

Joint declaration:

The notion of "safe country" threatens the rights of LGBTIQ+ refugees

In many parts of the world, people experience violence and persecution because of their actual or perceived sexual orientation or gender identity.

"It is widely documented that in all regions of the world LGBTIQ+ people are targets of homicide, sexual and gender-based violence, physical assault, ill-treatment and torture, arbitrary detentions, accusations of immoral, 'deviant' or 'unnatural' conduct, and of limitation, restriction or exclusion in the enjoyment of the rights of assembly, expression and information, among others." (UNHCR, 2014)

The international protection through asylum that various human rights instruments and, in particular, the **Geneva Convention of 1951** confer on certain persons against persecution or harm they suffer or may suffer in their countries of origin is **increasingly being called into question by European Union law**. A number of mechanisms are being developed to prevent persons in need of protection from accessing the territory of Member States or when they do manage to reach them, to make it difficult for their applications of asylum to be accepted.

The concept of a "safe country" is one of those mechanisms aimed at keeping potential asylum-seekers away and making it possible for them to be deported/expelled.

The directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection contemplates three consequences of the consequences of a safe country:

1. It may allow the Member State to process an application for international protection of a national of that country through an accelerated procedure.
2. It may make it possible for the Member State to reject an application for international protection.
3. It may allow the Member State not to carry out, or at least not to do so in full, the examination of the application for international protection.



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Nevertheless, the study of the case-law of the European Court of Human Rights (ECtHR) interpreting and applying Articles 2 and 3 of the European Convention on Human Rights demonstrates **the need for a full examination**, both of the circumstances prevailing in a given State and of the specific circumstances of the person subject to expulsion, before proceeding to his expulsion. Otherwise, **the establishment of a timeless and depersonalised list of safe countries of origin is not consistent with the case-law of the ECHR.**

The article 3 of the ECHR requires States parties to assess the circumstances existing in the State of destination before proceeding with the expulsion. Therefore, it is not possible to apply stereotyped concepts to assess the security of a State.

The same Directive 2013/32/EU requires Member States to adopt identification mechanisms for vulnerable people, including those persecuted on the basis of their sexual orientation or gender identity. The standard defines as an applicant in need of special procedural guarantees those whose ability to benefit from the rights and comply with the obligations set out in the Directive is limited due to personal circumstances. Member States should ensure that the needs of LGBTI applicants are addressed, including those who are identified, ab initio and throughout the procedure. This identification mechanism has been one of the objects of greatest opposition by the Member States and is one of the main achievements of the new Directive.

Even though this aspect is in the directive, **some countries are applying the notion of "safe country" to LGBTIQ+ people, we understand that this goes against the procedural guarantees proposed by the directive.** In addition, we believe it is important to respect the case-by-case analysis posed by both the 1951 Geneva Convention and the 1967 New York Protocol.

We demand at European institutions, that for LGBTIQ+ asylum cases a casuistic analysis be carried out and all procedural guarantees are respected.

We believe that the guarantee of human rights (of all rights, of all people) and compliance with international obligations constitutes a state interest of the first order.

See and learn more about LGBTIQ+ asylum: <https://rainbowelcome.eu/>

Join us and act for the well-being and rights of LGBTIQ+ refugees: Use the hashtag #RainboWelcome to share your support for the project.



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