

The "Special Vulnerability" of Queer Refugees: Political Challenges

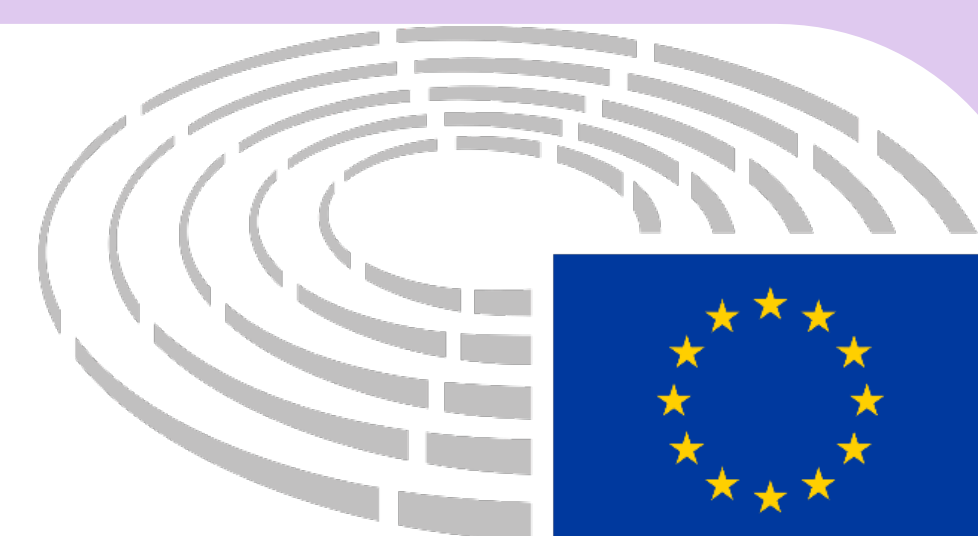
Legal Frameworks of Asylum

- **National Law** (the German Constitution, the Asylum Act of the Residence Act)
- **European Law** (Directive 2004/83/EC, Directive 013/33/EU)
- **International Law** (the 1951 Geneva Convention on Refugees)

European Law: Directive
2004/83/EC

Article 10

Reasons for persecution



- A **particular social group** might include a group based on a common characteristic of sexual orientation
- Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article
- In 2005, this Article was implemented into the German Residence Act, recognizing claims of persecution on grounds of gender identity and sexual orientation

The Concept of „Special Vulnerability“

- Directive 2013/33/EU of the European Parliament
- It aims to guarantee a dignified standard of living for asylum seekers in the EU and ensure their human rights are respected.
- It creates rules on living (or ‘reception’) conditions for applicants for international protection (asylum seekers or people seeking subsidiary protection)
- It applies from 19 July **2013**. EU countries had to incorporate it into national law by 21 July **2015**.

Article 21 General Principle

“Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.”

Article 18

3. Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centers referred to in paragraph 1(a) and (b).

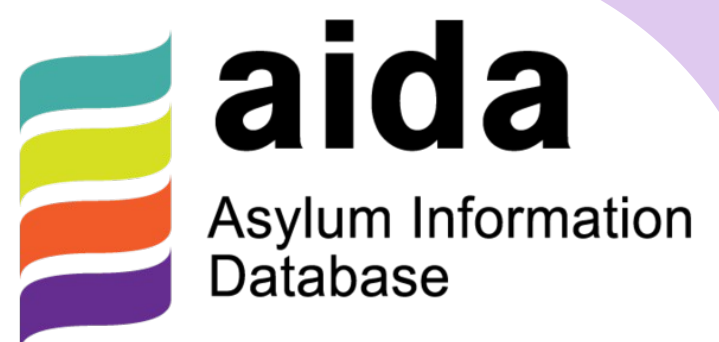
4. Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres referred to in paragraph 1(a) and (b)

Information Note on: Directive 2013/33/EU (July 2015)

- The list of vulnerable persons is **not exhaustive**
- Adopting **an inclusive approach** as regards the definition of applicants with special reception needs
- Transposition in national law should be complemented **by detailed guidance** (during the asylum process, and effective mechanisms for their identification)



AIDA Report Germany 2018



- No requirement in law or mechanism in place to systematically identify vulnerable persons in the asylum procedure (with some exceptions)
- No legal obligation to provide separated facilities/ wings for vulnerable groups
- BAMF drafted a “concept for the identification of vulnerable groups” in 2015, but it was never implemented, and is only used as an internal guideline
- German Asylum Act, after amendment in 2016, still fails to properly transpose the Asylum Procedures Directive (2013/33/EU)
- The identification procedures in Germany are “a matter of **luck** and **coincidence**”

Group Work

- "The Berlin Model for the Support of LGBTI Refugees" as an example of good practice
- How do we reach a nationwide recognition of "special vulnerability" of LGBTIQ* refugees?
- How do we reach a comprehensive system of identification ?



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Project "Refugees & Queers"
Magnus Hirschfeld Federal Foundation

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The presenter of this poster acknowledges the financial support of the Heinrich-Böll-Foundation

