did not help me. It took me a while to recover and I decided to leave Turkey ", while he repeats:" Everyone is looking for me: family, ISIS, the army ".

The interview was conducted with the representation of an expert of the Transgender Support Association, and the just two-page decision concludes: From the above claims, as assessed, it appears that the above has a well-founded fear of persecution in Syria because of a particular social group and attributed political beliefs as non-conscript, within the meaning of the abovementioned provisions.

Case No. 10. Second Degree.

According to the case background: The applicant was born in the Syrian capital, Damascus. He is of Arab ethnic origin and his mother tongue is Arabic. He is a Sunni Muslim in the religion. He is a graduate of higher education and worked in Syria as a director of an electronics company. The applicant left Syria two and a half years ago and first went to Lebanon and from there to Turkey. He arrived in Greece in 2016, specifically in Lesbos. The applicant stated that he had left Syria because of the war and did not want to have anything to do with the war. He said he did not want to return to Syria because some Syrian officers were harassing and blackmailing him because he was homosexual. The applicant stated that he had served in the military in Syria in 2005-2007 as a lance corporal at a unit near the Syrian border with Lebanon. Regarding his state of health, the applicant replied that he was suffering from a stomach ulcer and that he was receiving medication in his home country.

In order to assess whether the applicant is at risk of persecution in his country, the Committee took into account the United Nations High Commissioner for Refugees Assessments on the International Protection of people fleeing Syria, published in November 2015, in which "most Syrians seeking international protection are likely to fulfill the requirements of the refugee definition contained in Article 1A(2) of the Geneva Convention, since they will have a well-founded fear of persecution linked to one of the Convention grounds. For many civilians who have fled

Syria, the nexus to a 1951 Convention ground will lie in the direct or indirect, real or perceived association with one of the parties to the conflict." According to the UN High Commissioner for Refugees, in order for an individual to meet the refugee criteria there is no requirement of having been individually targeted in the sense of having been "singled out" for persecution, or being at risk thereof. Syrians and habitual residents of Syria who have fled may, according to the UNHCR, be at risk of persecution for reason of an imputed political opinion on the basis of their perceived association with a particular party to the conflict, because of their religion, their ethnicity, or because control over the neighborhood or village where they used to live was exercised by a particular party to the conflict. Based on these data, the UN High Commissioner for Refugees (UNHCR) states that it "welcomes the increased granting of refugee status to asylum-seekers from Syria by EU Member States in 2014 and 2015, in comparison to 2013, when most EU Member States predominantly granted subsidiary protection to Syrians." It is also noted that "in exceptional cases in which the 1951 Convention inclusion criteria may not be met, consideration needs to be given to broader refugee criteria elaborated in regional refugee instruments, or other forms of international protection, including subsidiary protection, or protection from refoulement derived from universal or regional human rights norms, or based on national legislative standards."

In the light of the above, the Committee considers that there is a reasonable likelihood that the applicant will be seriously injured if he returns to Syria and that his fear of persecution is based on objective facts and is justified. The risk of prosecution of the applicant comes from the Syrian state security authorities and consists in the possibility of being arbitrarily deprived of his liberty, accompanied by torture or inhuman and degrading treatment. The acts which the applicant is in danger of suffering constitute a violation of his Fundamental Rights (Articles 3 and 5 of the ECHR) and fall within the meaning of prosecution under Article 1A (2) of the Geneva Convention.

In conclusion, the Committee unanimously considers that refugee status should be recognized, while it is interesting that before reaching a decision, it examines whether there is a reasonable fear of persecution in all parts of the country.

The case had been supported by the lawyer on behalf of the GTSA, while a relevant Memorandum had been submitted by the GTSA.

Case No. 11. First Degree.

The case concerns a trans woman seeking international protection originating in Pakistan. According to her background, the trans woman had been repeatedly abused in her country of origin, Pakistan, and later in Turkey. In particular, her brothers abused and beat her constantly because of her solid gender identity formed at an early age, and so at the age of twelve, not enduring the horrible abuse and the beating, she was forced to leave her home, and stayed with other trans women in Lahore, while working as a dancer at weddings and events, as is it happens with many trans women in Pakistan for their survival. In her background still records abuses and rapes while working, and she has not served in the military while in Pakistan. She wanted to leave Pakistan because she could no longer stand the abuse and rape, so she found a trafficker who would take her to Turkey first and then to Germany.

In 2016 she left Pakistan for Iran where she stayed for 3-4 days and from there to Turkey where she stayed for another fifteen days. There she was hosted in a house maintained by the trafficker. During her stay in Turkey, she was physically abused by three of her compatriot men, from Pakistan.

The interview was conducted with the representation of an expert of the Transgender Support Association, while the GTSA had submitted a Memorandum. The three-page decision concludes: From the above claims, as they were assessed, it appears that the above has a well-founded fear of persecution in Pakistan, due to participation in a particular group within the meaning of the above mentioned provisions.

Case No. 12. Decision of the ACA of Piraeus 401/2019.

With the decision number 401/2019 of the Administrative Court of Appeal of Piraeus, the decision of the Independent Appeals Committee on the rejection of asylum was annulled, as it was deemed that illegally and unjustifiably the Committee did not examine the substantive reason of imputed sexual orientation to an asylum seeker by an organized group in his country of origin.

Specifically, the court ruled that:

5. In the present application, the applicant claims, inter alia, that the contested act is not legally justified as regards the risk of persecution in his country, in particular solely because of the imputed homosexual status to him before the Committee through his memorandum as the main reason for his leaving from his country, but it did not examine him. This is because, according to the above narratives, persons who belong to or are supposed to belong to the social group of homosexuals, that is, even if they do not identify themselves with this characteristic, like himself, are prosecuted and punished by the state authorities under criminal law consequently, cannot enjoy state protection in any part of his country, while, moreover, in his case there is a serious risk to his life or physical integrity from the aforementioned safety empire group.

6. Because, in the contested decision, it was accepted by a majority that the risks invoked by the applicant, i.e. his homosexuality and the threat to his life that runs through the aforementioned group (safety empire) due to his sexual preferences, in combination with the reports of his own sexual experiences cannot result in structured homosexual behavior with elements such as to make it a fundamental element of his identity as an inherent or unchanging characteristic. The Committee has also taken into account the relevant UNHCR Guidelines on the concept of sexual orientation, according to which sexual orientation is the ability of any individual to have deep feelings, affection and sexual attraction to, and relationships with, persons of the opposite or same sex or more than one sex. In that context, however, the contested decision is incorrectly reasoned, as is well founded in the present application. This is because it was lawfully and reasonably judged, first, by the fact that there is no structured homosexual behavior in the applicant's case so that it cannot be concluded that it constitutes a fundamental element of his identity as an inherent or unchanging characteristic. Furthermore, however, the substantive claim before the Committee of the imputed homosexuality to him by the State authorities or by the above-organized safety empire group that persecutes him, **even if he is not individually identified as homosexual**, was not examined legally. In particular, the Committee, unlawfully and unjustifiably, in the contested decision did not make an independent judgment, on the basis of the applicant's claimed assertion, whether that imputed characteristic to him is capable on its own, without the contribution of any other reason, to cause him objectively justified fear of persecution in his homeland, in order to be subject to the specific protection status of a refugee.

Case No. 13. Decision of the ACA of Athens 245/2020

This case concerns an applicant for international protection on the grounds of sexual orientation, originating in Pakistan. This case came to our attention after the request was rejected in the first and second degree and then it was challenged in the Administrative Court of Appeal of Athens. The interest of the case lies in the fact that the applicant had not stated his sexual orientation from the beginning.

Specifically, the court ruled that:

7. Because, the applicant claims to be homosexual and that although he requested to be examined orally by the Board of Appeal, in order to provide relevant clarifications and in particular the reasons why he did not mention this sexual orientation during his initial oral interview request for asylum, the Committee was not invited him to attend, nor were evaluated the information provided relevant. The Court, in view of the fact that this sexual orientation in a country such as Pakistan may, in fact, presumably justify the granting of subsidiary protection status, and in view of the fact that the contested decision was taken by a majority, with the minority member expressing doubts as to the accuracy of this claim and in particular the completeness of the relevant file, holds that the contested decision rejecting the applicant's claim, without calling him to a prior hearing, is not legally and sufficiently reasoned and must be annulled, in the light of the well-founded ground of the application for annulment.

[...] Accepts the request for annulment.

Annuls the decision of the 1st Appeals Committee of the Appeals Authority of the Ministry of Immigration Policy and already Citizen Protection.

It refers the case back to the above Committee, so that the applicant can be summoned to appear before it in person and to provide clarifications and information, in accordance with the reasoning.

Case No. 14. First Degree.

The case concerns a trans woman, an applicant for international protection on grounds of gender identity, originating from Morocco, and who initially stated that she was applying for sexual orientation. Nevertheless, from the narration of her background by herself, her trans identity emerges in a straightforward way.

As indicated:

The applicant left his homeland because he declared himself homosexual and feared that if he was found in his country he would be imprisoned and tortured. Specifically, the applicant states that he realized his homosexuality at 20 years old from the fact that he wanted to dress in women's clothes and for this reason he kept a suitcase full of women's clothes in his room. He had many sexual relationships and maintained a relationship with a person of the same sex since 2012 for 6 months. Having sexual contact with persons of the same sex made him feel good and relaxed in contrast to people of the opposite sex who made him feel uncomfortable. His marriage to his wife was done by his parents. His sexual identity was never perceived by his social or family environment as he was careful not to show it. While he was married to his wife he did not reveal anything to her, but he states that she herself could understand because he was isolated from her. He met with his friend or persons of the same sex in a hotel. According to him, he reportedly met his friend for the first time in a hotel, while he used to look for persons with the same sexual identity in well-known hotels in Fas, where he sought to work for this reason.

The interesting thing about the case is that this trans person is seeking international protection together with his child (mentioned in the decision as a secondary person), who is recognized as a "father". It is also interesting that although the decision accepts the element of internal and external cohesion as to the origin and status of the applicants (primary and secondary member), as well as their relationship, the assumption of custody exclusively by the trans person is questioned. ("father"). Specifically, it is stated that: Given the sensitivity of this issue and given the loss of a relevant document that officially certifies the transfer of custody from mother to father, although this was requested, the sole custody of the primary applicant to the secondary member is questioned.

Also, as indicated:

"During the interview, the applicant claimed that he left his homeland due to the existence of his homosexual identity. Given that he had provided this identity as a possible ground for prosecution and that his claim could not be corroborated by official sources in so far as the claim concerned his personal data, the service is examining its credibility from the information and answer the relevant questions.

The applicant was asked about 50 questions regarding his sexual identity. The answers show that he declares himself a homosexual person, without long-term relationships but mainly occasional sexual relationships. He entered into a marital relationship with a person of the opposite sex in order to conceal his identity. He was with his companions in hotels which he named and managed to keep his sexual identity secret.

His sexual orientation was perceived by him due to his desire to wear women's clothing, while his desire to meet a man was perceived due to his "appetite". When he intercourse with a man he felt "good" and "relaxed" while when he intercourse with his wife who was the only woman with whom this happened, he felt that he was experiencing sexual weakness. With the people he had sex contact with in hotels, where he looked for them alone in the specific places. He had a six-month relationship with a person of the same sex, whom he met on facebook.

[...]Therefore, from the above data as quoted by the applicant, there is no evidence to indicate his internal conversion to the same sex, on the contrary, his descriptions were more about a general situation, either his own or his country. As a result, it was not possible for the service to identify those characteristics - indicative of his inner state that he experienced as a homosexual at various stages of his life, either in relation to his environment or in relation to himself. Therefore, the service does not accept his claim that he is homosexual".

It then examines the objective element of fear of persecution which actually establishes the fact that homosexuality and trans status are criminalized in Morocco through specific articles of the Penal Code, but concludes: "However, in the context of the assessment of the applicant's claim, the service did not accept that he had a homosexual identity as claimed and therefore the possibility of harm to his physical integrity or threat to his life or discrimination such as makes his life unbearable is not considered reasonable and therefore his fear that he will be persecuted by the authorities of his country because of his sexual identity is not considered valid and justified".

Case No. 15. First Degree.

This case concerns a trans woman seeking international protection, originating in Morocco.

As noted in her background: Her mother as a child, when she realized her difference, physically abused her and told her father to beat her to stop being as "sensitive" as she called her and to let out her "manhood". According to her, her parents tortured her daily, beat her on the head and burned her with hot irons.

In their attempt to "make her a boy", they took her to a woman who was engaged in "spiritual" methods, who, together with her parents, tied her arms and legs and tortured her by burning her in the abdomen and legs. She found it difficult to talk to anyone because she was afraid of being attacked because of her femininity. Many times others told her why she has this appearance and they spoke badly about her. At school she was physically abused and her nose was broken.

In her struggle for survival and while she was still a 17-year-old child, she met a much older one who had great financial comfort and offered her everything (shelter, expensive clothes, food). He liked (as she says) young children and boys and girls. Often when she told him he wanted to leave he physically abused her, hitting her violently.

Unable to bear all the above, she decided to leave her country of origin and left for Turkey, where she stayed for a year. During all this time, she practiced sex work to make a living, while 4 times she was raped and physically abused. The last time, she went to the hospital in Istanbul injured but was not accepted because her documents had expired.

In her interview, there was a representation of an expert from the Transgender Support Association, while the GTSA had submitted a Memorandum. The three-page decision concludes: From the above claims, as they were assessed, it appears that the above has a well-founded fear of persecution in Morocco, due to membership in a particular group within the meaning of the above mentioned provisions.

Case No. 16. Decision of the ACA of Athens 1697/2018.

The case concerns an applicant for international protection on grounds of sexual orientation but also for reasons of HIV, originating from Cameroon. The request was rejected in the first and second degree and was examined by the Athens Administrative Court of Appeal.

The decision states:

7. Because, from the content of the interview recording, it appears that the applicant was called upon by the competent operator to state unhindered the reason why he allegedly forced him to leave his country, and then he was asked successive questions about the issues raised, in particular, about his life in Cameroon, the time in which he became aware of his sexual identity, his arrests, detentions and release, the reason why his sexual orientation makes his return to Cameroon undesirable, even if he is due to a problem he will face relatively. Therefore, during the personal interview of the applicant, the claims he unjustifiably claimed were not taken into account and, therefore, there was no reason to call him, because, among other things, there were no questions or doubts as to

the completeness of his interview. In addition, the Administration, in assessing the alleged sexual orientation of the applicant, took into account his claims, which, in the above reasoned judgment, he considered to be contradictory and vague, as well as the general conditions in his country of origin, the rejection to accept refugee status was made after considering all these factors and did not rely solely on his inability to answer questions about the time of his sexual identification, dismissing as unfounded claims to the contrary. [...]

8. As has been extended, as regards subsidiary protection, in the contested decision, it was decided by a majority that the conditions for the applicant to be placed under the relevant procedure were not met, on the ground that, in view of his claims, but also the political and social situation arising from the available valid international sources, does not risk suffering, in case of return to his country of origin, serious damage within the meaning of article 15 (instance. α' , β' and γ') of presidential decree 141/2013. However, in that context, the contested decision is inadequately reasoned, as is rightly stated in that part in the present application. This is because the Committee did not make a reasoned decision regarding the possibility of the applicant being included in the subsidiary protection status, in view of the health problems he already presents, as they result from the medical certificate of the General Hospital of Athens "GIORGOS GENNIMATAS" submitted by him on 25-5-2017, which is pointed out by the minority of the Committee, but the majority opposes it, without any special thought. The contested decision is therefore set annulled in that regard.

Case No. 17. First Degree.

This case concerns a trans woman seeking international protection, originally from Bangladesh. Specifically, as she states in her interview on the Lesbos Regional Office, from a very young age, she had a well-established self-perception of her gender (female) which differed from the gender recorded at birth (male) and is transgender/trans person.

However, as she states, this fact was not accepted by her family, school or society. More specifically, she had been beaten both by her own family, at school by her classmates, while the teachers at the school never protected her from the blatant violence she suffered. In her family shelter, her father beat her, tortured her, her classmate had opened her head to the point that she needed stitches, while the violence she experienced reached the extreme form of rape she had received from her classmates at a birthday party. The first time the violence of her classmates reached the point of rape, she was videotaped under the threat that they would "upload" the video on the internet, while her father, when he learned about her rape, not only did not protect her, but beat her with a hot kitchen spatula that has still left marks on her head.

However, this was not the only time, as under the threat of publishing the video of her first rape, she was raped a second time and in fact when she reported the incident to the police as well as the names of her rapists, the police authorities not only did not protect her and they did not do their legal duty, but instead protected her rapists, one of whom his father was in power (a politician and a powerful businessman) who then threatened by telephone that if she did not withdraw the complaint, they will kill her and they will "breaking her into pieces", she said, while one of the police officers threatened her that he would put her in prison, based on the law of the country that outlaws any sexual behavior that is not part of heterosexuality.

These threats went so far as to set fire to her home and extreme threats against her life, which were aided by her father, threatening to kill her, a fact that led her to the burden of multiple abuses, violence, threats against her life, to the point of attempting suicide, leaving her country to take refuge in a country that would feel safe.

In the reasoning of the first degree rejection decision, it is stated that: "[...] was not able to explain clearly and with logical claims presenting the incidents of rape and the threats received".

B.- Decisions on Legal Recognition of Gender Identity in trans refugees.

In addition to the cases listed above, we consider important the decisions of legal recognition of gender identity in trans refugees.

Case No. 18. Desicion 444^E/2018 Magistrate Court of Thessaloniki.

On March 8, 2018, following a request filed on November 30, 2017, the Magistrates' Court of Thessaloniki, examined the case of a trans woman who is a recognized refugee, for the change of gender and first name, in order to be consistent with her gender identity, according to with the provisions of Law 4491/2017 (legal recognition of gender identity).

The Court accepted in its decision 444E/2018 that the existence of identification documents that show her in the male gender, makes her due to the difficulty of identification in various transactions with public services, other bodies, but also public health services, particularly vulnerable, as well as these circumstances are a permanent source of psychological tension and anxiety and a situation of especially distressing that is added to her already heavily situation due to the torture she had suffered in her country of origin and insurmountable obstacle for her full integration into the Greek social environment, while causing serious damage to her legitimate interests and infringes on her personality.

Most important, however, is the fact that although Law 4491/2017 does not include an explicit provision for the change of gender and first name for persons who are not registered in the Greek Registries and especially in trans refugees, while Article 4 of provides that the court decision is registered in the relevant Registry (while the trans refugee is not registered in the Greek Registry), the Court accepted the request of the trans refugee and affirmed in order to correct the decision of the Regional Asylum Office of Thessaloniki recognition as a refugee as well as the relevant residence permit, with the aim of changing the registration of gender and first name in both her documents, so that they are consistent and in accordance with her gender identity.

Case No. 19. Desicion 136/2018 Magistrate Court of Mytilene.

The Magistrate Court of Mytilene with the decision 136/2018, which became final on Tuesday 19.2.2019, proceeded to change the registered gender of the trans woman and the main name, recognized refugee by the Regional Asylum Office of Mytilene (thus confirming the jurisprudence of the Magistrate Court of Thessaloniki 444E/2018).

Further, however, the court, correctly applying the procedure of no. 4 par. 1 of the law, it confirmed, in order to correct the first name and the gender and in addition it adapted in a broadly way the surname in the Residence Permits (ADET) documents of the Asylum Service and Passport (Travel Document) of the Greek Police.

We copy the relevant excerpt of the decision:

[...]"From all the above it follows that the female gender, the name X, and the surname Y are for him the necessary and permanent characteristic elements of his personality by which they recognize him in the family and social environment. The existing inconsistentbetween the appearance of the applicant and his official identification and documents creates a serious problem in his daily life and can cause serious confusion in his transactions. Therefore, the need to accept the adjudicated application of an existing legal interest is obvious and the new situation, regarding gender, and his name and surname, must be reflected in his documents ".[...]

C.-A case of unaccompanied intersex infant.

Case No. 20

In March 2021, it came to our attention through the Intersex Greece team, a case of unaccompanied intersex infant.

Specifically, as it became known to us at the Hospital of Mytilene, an infant was born from foreign parents seeking international protection, who "due to a health problem" was transferred to a hospital in Athens. A copy of the history provided shows that the infant had intersex status. Also, however, we became aware, the social report of EODY announced that the parents were informed about the infant's health and the definition of the sex of the infant as "female" and that "will have to follow hormonal treatment and then (a.n. surgical) operation, but will be in good health ". The parents stated that they did not want custody and care of the infant, with a joint statement at the Mytilene police station.

Consequently, the infant remained in the hospital, in fact was abandoned there and an attempt was made to find a suitable accommodation structure, and at the request of the hospital, was assigned, with a temporary order of the One-member Court of First Instance of Mytilene, his/her custody.

Following the actions of Intersex Greece, assisted by the GTSA, we were informed that any ideas for surgery on the (now) unaccompanied intersex infant were rejected, the necessary assurances were given, while in a document forwarded by the Special Secretariat for the Protection of Unaccompanied Minors of the Ministry Immigration and Asylum, it is stated that:

"Therefore, it is concluded that with the data so far the infant does not face any health problems and does not need any intervention", while below justifies based on the relevant Resolution of the Council of Europe (as we had pointed out in our letters both the GTSA and Intersex Greece) but also a Resolution of the European Parliament, that surgeries on intersex infants are not only unnecessary but also harmful and should be postponed until the age at which the child can consent.

It concludes by stating that special care must be taken for the legal status of the child in our country, while instructing an authorized lawyer to take all necessary actions to file a request on behalf of the child for international protection, before the Piraeus Regional Office.

LEGAL COMMENTS ON CASES OF APPLICANTS FOR INTERNATIONAL PROTECTION FOR REASONS OF SEXUAL ORIENTATION AND GENDER IDENTITY

1. The institutional framework

The legal evaluation of the findings of the present research presupposes the citation of the legally binding texts that govern the provision of international protection, without discrimination or for reasons of sexual orientation and gender identity. In addition to the legally binding texts, for the completeness of the review, the non-legislative tools should be mentioned, but they are strong recommendations of soft law or a combination of international practice and experience from the application and interpretation of the provisions.

1.1. International Law

The central international law governing the protection of refugees is the Geneva Convention on the Status of Refugees of 1951 as well as the Protocol of 1967. The Convention was ratified by Greece with the L.D. 3989/1959. The Protocol of 1967 was ratified by C.L. 389/1968. The Protocol removes the geographical and temporal constraints set out in the original Convention that only persons involved in the events that took place in Europe before 1 January 1951 could apply for asylum. Article 1 of the Convention defines exactly who the refugee is. A person who is outside his or her country of origin or place of residence, has a legitimate fear of persecution on the grounds of race, religion, nationality, membership in a particular social group or political beliefs and because of this fear of persecution is unable or unwilling to enjoy protection of this country or return to it.

The 1951 Convention does not include a definition of "persecution". It is concluded, however, that the prosecution includes serious violations of human rights, including threats to life or liberty, as well as other harmful forms of serious harm. Prosecution may also be recommended the gathering of minor harmful practices. The age, gender, beliefs, feelings and psychological state of the asylum seeker are crucial in determining the prosecution. In this context, the discriminatory treatment of LGBTQI individuals is prosecuted when the measures in question, individually or cumulatively, have substantially detrimental consequences for the person concerned.

As defined by the Guidelines for International Protection no. 9 for the examination of asylum applications due to sexual orientation or gender identity of the UN High Commissioner for Refugees (2012), past persecution is not a prerequisite for recognition of refugee status. The well-founded fear of prosecution must be based on an assessment of the situation to which the applicant is to be exposed in the event of his return to his country of origin. It is not necessary for the person concerned to prove that the authorities of his/her country knew about his/her sexual orientation and/or his/her gender identity before deciding to flee seeking protection. The five reasons for fear of persecution of the Convention, namely, race, religion, nationality, membership in a particular social group and political beliefs are not mutually exclusive. Instead, they may overlap. Also, in a case, more than one reason for fear of persecution may be crucial. In the case of asylum applications based on sexual orientation and/or gender identity, refugee status is recognized due to "membership in a particular social group". However, other grounds for fear of persecution may apply depending on the political, religious and cultural context of the asylum application. For example, advocates of LGBTQI persons and human rights defenders (or those perceived as advocates/defenders) can base their claim on either their political beliefs or religion or both, when, for example, their position is considered to conflict with prevailing political or religious beliefs and/or practices.

1.2. Treaty on the Functioning of the European Union

In accordance with Article 10 of the Consolidated version of the Treaty on the Functioning of the EU, in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic

origin, religion or belief, disability, age or sexual orientation. Also, according to article 19 par. 1 of the TFEU, in defining and implementing its policies and activities, the Union seeks to combat any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Also, according to article 19 par. 1 of the TFEU, in defining and implementing its policies and activities, the Union seeks to combat any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

In the context of the implementation of the TFEU, Directive 2011/95/EU of the European Parliament and of the Council of 13.12.2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (L 337/9). The concept 30 of that Directive states: "For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution." At this point, the EU asylum legislation clearly adds the LGBTQI parameter to the definition of the particular social group.

Furthermore, Article 10 (Reasons for persecution) of this Directive stipulates that in assessing the reasons for persecution, Member States shall take into account, inter alia, the "specific social group", the common characteristic of sexual orientation. The European legislator hastens to clarify that sexual orientation "cannot be understood to include acts considered criminal in accordance with national law of the Member. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group."

1.3. Charter of Fundamental Freedoms of the European Union

The Charter is an integral part of the primary law of the EU. Directly related to our subject is Article 18 ("Right to Asylum"), which states that the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community (hereinafter referred to as "the Treaties").

At the same time, Article 21 ("Non-discrimination") stipulates that all discrimination shall be prohibited, in particular "on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation".

Related to the general issue is Article 7 ("Respect for private and family life"), according to which every person has the right to respect for his or her private and family life, home and his communications.

1.4. European Convention on Human Rights

The Convention for the Protection of Human Rights and Fundamental Freedoms, otherwise known as the European Convention on Human Rights (ECHR), signed in Rome on November 4, 1950 and ratified by the Greek l.d. 53/1974 (A' 256), is an international treaty for the protection of human rights and fundamental freedoms in Europe. The Treaty established the European Court of Human Rights (ECtHR), which aims to protect individuals from human rights violations by interpreting and implementing the Convention. Any person whose rights under the Convention have been violated by a State party which participated in it may appeal before the Court.

The ECHR absolutely (without exception) prohibits the expulsion of a person from a State if that would expose that person to a real risk of loss of life under Article 2 of the ECHR or torture or inhuman or degrading treatment or punishment according to Article 3. It is not necessary to certify prosecution for a reason explicitly provided for in the Geneva Convention [1951]. Therefore, if a person's sexual orientation and/or gender identity exposes him or her to

the risk of losing his or her life or to inhuman and degrading treatment in his or her country of origin, it is self-evident that the ECHR protection mechanism is activated. The ECtHR focuses on the foreseeable consequences of departing a person to the proposed country of return. It examines the personal situation of the person concerned, as well as the general conditions prevailing in a country, such as whether there is a generalized state of violence or armed conflict there and whether there are human rights violations. When the person concerned is a member of a group that has been systematically abused, it may not be necessary to provide evidence of the existence of personal risk factors.

Of particular interest in this case are Articles 8 and 14 of the ECHR. According to Article 8, "Everyone has the right to respect for his private and family life, his home and his correspondence." According to ECHR case law, the term "private life" within the meaning of Article 8 of the Convention is a broad concept that includes, inter alia, the right of everyone to enter into and develop relationships with other people, the right to "personal development" or right to self-determination as such. Includes information such as names, gender identity (B. v. France, application 13343/87), sexual orientation and sexual life, which fall within the personal sphere protected by Article 8 (Dudgeon v. United Kingdom, October 22, 1981). Also, according to Article 14 of the Convention, "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". Although sexual orientation and gender identity are not explicitly mentioned in the above wording of Article 14, the ECtHR has repeatedly emphasized that this list of prohibited grounds of discrimination is indicative and that the wording "or other status" includes such reasons.

1.5. Yogyakarta Principles for the Application of International Human Rights Law Without Discrimination in Relation to Sexual Orientation and Gender Identity

Yogyakarta is a province of Indonesia, which also has the city of the same name. In this city, in 2006, a group of 29 human rights experts met: senior judges, former and current United Nations officials, members of National Human Rights Committees, NGO representatives and academics. Following a well-documented record of human rights abuses, this group has developed a set of principles related to sexual orientation and gender identity, effectively summarizing the international legal commitments that all States must abide by.

According to Principle 2 ("The rights to equality and non-discrimination"), "Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity", while, according to Principle 10 ("The right to the prohibition of torture, cruel, inhuman or degrading treatment or punishment"), "Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity". According to Principle 23 ("The right to seek asylum"), which is of greater interest to us in this research, "Everyone has the right to seek and enjoy in other countries asylum from persecution, including persecution related to sexual orientation or gender identity. A State may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment, on the basis of sexual orientation or gender identity".

The Yogyakarta Additional Principles (2017) added new obligations to States in Principle 23.

Under the new obligations, the States shall ensure that a well-founded fear of persecution on the basis of sexual orientation, gender identity, gender expression or sex characteristics is accepted as a ground for the recognition of refugee status, including where sexual orientation, gender identity, gender expression or sex characteristics are criminalised and such laws, directly or indirectly, create or contribute to an oppressive environment of intolerance and a climate of discrimination and violence (Obligation D).

The States shall ensure that persons seeking asylum are protected from violence, discrimination and other harm committed on grounds of sexual orientation, gender identity, gender expression or sex characteristics, including during the determination of their claims and in reception conditions (Obligation E).

The States shall ensure that no person is denied asylum on the basis that a person may conceal or change their sexual orientation, gender identity, gender expression or sex characteristics in order to avoid persecution (Obligation F).

The States shall accept the self-identification of a person seeking asylum on the basis of sexual orientation, gender identity, gender expression or sexual characteristics as the starting point for consideration of their asylum claim (Obligation G).

The States shall ensure that persons seeking asylum are not refused asylum because they did not set out their sexual orientation, gender identity, gender expression or sexual characteristics as a ground for persecution on the first occasion they were given to do so (Obligation H).

The States shall ensure respect for the dignity and privacy of persons seeking asylum at all times, including by recording information about a person's sexual orientation, gender identity, gender expression and sex characteristics only where it is lawful, reasonable, necessary and proportionate to do so, by storing it securely and by prohibiting its release to any person other than a person directly involved in the refugee determination process (Obligation J).

The States shall develop and implement guidelines on assessing credibility in relation to establishing a person's sexual orientation, gender identity, gender expression and sex characteristics when seeking asylum, and ensure such assessments are determined in an objective and sensitive manner, unhindered by stereotyping and cultural bias (Obligation K).

The States shall ensure that inappropriate, invasive, unnecessary or coercive medical or psychological testing or evidence is not utilised to assess a person's self-declared sexual orientation, gender identity, gender expression or sex characteristics when seeking asylum (Obligation L).

The States shall provide access to medical care and counselling appropriate to those seeking asylum, recognising any particular needs of persons on the basis of their sexual orientation, gender identity, gender expression or sex characteristics, including with regard to reproductive health, HIV information and therapy, hormonal or other therapy, and gender affirming treatment (Obligation M).

The States shall ensure that the detention of asylum seekers is avoided, and is only used as a measure of last resort and for the shortest possible time (Obligation N).

The States shall ensure that placement in detention, where used, avoids further marginalising persons on the basis of sexual orientation, gender identity, gender expression or sex characteristics or subjecting them to violence, discrimination or other harm (Obligation O).

States shall ensure that solitary confinement is not used to manage or to protect persons at risk of discrimination, violence or other harm on the basis of sexual orientation, gender identity, gender expression or sex characteristics, and release or refer asylum seekers to alternatives to detention, if effective protection cannot be provided. (Obligation P).

1.6. Council of Europe Recommendation CM/Rec(2010)5 on Sexual Orientation and Gender Identity

The Committee of Ministers of the Council of Europe on 31 March 2010 adopted CM/Rec(2010)5 Recommendation to the Member States on combating discrimination on grounds of sexual orientation or gender identity. This is the first text of European law which, although formally non-binding, is not merely a declaration of non-discrimination on the grounds of sexual orientation and gender identity, but sets out a set of principles which have so far been crystallized in international case law and practice, which specify the content of this prohibition, while at the same time proposing the adoption of specific positive measures for the effective implementation of the aforementioned principles.

This Recommendation, under point X ("Right to seek asylum") of its Annex, specifically states: "42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law. 43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity. 44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation".

2. The case law of the ECtHR

The European Court of Human Rights, examining the compliance of European states with the ECHR, issued a series of decisions concerning the provision of state (international) protection of persons from the risk of return to countries of origin where LGBTQI persons are persecuted.

In one of its initial relevant decisions, the I.N.N. v. the Netherlands (no. 2035/04) of 9.12.2004, the ECtHR rejected an action as inadmissible, as manifestly ill-founded. The applicant was originally from Iran and relied on the inhuman and degrading treatment (Article 3 of the ECHR) which he would have received if he had returned from the Netherlands. However, the ECtHR held that the applicant has not established in his case that there are substantial grounds for believing that he will be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention on grounds of his homosexuality. The judgment of the ECtHR was similar in Case F v. The United Kingdom (no. 17341/03) of 22.6.2004.

In the case of A.S.B. v. the Netherlands (no. 4854/12) of 10.7.2012, the applicant stated that his return to Jamaica would put him at risk in violation of Article 3 because of his homosexuality. The ECtHR closed the case under Article 37 of the Convention, as the applicant was eventually granted asylum in the Netherlands and was no longer in danger of being deported to Jamaica.

In the case of M.K.N. v. Sweden (no. 72413/10) of 27.6.2013 the applicant stated that he had to leave Iraq as he had been convicted as a Christian. He further claimed that his return to Iraq would put him in danger as he had been in a same-sex relationship and the Mujahideen had already killed his partner. The ECtHR considered that the execution of the applicant's expulsion decision would not constitute a violation of Article 3. It considered that his return to Iraq did not constitute a risk due to the gradual improvement of the general situation in the country. The ECtHR further held that although the applicant belonged to a vulnerable minority in danger, the applicant could have settled in other parts of Iraq, such as Kurdistan. Finally, the Court held that the applicant's claim concerning the homosexual relationship is not credible.

In the case of *M.E. v. Sweden* (no. 71398/12) of 8 April 2015, the Grand Chamber of the ECtHR adjudicated an asylum seeker claiming that his return to Libya would expose him to a real risk of persecution and ill-treatment due to his homosexuality and previous problems with authorities as he had been arrested with illegal weapons. The ECtHR ruled that his residence permit prevented his deportation. The Swedish Immigration Commission had recognized the dangers of living openly as a homosexual and providing protection in Sweden. Thus, the Court ruled that there was no risk in violation of Article 3 by Sweden.

In the case of *A.E. v. Finland* (no. 30953/11) of 22.9.2015 the applicant invoked the danger of his deportation to Iran. The ECtHR closed the case under Article 37, stating that the applicant had obtained a separate residence permit in Finland with the possibility of renewal and was no longer in danger of being deported.

In the case of *A.N. v. France* (no. 12956/15) of 19.4.2016 the case concerned a homosexual person who allegedly feared a violation of Article 3 if he returned to Senegal. The ECtHR declared the action inadmissible, finding that the applicant had not shown that he would face a real risk in violation of Article 3 in the event of his return to Senegal.

In the case of *M.B. Against Spain* (no. 15109/15) of 13.12.2016 the applicant relied on the risk of returning to Cameroon, but the ECtHR closed the case noting that there was no risk of leaving Spanish territory at present and if such a risk arose he could have initially appealed to the National Authority on these matters.

In the case of *I.K. v. Switzerland* (no. 21417/17) of 19.12.2017 the applicant who claimed to be homosexual expressed his fear of violation of rights in case he would return to Sierra Leone. The ECtHR rejected the action as inadmissible, finding that the applicant's claims were unreliable and that there was no such risk.

In the cases *B and C v. Switzerland* (nos. 889/19 and 43987/16) of 17.11.2020, the applicants claimed that the claim of the first, who had lived in Switzerland since 2008, had been rejected, as the Swiss authorities did not consider his reports of previous abuse by the Gambia. The ECtHR considered that Switzerland would have violated Article 3 if it had deported the first applicant in its decision, considering that the Swiss authorities had not adequately assessed the risk of abuse of the applicant as a homosexual in note that in the Gambia there was no protection for LGBTQI persons.

In the case of *O.M. v. Hungary* (no. 9912/15) of 5.7.2016, the ECtHR convicted Hungary of violating Article 5, par. 1 of the ECHR (right to freedom of security), as that country had detained the applicant for 58 days after the submission asylum seeker, while he had stated that he was forced to leave Iran because of his homosexuality. He was recognized as a refugee in 2014 and protested legally specifically that his detention was arbitrary and unjustified.

3. The case law of the ECJ

The Court of Justice of the European Union (Luxembourg) has applied EU law prohibiting discrimination on grounds of sexual orientation in cases of international protection of persons.

3.1. By judgment of 7.11.2013 (Joined Cases C-199/12 to C-201/12), the ECJ ruled a preliminary question submitted by the Netherlands. The case involved asylum seekers who have shown that homosexuality is being prosecuted in Sierra Leone, Uganda and Senegal. Their asylum applications were rejected by the Dutch authorities and they appealed in Court. The Dutch courts sent a preliminary question to the ECJ on whether LGBTQI foreigners are a "particular social group" under the relevant EU directive and various sub-questions. The ECJ with its decision gave the following answers:

1) Article 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection for other reasons should be interpreted as meaning that the existence of criminal law such as that at

issue in each of the main litigation cases, which specifically concerns homosexuals, makes it possible to establish that such persons should be considered a particular social group.

2) Article 9 (1) of Directive 2004/83, in conjunction with Article 9 (2) (c), must be interpreted as meaning that the mere criminalization of homosexual acts is not in itself, act of persecution. On the contrary, imprisonment or imprisonment for heinous homosexual acts and in fact applicable in the country of origin which enacted such legislation must be regarded as disproportionate or discriminatory sanction and is therefore an act of persecution.

3) Article 10 (1) (d) of Directive 2004/83, in conjunction with Article 2 (c), must be interpreted as meaning that only homosexual acts under the law of the Member States are excluded from the scope of its implementation. When assessing an application for refugee status, the competent authorities cannot reasonably expect in order the asylum seeker to avoid prosecution, conceal his or her homosexuality in his or her country of origin or show restraint in the externalization of his or her sexual orientation.

3.2. With the decision of 2.12.2014, the Chamber Composition Department of the ECJ adjudicated a preliminary question regarding the examination of the sexual orientation of LGBTQI asylum seekers (C-148,149,150/13). The question was: "What restrictions are imposed by Article 4 of [Directive 2004/83] and [by the Charter], in particular Articles 3 and 7, on how to check the credibility of statements concerning sexual orientation of the person concerned, and are these restrictions distinguishable from those applicable to the verification of statements of assistance in the other provided grounds for prosecution and, if so, in what sense? The answers given by the ECJ were as follows:

"Article 4(3)(c) of Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Article 13(3)(a) of Directive 2005/85/EC of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, must be interpreted as precluding, in the context of the assessment by the competent national authorities, acting under the supervision of the courts, of the facts and circumstances concerning the declared sexual orientation of an applicant for asylum, whose application is based on a fear of persecution on grounds of that sexual orientation, the statements of that applicant and the documentary and other evidence submitted in support of his application being subject to an assessment by those authorities, founded on questions based only on s t e r e o t y p e d notions concerning homosexuals.

Article 4 of Directive 2004/83, read in the light of Article 7 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the competent national authorities from carrying out detailed questioning as to the s e x u a l p r a c t i c e s of an applicant for asylum.

Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding, in the context of that assessment, the acceptance by those authorities of evidence such as the p e r f o r m a n c e by the applicant for asylum concerned of homosexual a c t s, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of f i l m s of such acts.

Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85 must be interpreted as precluding, in the context of that assessment, the competent national authorities from finding that the statements of the applicant for asylum lack credibility merely because the applicant did not rely on his declared sexual orientation on the f i r s t occasion he was given to set out the ground for persecution. "

3.3. With the decision of 25.1.2018 (C-473/16) the question was raised in the ECJ whether the Union law allows the consideration of a psychologist expertise based on a personality test, when the expertise does not ask questions about the sexual life of the LGBTQI applicant asylum, depending on whether the applicant has undergone a clinical examination. In addition, the national authorities asked the ECJ if it was generally permissible to examine whether the applicant was telling the truth that he was LGBTQI.

The decision of the Court of EU gave the following answers:

- 1) Article 4 of Directive 2011/95/EC of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, must be interpreted as meaning that it does not preclude the authority responsible for examining applications for international protection, or, where an action has been brought against a decision of that authority, the courts or tribunals seised, from ordering that an expert's report be obtained in the context of the assessment of the facts and circumstances relating to the declared sexual orientation of an applicant, provided that the procedures for such a report are consistent with the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union, that that authority and those courts or tribunals do not base their decision solely on the conclusions of the expert's report and that they are not bound by those conclusions when assessing the applicant's statements relating to his sexual orientation.
- 2) Article 4 of Directive 2011/95, read in the light of Article 7 of the Charter of Fundamental Rights, must be interpreted as precluding the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, such as that at issue in the main proceedings, the purpose of which is, on the basis of projective personality tests, to provide an indication of the sexual orientation of that applicant.

2. Individual issues of legal comment on cases

2.3. Terminological observations

2.1.1. Although wrongs in the terminology exist even in the current legislation, this legal commentary will point out relevant incorrect references, as the exercise of public authority must always be done in terms of accuracy, respect for personality and scientific perfection when using terms that characterize inherent human qualities. Thus, the wrong terminology, especially when it is observed repeatedly, is problematic for the value of the person and the respect of the personality, but also the respect of the private life and mainly of the identity of the LGBTQI persons.

2.1.2. It is observed that in the "backgrounds" of the cases instead of the correct term "sexual orientation" the term "preference" is used extensively (Case 1).

2.1.3. However, it should be welcomed as a positive development that in Cases 5,6,7,11 concerning transgender (trans) women asylum seekers, although the name and gender registration have not been changed in the documents, the service uses the female name and female pronouns, pursuant to Law 4491/2017 which imposes respect for gender identity as an integral part of the individual's personality, regardless of whether the legal recognition of gender identity has occurred in official documents.

2.1.4. Of particular interest is the judgment of decision no. 401/2019 of the Administrative Court of Appeal of Piraeus (Case 12) which correctly clarified that the imputed status of homosexual (regardless of whether the person is not or does not self-identify as LGBTQI), needs international protection when there is a fear of persecution by the country origin. Because regardless of the self-determination of the individual, when the third parties perceive a person as LGBTQI then the treatment that will be reserved for him will be the one with which the LGBTQI persons are treated. That is why the sexual orientation considered or imputed should be investigated in these cases of consideration of requests for international protection.

2.1.5. The confusion between sexual orientation and gender identity is obvious and cost the applicant the very provision of international protection in Case 14. While she is clearly a trans woman, the service does not make a diagnosis and insists on assessing the case as a request that submitted by a man who himself does not seem to separate sexual orientation from gender identity. However, in such cases, the separation must be carried out by the State: regardless of the individual's level of awareness of the terminology, the Asylum Service must be able to separate the issues related to gender identity and distinguish them from those refer to sexual orientation. Not every

asylum seeker is required to be immersed in the relevant terminology and analysis. However, the State is obliged to respect and apply in practice the relevant terminology distinctions that exist in its current legislation (e.g. in the explanatory reports and articles of Law 4443/2016, but also in Law 4491/2017 for the Legal Recognition of Gender Identity which includes a legislative definition of gender identity).

2.4. Stereotypical questions and prejudices related to the life of LGBTQI persons

2.2.1. There is an arbitrary judgment in the case reports that "his critical claims about his sexual orientation were not sufficiently coherent and lack sequence and coherence." These conclusions are accompanied by an alleged specialization stating that "the applicant was not able to analyze in detail the evolution of his sexual life nor to adequately describe the difficulties he encountered in expressing and showing his sexual preferences. "(Case 1).).

2.2.2 The asylum authorities have absolutely no authority to intervene by requesting information about the "evolution of the sexual life" of the person, since it is enough to record only the expression, i.e. the externalization of sexual orientation, in the context of relevant expressions. In cases such as Case 1 where the applicant has extensively described his first homosexual relationship with a classmate from school and the problems he had after his arrest, questioning the description of the evolution of his "sex life" is completely unnecessary. Sexual orientation is different from sex life. One may not have a sexual "life" at all (that is, not have sex), but of course may also have a sexual orientation (desire).

2.2.3. In Case 8 that "it does not seem reasonable" for an LGBTQI person who has not had an erotic relationship with a man to meet a man on the Internet and invite him home to have erotic intercourse "without first meeting him in person" is unrealistically stereotypical. Because it assumes that LGBTQI persons with zero experience will be extremely careful and will seek to develop consistent communication from the beginning before engaging in close sexual activity. Equally unrealistic and stereotypical is the judgment that the applicant, answering a question, stated that he did not know what the fate of his sexual partner was as he did not remember the password of his facebook account. The asylum service states that this does not seem plausible as it could search for him through another account (as if Facebook's Terms of Use allow anyone to create as many accounts as you want) and that the search "that would have been expected, following the high-intensity incident they experienced together ". In other words, the asylum service necessarily considers as a "romantic relationship" the first attempt of a person to have a sexual experience with a random person he met on the same day on Facebook and has the demand that the person remember the name of this random person. It is inconceivable and legally unacceptable that for all these purely stereotypical prejudices the applicant's statements regarding his sexual orientation were rejected as untrue.

2.5. Prohibited examination of sexual practices

3.2.1. The judgment that the asylum seeker "does not describe in detail the experiential way and the erotic encounter which, as he claims, was perceived by the locals and the mullah" is in fact a disapproval because the applicant did not disclose the sexual practices he practiced with his partner (Case 3). It is completely unacceptable to require a description of specific sexual acts in order to make the asylum seeker credible. It is an intervention in the inner core of his private life that cannot be examined by any state body in terms of proportionality in a democratic society. The sexual role of the person in a homosexual sexual encounter is completely indifferent, it is completely unjustified to wait for the asylum seeker to describe the sexual encounter "experientially" in order to determine whether it was indeed "perceived" by the locals.

3.2.2. The judgment that the trans woman was seeking asylum in Bangladesh "was not able to explain clearly and with logical claims presenting the incidents of rape and the threats received" is extremely problematic. While the trans woman has referred not only to rapes, but also to a number of violent acts against her for her transgender status, the State suddenly demands "clarity" on the "incidents of rape". The State's demand for a clear description of the rape incidents already narrated by a trans woman, raises questions. The anatomical details of such cases should be completely indifferent to an asylum service, which is neither a criminal court nor, of course, a forensic service.

2.6. Cases of subsequent declaration of sexual orientation

2.4.1. As set out in the revised obligations of the Yogyakarta Authorities, the individual is not required to declare from the outset his or her sexual orientation in need of international asylum or subsidiary protection. The reason why the subsequent statement is accepted is that this information is particularly sensitive, it is a "special category of data", after all, according to Article 9 of General Regulation (EU) 679/2016 on Data Protection and is of course within the sphere of privacy of the individual under Article 8 of the European Convention on Human Rights.

2.4.2. In this context, the judgment of the Athens Administrative Court of Appeal in decision 245/2020 was correct, in which a decision was annulled rejecting his request, due to the violation of his right to a previous hearing by the Board of Appeals, since when he stated it he had to be called upon to provide specific information and to be able to substantiate his claim and request.

2.7. Need to simplify the process of legal recognition of gender identity

Cases 18 and 19 refer to two decisions of Magistrates' Courts (Thessaloniki and Mytilene) that recognized the legal loophole of Law 4491/2017 in the case of legal recognition of gender identity, as the entire structure of Law 4491/2017 concerns the judicial change of the birth certificates of the Greek registries. This means that if a trans refugee or asylum seeker or any other trans foreigner is in Greece and was not born there, he/she simply is unable to proceed with Legal Recognition of Gender Identity. Thus, the Magistrates' Courts, to which the Athens Magistrates' Court has been added (with decision 121/2020) recognized the legal loophole and by analogous application "find" the gender disjunction in the refugees' documents, "certifying for the purpose of correction" the actual status of the refugee identity and the refugee name used. This, of course, is simply an evolution of case law that does not provide legal certainty and should be reflected legally in Law 4491/2017. But it also shows something deeper and more crucial: that the judicial legal recognition of gender identity is already an outdated process and should be replaced by a statement to the authorities that keep the identity of the individual. The observation of the long delay of those responsible for the change of refugee data following the legal recognition of gender identity decisions should also be added. In the case of decision 121/2020 of the Athens Magistrates' Court, after the final decision, twelve (12) months needed to be elapsed for the change of the data of the trans refugee applicant (Iraq).

2.6. Need for specific legislation for intersex persons

Case 20 in the case of the unaccompanied intersex infant restores once again the problematic loophole in the recognition of all the rights of intersex individuals, as described in detail in the relevant Resolution 2017 of the Parliamentary Assembly of the Council of Europe. While "sex characteristics" were introduced in the national legislation on non-discrimination (Law 443/2016) and as a legislative definition in the national legislation on legal recognition of gender identity (Law 4491/2017), there are still legal loopholes that need to be regulated. These loopholes concern: a) the prohibition of medical and surgical procedures of "normalization" of the sex that are applied without their consent, i.e. when they are infants and are not at the appropriate age for a decision, b) the

postponement of such decisions until the age at which the child is able to make such a decision, (c) the provision of special health protection; (d) the choice of a third sex registration for persons not identified as male or female.

PART C: Legal commentary on interviews

1. Physical and mental abuse

It follows from all the interviews that LGBTQI persona - refugees are deprived of basic respect for their rights by traffickers, employers and in general by any human mediation during their movement to a safe state. Physical harm, rapes, verbal and physical abuse with a strong element of sexual humiliation, financial exploitation, refoulement .

2. Lack of trust and information about the asylum recognition process

The process is governed by secrecy and the participating public officials are bound by the duty of confidentiality. However, in addition, it must be made clear to the participating LGBTQI asylum seekers that the terms of their confidentiality and data protection are being met, precisely so that they can feel the necessary trust that the State must inspire. When LGBTQI asylum seekers are afraid and uncomfortable with the interpreter, the problem is not theirs, but the State that has not secured the right condition for a process that will determine the future of these people. It is inconceivable that a person should confess with completeness and clarity about his/her sexual orientation or gender identity and sex characteristics when in the same place are compatriots and listen the process. Privacy should be ensured and, above all, all rights and obligations should be explained to everyone in an understandable language before the proceedings begin.

CONCLUSION – ACKNOWLEDGEMENTS

This deliverable report related to the implementation of the program: "LGBTI + refugees in Greece: The EU-Turkey deal and beyond", is part of the continuous action of the Association to support and promote knowledge of the particular problems faced by applicants or recognized refugees for reasons of sexual orientation, gender expression, gender identity or sex characteristics, in their presentation, in the legal framework (international, European, national) as well as in the case law of related cases, and with a strong belief in the promotion of the rights of this particular group of refugees Greece does not recognize their rights to the extent that it should.

We warmly thank all the persons participated in our research, LGBTI refugees and professionals, the Open Society Foundation, without whose funding this project would not have been possible, but also all the persons who from 2010 until today have - all voluntarily - come forward in support of about 120 asylum cases that our Association has undertaken so far. Without their activation and hard work, none of them would have a happy ending.

With the refugees,

For the refugees.



©Greek Transgender Support Association – April 2021.