

Interview: Nuno Ferreira*

1. Do you use the concept or idea of European values in your research? How would you define European Values? Does it have any meaning to you personally?

The idea of European values has never played a central role in my research. Being a socio-legal scholar focused on human rights issues in the European context, I have always referred more specifically to particular legal rights, especially in relation to children's rights, refugee rights and various aspects of the right to equality. Yet rights are inextricably linked to values: European societies like to see themselves as cherishing a catalogue of human rights that is central to their identity and every European country has some sort of bill of rights or text of a constitutional nature that contains various fundamental rights. In that sense, my work is also about values: the value of human dignity, of religious freedom, of equality, and so on.

I would have immense difficulties defining European values. I suspect one would get as many different answers as different people asked this question. I would like to think that amongst such European values we can include democracy, equality, human dignity, and so on. But that does not mean these values are only, mainly or particularly European in any sense, as many countries and societies around the world also cherish and share such values. There is nothing intrinsically European about these values, and even history can show this, despite pervasive narratives that try to convince us otherwise. Instead, what matters is that these are values that we espouse and protect.

European values inevitably have a personal value – in my particular case for several particular reasons. Having been born and grown up in Portugal, where democracy was only re-conquered in the 1970s and slowly solidified in the 1980s, cherishing the right to vote and freedom of speech was always crucial in my mind. And being gay has meant that I was always acutely aware of the importance of equality and the fight against discrimination, not only on grounds of sexual orientation, but on grounds of all other personal characteristics. Moreover, having had the privilege of taking part in several student exchange programmes and being yet another member of the 'Erasmus generation', I value immensely the right to education, the right to free movement, intercultural communication and respect for minorities. Despite the limits of cultural relativism and the need to hold on to human rights standards, we need to strive for much better knowledge and understanding of cultural differences. The private and the public are inextricably intertwined.

2. Can you describe what your research project is about and how its conclusions contradicts common ideas about European values?

The SOGICA project – standing for Sexual Orientation and Gender Identity Claims of Asylum: A European Human Rights Challenge – has been a four-year (2016-2020) research project exploring the social and legal experiences of individuals across Europe claiming international protection on the basis of their sexual orientation or gender identity (SOGI). It has been led

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by myself and a team of researchers at the University of Sussex who are Dr Carmelo Danisi, Dr Moira Dustin and Dr Nina Held. Our research has addressed the experiences and needs of those LGBTIQ+ people who are discriminated and persecuted and claim international protection in EU Member States.¹

We adopted a comparative approach (using as case studies Germany, Italy and the UK, along with the EU and the Council of Europe),² an interdisciplinary approach (combining mainly law and sociology) and an empirical approach (involving almost 500 participants in interviews, focus groups and online surveys, as well as non-participant contextual observations of judicial appeal hearings and freedom of information requests). Interview participants included policy-makers, decision-makers, members of the judiciary, legal representatives, NGO activists and SOGI asylum claimants.³ We are proud to have reached more than 200 SOGI asylum claimants and refugees, who participated in our study, which followed a collaborative approach from the outset, working closely with NGOs and SOGI asylum claimants and developing resources for lawyers, campaigners and service providers.

Our findings point to very problematic practices regarding SOGI asylum decision-making based on stereotypes, refusals and returns based on the expectation of concealment, intrusive and demeaning lines of questioning, and low quality standards of interpretation. Reception conditions for these asylum claimants still do not sufficiently address their needs, with instances of discrimination and violence often occurring. SOGI refugees and asylum claimants also struggle considerably in accessing health services, the labour market and educational provision, having to manage too many (often insurmountable) hurdles. NGOs play an essential role in supporting SOGI claimants and refugees, but they are more likely than not to lack sufficient resources. All in all, it is a very worrying scenario that requires urgent action by policy-makers and state authorities.⁴

The project's team analysed the data mostly from human rights, feminist, queer and intersectional perspectives. Although these reflect certain values – human dignity, equality, diversity – our analysis did not focus in any particular way on the notion of (European) values. And yet, our findings can easily lead us to conclude that there are clear tensions between the way SOGI asylum claimants and refugees are treated in Europe and the values European countries and peoples purport to uphold. I would highlight four values – or more broadly principles or ethical commitments – in particular: 1) freedom from torture, 2) the right to freedom (of choice, movement, etc.), 3) tolerance, diversity and equality, and 4) solidarity and social justice.

In relation to freedom from torture, by returning to their countries of origin SOGI asylum claimants who risk persecution and serious forms of discrimination, European public authorities are betraying their alleged opposition to torture, enshrined in Article 3 of the European Convention on Human Rights (ECHR). Unfortunately, even the European Court of

¹ This project was funded by the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No. 677693). More information is available in the project's website: <https://www.sogica.org/en/>.

² More information about these case studies can be found here: <https://www.sogica.org/en/case-studies/>.

³ More information about the fieldwork can be found here: <https://www.sogica.org/en/fieldwork/>.

⁴ The project's outputs are listed here <https://www.sogica.org/en/publications/>.

Human Rights is an accomplice in these domestic return decisions, by adopting an unreasonably high threshold for violation of Article 3 ECHR and acting as an accomplice of the culture of disbelief in ECHR member states.⁵ The Court's 2020 decision in *B and C v. Switzerland* brings some hope that the Court is slowly becoming more sensitive to applications involving SOGI claims, but it is too early to be sure of that.⁶

In terms of the right to freedom, our findings also show that it is a value that – even if very much cherished by Europeans – does not seem to be extended to SOGI asylum claimants and refugees. Besides the restrictive rules and implementation of the Dublin system,⁷ there is also the serious issue of detention of migrants without time limits in the UK.⁸ These issues are compounded by the lack of choice in terms of type and location of accommodation. While these issues affect all asylum claimants, they affect SOGI asylum claimants in particular ways, on account of the isolating and marginalising effects they have on their social lives and legal claims. This is made all the worse owing to the stereotyped decision-making, experiences of sexual and commercial exploitation, and overall oppressed agency that SOGI claimants and refugees undergo in Europe.⁹

Similarly, tolerance, diversity and equality are values that are recurrently proclaimed as championed by European countries, but fail to apply to SOGI claimants and refugees. Our participants told us of many instances of discriminatory treatment, especially racist, homophobic and transphobic abuse, and in several contexts (in accommodation, in public spaces, by public authorities, etc.). It was also patent that many actors in the asylum system homogenised everyone within the LGBTIQ+ spectrum, which reduced the diversity that exists within that spectrum. We also found out about the legal violence committed against couples and families with children, the hetero and homonormatively underpinned decision-making, and practically illusory access to family reunification opportunities.¹⁰

Finally, solidarity and social justice also transpired as values that failed to materialise in the experiences of SOGI asylum claimants and refugees amongst our participants, despite being often proclaimed as key in the European public space. We identified limited access to language classes, the labour market and health services, as well as endemic mental health

⁵ For a detailed discussion, see Ferreira, N., 'An exercise in detachment: the Strasbourg Court and sexual minority refugees', in Richard Mole (ed.), *Queer migration and asylum in Europe*, UCL Press (forthcoming).

⁶ *B and C v. Switzerland* (Applications nos. 889/19 and 43987/16), 17 November 2020.

⁷ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

⁸ See, for example, Singer, S., "'Desert Island' Detention: Detainees' Understandings of 'Law' in the UK's Immigration Detention System." *Refugee Survey Quarterly* 38, no. 1 (2019): 1–29, as well as campaigns by Liberty (<https://www.libertyhumanrights.org.uk/campaigning/oppose-indefinite-detention>) and Detention Action (<https://detentionaction.org.uk/get-involved/end-indefinite-detention/>).

⁹ All these issues are discussed in detail in Chapters 6-10 of Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021 (forthcoming).

¹⁰ Danisi, C., and Ferreira, N., 'Legal violence and (in)visible families: How law shapes and erases families in SOGI asylum in Europe', *Human Rights Law Review* 2021 (forthcoming).

issues and pervasive trans health issues.¹¹ Many of the existing services cater mainly for gay men, leaving lesbian women, intersex and trans claimants in a more vulnerable position. Overall, it also became clear that across the asylum system there is insufficient attention being placed on the intersectional picture, i.e., the fact that SOGI asylum claimants and refugees are characterised by both their SOGI and ‘refugeeness’, amongst other characteristics.

In short, our findings clearly contradict common ideas about European values – not because these values are not important or worth cherishing, but because they are often rhetorical and deficiently acted upon.

3. Based on your results, what are the differences between European countries in terms of asylum procedures for SOGI refugees?

I should start by pointing out that the SOGICA project only covered three European countries (Germany, Italy and the UK), all of them in Western Europe. This is thus a limited sample, although we tried to gain an understanding of the range of experiences of SOGI asylum claimants and refugees in Europe through our online surveys.¹²

Although all our country case studies were EU Member States for most of the project’s duration – including members of the Common European Asylum System (CEAS) – it was clear the differences at domestic level were immense. A range of factors may account for these differences, such as geographical location, number of asylum claims, political context and internal governance structures. We identified differences in relation to the statistical evidence produced by public authorities (if any), the official guidance followed for SOGI claims (if any), the legal aid systems, the quality of Country of Origin Information (COI) produced (if any) and used, the way the Refugee Convention and CEAS elements are interpreted and applied, the degree of social integration support, etc.¹³ The CEAS framework is obviously fairly loose and offers much leeway to domestic authorities – leeway that can be used to the detriment or benefit of asylum claimants.

Conversely, our analysis allowed us to identify several commonalities between the three country case studies as well. Asylum authorities still deal with SOGI claims in often inappropriate and unlawful ways, depriving claimants of quality legal advice and

¹¹ Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021 (forthcoming), Chapter 9.

¹² Andrade, V. L., Danisi, C., Dustin, M., Ferreira, N. and Held, N., ‘Queering Asylum in Europe: A Survey Report’, SOGICA Project / University of Sussex, July 2020, available online: <https://www.sogica.org/database/andrade-danisi-dustin-ferreira-and-held-queering-asylum-in-europe-a-survey-report-2020/>.

¹³ All these differences are dissected in Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021 (forthcoming).

interpretation services, relying on stereotypes, adopting intrusive and demeaning lines of questioning, and using an unreasonably high standard of proof.¹⁴

Some positive practices have nonetheless emerged, including SOGI-friendly interpretations of key notions of the refugee definition or procedural arrangements. A striking example is that of the Italian Supreme Court finding that the criminalisation of same-sex sexual acts in the country of origin should be seen as ‘persecution’ in itself,¹⁵ for the purposes of the definition of refugee under the 1951 Refugee Convention,¹⁶ even if that is not the position adopted by the Court of Justice of the EU (CJEU).¹⁷ Similarly, there is a growing number of LGBTIQ+-specific accommodation for SOGI claimants wishing to avail themselves of those opportunities (and capacity allowing).¹⁸ Such positive practices are worth replicating across Europe.

What also struck the project’s team throughout the project is that a country’s overall treatment of ‘their’ SOGI minorities was not at all a safe indicator of the way it treated SOGI asylum claimants, as these individuals’ ‘refugeeness’ could attract much worse treatment. For example, while Italy possesses a fairly thin legal framework to protect SOGI minorities, with a civil partnership act having only been introduced as recently as 2016,¹⁹ SOGI asylum decision-making was in many respects of a good standard, as illustrated by the example of the decision of the Italian Supreme Court mentioned above. Yet, that decision-making does not necessarily translate into well-being on account of the social welfare system failing to provide what legally recognised SOGI (and other) refugees require to re-build their lives in Italy. Conversely, the UK – with a much more solid legal framework to protect SOGI minorities, including the Adoption and Children Act 2002 (allowing same-sex couples to adopt children), Civil Partnership Act 2004 and Marriage (Same Sex Couples) Act 2013 – offered much worse examples of inadequate decision-making, poor accommodation practices, and overall hostile legal and social policies. The hostility against asylum claimants and refugees in the UK ‘trumped’ the perceived friendliness towards SOGI minorities; in other words, members of a SOGI minority are only adequately protected if they are UK nationals or are placed higher up in some sort of ‘migrant hierarchy’. Somewhat making up for this, one can at least observe that the UK has some important accountability mechanisms that allow for issues in the asylum system to be identified and addressed (e.g., through the work of the Independent Chief Inspector of Borders and Immigration and parliamentary scrutiny).²⁰ These contrasts were a good reminder of how complex such

¹⁴ Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021 (forthcoming). Chapters 6-7.

¹⁵ Italian Supreme Court, decision no. 15981, 20 September 2012.

¹⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

¹⁷ Joined Cases C-199/12, C-200/12 and C-201/12, *X, Y and Z v Minister voor Immigratie, Integratie en Asiel*, 7 November 2013, ECLI:EU:C:2013:720.

¹⁸ Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021 (forthcoming), Chapter 9.

¹⁹ Law No. 76 of May 20, 2016 (Official Journal No. 118, 21 May 2016).

²⁰ For example, Independent Chief Inspector of Borders and Immigration, ‘Inspection of Country of Origin Information Thematic Report on Sexual Orientation and Gender Identity or Expression’, 2020, available here:

contexts are and how different combinations of factors may lead to different lived experiences.

4. You said that SOGI refugees often don't know about the fact that SOGI is a ground for asylum. Does that mean that issues related to their SOGI identities are not the main reason why they flee? So they are not attracted to "Rainbow Europe"? What kind of image do they have of Europe?

While some SOGI claimants and refugees are well informed about the laws and policies that apply to SOGI minorities and asylum claimants in different European countries and try to reach a particular country, many members of SOGI minorities are not aware that SOGI can be a ground to claim international protection and did not make a conscious choice of country of destination. They may have suffered negative experiences in their countries of origin on account of their SOGI and – on that and sometimes other accounts – have had to escape. In those cases, they are simply looking for a safer place, where they can avoid being persecuted and discriminated against on grounds of their sexual orientation or gender identity. Yet, they may be unaware that their SOGI can ground a claim for international protection in their host country, and so they may pursue other legal avenues (such as a student or work visa, or an asylum claim on other grounds). According to our survey, 31% of respondents did not know they could claim asylum on SOGI grounds when they arrived to Europe.²¹ Some of the participants we interviewed shared such experiences, including of years in Europe without having realised that their SOGI could constitute a valid ground to obtain asylum.²² Even if they realised that they would not be persecuted in their host country on account of their SOGI (at least not to the same extent as in their countries of origin), their migration legal status remained in constant peril.

This lack of knowledge of the asylum system is entirely credible but also worrying, as it plunges these individuals into very vulnerable positions and exposes them to return to dangerous situations in their countries of origin. Even if these individuals subsequently become aware of SOGI being a valid ground for an asylum claim and file an asylum claim, they are often disbelieved for such 'late disclosure' of their SOGI and accused of fabricating such claims as a desperate attempt to remain in the country. Such poor levels of knowledge of the asylum system also lead to inadequately framed and evidenced asylum claims.

On account of this, we advocate in favour of a drastic improvement of the provision of information to potential asylum claimants, including in relation to SOGI as a valid ground. This should translate into the production and dissemination of better information materials about the asylum system, including in easy-read formats and different languages, to be

<https://www.gov.uk/government/publications/inspection-of-country-of-origin-information-thematic-report-on-sexual-orientation-and-gender-identity-or-expression>.

²¹ Andrade, V. L., Danisi, C., Dustin, M., Ferreira, N. and Held, N., 'Queering Asylum in Europe: A Survey Report', SOGICA Project / University of Sussex, July 2020, available online: <https://www.sogica.org/database/andrade-danisi-dustin-ferreira-and-held-queering-asylum-in-europe-a-survey-report-2020/>.

²² For more examples from the SOGICA fieldwork, see Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021 (forthcoming), Chapter 6 (Section 4).

distributed, for example, at points of entry into the host country, asylum interview venues, reception and accommodation centres.²³

5. What are the specific vulnerabilities of SOGI refugees?

Vulnerability is a central notion in the asylum process, because being classified as ‘vulnerable’ entitles claimants to certain procedural adjustments and rights.²⁴ The EU definition of ‘vulnerability’ for these purposes can be found in Article 21 of the Reception Directive,²⁵ and it does not expressly include SOGI asylum claimants. Still, they can be considered vulnerable if, for example, they have been victims of human trafficking, have serious illnesses or mental disorders, or have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

Despite the legal advantages that the ‘vulnerability’ label can bring about, it is a contentious label for the stigmatising, patronising, victimising and infantilising effects that it carries in some contexts, something that many claimants and refugees may not take lightly, especially considering the immense resilience and determination they may have had to muster to escape persecution and reach a safer location.²⁶ For this and other reasons, the reform of the CEAS instruments has included a proposal to replace the notion of ‘vulnerability’ with that of ‘specific needs’, with the advantage of circumventing the criticism that claimants considered ‘vulnerable’ are being favoured. Instead, if considered to have ‘specific needs’ – as SOGI claimants may have in relation, for example, to accommodation – then it is simply a matter of tailoring the asylum procedure to the individual claimant without any question of favouritism.²⁷

In light of these debates around the use of the notion of ‘vulnerability’ in refugee studies, the SOGICA project did not use this notion as a key aspect of our data analysis. It is however clear that many of our participants were in a vulnerable situation, on account of their circumstances. Vulnerability is thus situational, contextual and produced by a range of actors and factors, rather than endogenous to the claimants and refugees. Many of the SOGI refugees we met were in very precarious situations owing to their poor accommodation conditions, being in detention centres, being exposed to discrimination and abuse (by people they lived with, by public authorities and by the communities where they lived more

²³ For the SOGICA recommendations, see <https://www.sogica.org/en/final-recommendations/>.

²⁴ Brandl, U., and Czech, P., ‘General and Specific Vulnerability of Protection-Seekers in the EU: Is There an Adequate Response to Their Needs’, In *Protecting Vulnerable Groups. The European Human Rights Framework*, edited by Francesca Ippolito and Sara Iglesias Sánchez, Oxford University Press, 2015.

²⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ L 180, 29.6.2013, p. 96–116.

²⁶ Stevenson, J., and Willott, J., ‘Cultural Influences in Data Collection and Analysis: Issues in Conducting Research with Refugees’, Leeds Metropolitan University, 2006; Krause, U., ‘Researching Forced Migration: Critical Reflections on Research Ethics during Fieldwork’, RSC Working Paper Series. Refugee Studies Centre, 2017; Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021 (forthcoming), Chapter 2 (Section 3).

²⁷ Danisi, C., Dustin, M., Ferreira, N. and Held, N., *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, 2021 (forthcoming), Chapter 4 (Section 4).

generally), being deprived of access to the labour market, education and health services, and being subjected to legal procedures that dehumanised them.

The sources of support that many other refugees have are often not available to SOGI refugees, as SOGI refugee groups tend to be located in urban centres and refugee claimants are sometimes housed in isolated areas, and diaspora communities can be either unsupportive or outright hostile. It is thus essential to address all the factors that contribute to the vulnerabilisation of SOGI refugees, at legal and social levels, and nurture their agency by empowering them through a well-resourced legal aid system, fair decision-making practices, adequate housing, access to the labour market, educational system and health services, and dynamic civil society groups that support them.

6. You plead for more empathy in the process of obtaining asylum. Where and how do you see this lack of empathy? And how can we implement empathy structurally in these bureaucratic structures?

The lack of empathy is unfortunately visible in the actions and omissions of many actors in the asylum system. From dismissive comments made by border staff when a SOGI claimant files an asylum claim upon arrival at the airport to the strenuous and hostile interviews many are subjected to, from the poor legal advice many SOGI claimants are offered by scrupulous lawyers to the neglect they suffer at the hands of some housing providers, from the exploitative practices of some employers to the plainly offensive disbelief with which some decision-makers treat them, the asylum system is riddled with examples of dehumanisation. There are numerous signs that many actors in this system are unable to empathise with the experiences of SOGI asylum claimants, the persecution they have suffered and the risks they run if returned to their countries of origin. The most basic standards of civility are sometimes not applied by decision-makers (including judges) and housing providers.

It is thus urgent to ensure that all asylum system actors have the necessary training and follow relevant guidance as to how to treat SOGI (and all other) asylum claimants and refugees in a respectful and dignified manner. With this in mind, we recommend that guidance and training materials emphasise the importance of empathy, respecting equality and human rights, using appropriate terminology, respecting confidentiality, creating a safe space, being alert to signs of trauma on individuals and avoiding unconscious bias.²⁸

This is not to say, however, that everyone in the asylum system lack humanity, on the contrary. We met many decision-makers, housing providers, legal advisors and members of support groups that carry out admirable work under very difficult circumstances and with little or no reward besides the hope that they will contribute to some extent to the well-being of refugees – SOGI or otherwise. SOGI refugees should, in any case, be able to expect greater empathy across the board, rather than being grateful for small ‘pockets of humanity’.

²⁸ See our recommendation no. 10: <https://www.sogica.org/en/final-recommendations/>.

7. To what extent do we need to address the EU to make the necessary changes and to what extent does this fall under the competence of the nation states?

Asylum law and policy is a shared competence between the EU and its Member States.²⁹ While the EU sets some common (minimum) standards in this field, it is then up to its Member States to implement those standards and set their own standards to the extent allowed by the EU. This being the case, both the EU and its Member States need to work together to address many of the issues affecting SOGI and all other refugees and take responsibility for rendering the asylum system more humane.

For this reason, we produced recommendations that address both the EU and the country case studies we adopted. At a domestic level, we produced 30 recommendations tailored to Germany,³⁰ Italy,³¹ and the UK.³² Our recommendations cover the range of experiences that SOGI asylum claimants and refugees undergo, from leaving their countries of origin until they obtain decisions on their asylum cases and beyond. We recommend, for example, that European countries should offer SOGI refugees a safe passage to Europe by introducing or expanding humanitarian admission programmes and visas. We also recommend that European asylum authorities should record the number of SOGI claims submitted and the grounds used to refuse or accept them, and the Refugee Convention needs to be applied in a more appropriate and consistent manner. Statutory guidance on SOGI asylum should be produced (where absent), and applied more consistently. All actors, including decision-makers, judges, interpreters and service-providers, should have to undergo training on SOGI asylum. Legal advice and representation, as well as interpretation and Country of Origin Information, require much improvement, and authorities should do away with the notion that there are 'safe countries', as many of these countries do not provide protection for SOGI minorities. Our recommendations also cover several aspects related to social integration of SOGI refugees, including accommodation, labour market, educational system and the role of NGOs in supporting SOGI refugees.

To complement these, we have also produced 32 recommendations to the EU.³³ These recommendations cover many aspects mentioned above, as well as EU-specific aspects, especially in the context of the current CEAS reform. These include the need to improve the way the Dublin system works for SOGI asylum claimants. Here, the criteria in place for allocation of responsibility to a State for a given asylum claim needs reviewing by paying attention to aspects that are more in tune to SOGI claimants' needs and rights. We also highlight the role of the EU in encouraging greater respect for SOGI minorities' rights and needs around the world.

²⁹ Articles 4(2)(j) and 77 ff of the Treaty on the Functioning of the EU (TFEU).

³⁰ <https://www.sogica.org/de/empfehlungen/>

³¹ <https://www.sogica.org/it/raccomandazioni-finali/>

³² <https://www.sogica.org/en/final-recommendations/>

³³ <https://www.sogica.org/database/sogica-project-32-recommendations-to-the-european-commission-on-the-new-eu-lgbti-equality-strategy-2020/>

With shared competence comes shared responsibility, and neither the EU nor its Member States can escape the need to improve the current asylum system for SOGI claimants and refugees.

8. Did you observe any changes in how SOGI refugees are treated in the past decade or during the time you did the research?

There have been some improvements throughout the years and in several countries as well as at EU level, such as in relation to the prohibition of requesting evidence of a sexual nature – something that the Court of Justice of the EU has asserted and EU domestic authorities have generally respected.³⁴ Although, many issues we identified and analysed in the project's outputs had already been to some extent highlighted in the past (in scholarly work, NGO reports and the media), there are still serious issues regarding SOGI asylum. As discussed above, decision-making is still often stereotypical, accommodation is inappropriate, access to the labour market, the educational system and health services is insufficient, and social experiences are marred by discrimination and abuse.

There is still a lot of policy and social work to carry out to address these issues (as we identify in our recommendations), but unfortunately it is hard to garner political support and media interest for these issues. Populist trends across Europe – including racist, xenophobic, homophobic and transphobic narratives – make everything even more difficult.

We interviewed several policy-makers who were very enthusiastic about our research and engagement with such a broad range of stakeholders. We have been fortunate to have seen our work being backed by officials in the UN, EU and Council of Europe, even if mainly at an informal level. We have also worked with members of the UK parliament, as well as key German and Italian stakeholders, to disseminate our work, and were pleased to benefit from their support in raising further awareness about this matter in domestic public debates. Having said that, it is clear that much work is still needed to ensure that policy-makers of all political quadrants are aware of (and convinced about) the need to render the asylum system fairer for SOGI refugees and work towards more empathic law and policy in this field.

³⁴ Joined Cases C-148/13 to C-150/13, *A, B and C v Staatssecretaris van Veiligheid en Justitie*, 2 December 2014, ECLI:EU:C:2014:2406.