

COMMITMENT FOR LEGAL SECURITY

Public counsels perspective on the asylum process for young newcomers*

* Young newcomers are young newly arrived lgbtq-people
and young lgbtq-people who will or have sought asylum



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Introduction

Newcomers Youth is a project within RFSL that is aimed at young LGBTQ people between 15-25 who are to seek or are seeking asylum or are newly arrived (young newcomers). Among other things we offer legal counselling, safe meeting spaces and creative workshops to the target group. We also educate people that come in contact with the target group, like for example legal practitioners, legal guardians and interpreters. Newcomers Youth is a three-year project funded by Arvsfonden.

Because the youth that are members of Newcomers Youth are in need of public counsels with LGBTQ competency or asylum counselling with an LGBTQ perspective the project "hbtq-juristerna" was started to gather asylum legal practitioners with LGBTQ competency who want to help young newcomers with legal counselling and/or act as a public counsel. The purpose of the network is to increase the legal security for young newcomers.

This report is based on a survey that was carried out in the beginning of 2017. The survey was sent to legal practitioners who are members of European Legal Network on Asylum and/or Newcomers Youth's network "hbtq-juristerna" and spread through informal personal networks between the legal practitioners.

The survey was carried out with the aim to investigate if LGBTQ youth's rights are made visible and are catered to and if they're given the best preconditions in order for them to address sensitive circumstances that are at the root of their need for protection when they seek asylum.

Newcomers Youth thinks that it's very important that the public counsels are experts, both in children's rights and LGBTQ issues, and sufficiently independent in their role as public counsel towards the Migration Agency in order to fully cater to the asylum seeker's interests.

The survey was answered by 20 legal practitioners who all, except for one, have a solid experience of working as a public counsel in asylum cases. The majority have worked for over five years and have had over 200 cases. All of them have worked with asylum cases that has concerned an LGBTQ person to varying degrees. Almost all have had at least one case where the LGBTQ person was a youth (15-25). We have chosen to continuously use the pronoun "ze" when we speak about the respondents since we don't know anything about their gender identity.

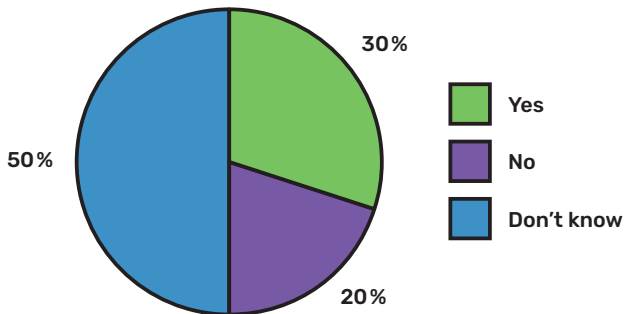
1. The Migration Agency

1.1 LGBTQ specialists

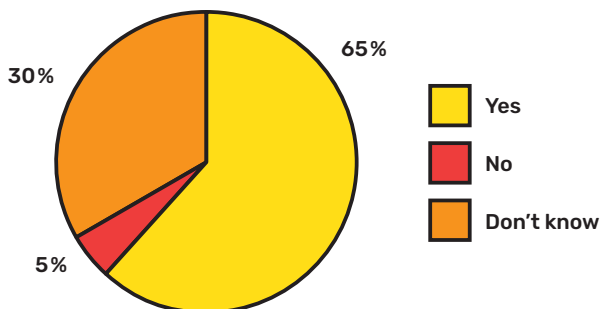
The Migration Agency educated and appointed LGBTQ specialists after criticism from, among others, RFSL that LGBTQ people were treated badly by the Migration Agency and the Migration courts. However, in a report from the Migration Agency's internal accountant in the fall of 2016 the working order with the LGBTQ specialists was criticized, which has led to a discussion about the LGBTQ specialists' role.

On the question if the respondents feel that the Migration Agency's LGBTQ specialists have contributed to an increased understanding in the asylum process the answers vary. Half don't know if the LGBTQ specialists have contributed in this way, four feel that they haven't and six feel that they have. But more than half feel that the Migration Agency's LGBTQ specialists are still necessary for LGBTQ people's legal security. The majority of the respondents feel that all actors in the asylum process should be given a basic LGBTQ competency education. This opinion is shared by RFSL since the internal accountant's report became public.

Do you feel that the Migration Agency's LGBTQ experts have contributed to an increased understanding in the asylum process?



Do you feel that the Migration Agency's LGBTQ experts are still necessary for LGBTQ people's legal security?



1.2 Caseworkers

The respondents are divided in the question of whether the employees at the Migration Agency have adequate knowledge to handle cases to do with LGBTQ people. It becomes clear that it varies considerably between different employees. The answers also reveal that caseworkers have been ignorant, rude and uncomprehending towards the asylum seekers and have been prejudiced, condescending or suspicious. Also there were examples of a caseworker that had broken the Migration Agency's own guidelines. However, the majority said they hadn't experienced that a caseworker had been exceptionable towards the asylum seeker because of their gender identity, gender expression or sexual orientation. One respondent says that ze has worked with a caseworker that ze suspects has been partial and has had racist motives.

The respondents experience a certain inaccessibility on the Migration Agency's part. One example is that close to half of the respondents feel that the staff at the Migration Agency is unwilling to move a planned investigation meeting. A consequence of not granting a change of time is that the asylum seeker risks finding themselves without help if it's not possible to change to a public counsel that's available at a certain time. This is also something that the respondents mean varies considerably from caseworker to caseworker, when some do everything to cater to the seeker's need while others don't care at all about if the desired counsel can be present or not.

One respondent explains that there are three people who make the decisions in

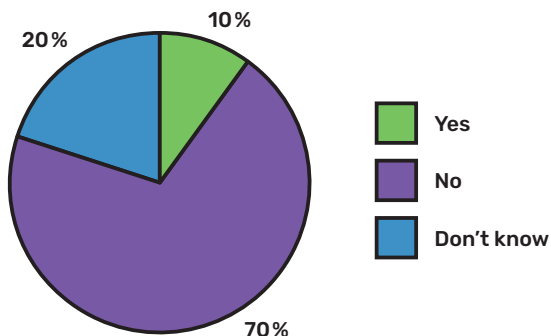
LGBTQ cases: the caseworker, the decision maker and the LGBTQ specialist. There can be a huge problem when a caseworker is replaced and the decision ends up with someone who hasn't even met the person but is to judge their credibility on the basis of a protocol. Another respondent underscores among other things that the grounds for the decision are lacking and relatively poorly backed up.

1.3 Child competency

Almost all the respondents have at some point represented a child who has come to Sweden alone and the majority feel that they have a sufficient amount of knowledge about children and youth in the asylum process. In spite of that only about half state that they are experienced in children's psychology, for example in conversational technique and empathy. Moreover the majority says that they haven't been offered the possibility to get educated by the Migration Agency or other authority in children's asylum cases before they represent a child.

When it comes to the child competency at the Migration Agency most state that the Migration Agency doesn't have sufficient knowledge about children and youth in the asylum process. Many report that the level of knowledge and competency in the Migration Agency's staff varies greatly. It's said that some caseworkers have a good LGBTQ- and child competency while others lack competency completely. A lack of empathy and inadequacies in reception are also mentioned. One explanation that's presented is that many caseworkers at the Migration Agency are young and newly employed, which leads to a great insecurity concerning legal security.

Do you feel that case workers/investigators at the Migration Agency have sufficient knowledge about children and youth in the asylum process?



Many underscore that it's very important to speak separately with children who have come to Sweden with their caregivers, i.e. without parents or other caregivers being present. It's important that children that are subject to threats and persecution from their own caregivers have the opportunity to get their own reasons for asylum investigated and that these children can invoke gender identity and/or sexual orientation as grounds for asylum without the caregivers being notified. On the question of if separate interviews are carried out generally the answers vary. Some mean that all family members are interviewed separately and some mean that most families are interviewed together. Some bring up that children that have their own grounds for asylum should be treated as a separate case and have their own public counsel, separate from the family's

2. The asylum process

2.1 Limitations of residence permit

The new temporary law entered into effect in July 2016 and is to run for three years. This law limits the possibility of getting a residence permit in Sweden for people who have applied for asylum after November 2015. The limitations are, among others, that the protection category others in need of protection is abolished. On the question of if the respondents have felt that the rejections have increased since the category others in need of protection was abolished almost half answered that they didn't. Almost as many answered that they believed that was the case.

One respondent explains that LGBTQ people tend to get a residence permit as a refugee and not as others in need of protection. This, ze means, shows that LGBTQ people's need of protection is expected to last. According to the temporary law, refugee status gives a temporary residence permit of three years, after which it can become permanent.

2.2 Family reuniting

The right to family reuniting is also limited and according to the new temporary asylum law it only applies to husband, wife or partner you've lived with. Before, the family reuniting also included people who intended to get married or to live together. The majority of the respondents haven't felt that this limitation has affected asylum seeking LGBTQ people. One of the respondents point out that the effect isn't noticeable now, but probably will be in the future.

2.3 Credibility assessment

On the question of what the biggest problems in LGBTQ asylum cases are the credibility assessment is most often stated, i.e. that the Migration Agency doesn't feel that the asylum seeker is credible when it comes to the question of their sexual orientation and/or gender identity.

But also preconceptions about how an LGBTQ person "should be" is viewed as a problem, as well as the Migration Agency time constraints, caseworkers' competency in LGBTQ issues and the asylum seekers fear of telling and risks of honour related violence. The Migration Agency's interpretation of country information is also presented as a problem. One of the respondents explain that the Migration Agency focuses on the positive parts of the country information. Lack of information about LGBTQ people's situation in the country is for example interpreted as that country being safe for that group.

Many of the respondents state that it's the credibility assessment that's the motivation for most rejections that they see in LGBTQ cases. An important fact is that more than half of the respondents state that LGBTQ people are afraid of revealing their sexual orientation or gender identity for fear of what would happen in their application is rejected or if a temporary residence permit has expired.

One respondent explains that the Migration Agency's demands for the credibility assessment are too high. The same is true when the asylum seeker is a child that has no experience of putting into words, name or talk about their feelings and thoughts about their sexual orientation, gender identity or gender expression. This is used against them later on when they are tried as an adult. The person is then deemed non credible and is rejected on the basis of what they haven't said or been able to express earlier, even if they now are capable.

One of the respondents describes their experience of the credibility assessments:

"The credibility assessments are COMPLETELY random and are based on pure speculations that often have to do with the caseworker's/decision maker's own, subjective and stereotypical, western preconceptions of how ALL LGBTQ people are supposed to feel, think and have the ability to express their 'thoughts and feelings' regarding their orientation/gender identity."

2.4 Rejection

Apart from the credibility assessment other different factors that can promote a rejection are mentioned, for example the possibility of protection by authorities in the home country or internal refuge alternatives. The respondents explain that the Migration Agency are unwilling to understand that the authorities in the home country can be behind, be part of or not work to stop the persecution.

It's described that there's frustration and hopelessness that comes with being a public counsel for an LGBTQ person.

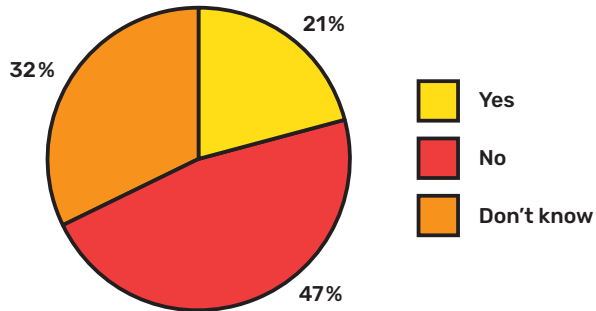
"The grounds for rejection I see (and get) today often makes me want to quit working as a public counsel for LGBTQ people. No matter how well I prepare my clients and how many hundreds of hours of overtime I put into getting written evidence it can lead to a rejection because a caseworker feels that: 'No, you don't meet my Swedish preconceptions of how a homosexual should be. Go back. Rejection.' It feels pointless."

The respondents are divided in the issue if it's relevant in the first investigation stage if children who come alone don't have anywhere to go back to or if there is something that can be seen as a proper reception in the home country. Some mean that it's absolutely investigated and is viewed as relevant while some feel that it's not. One respondent describes their experience of this as the Migration Agency not caring about a child consequence analysis. Another respondent points out that for those who arrived during the fall of 2015 (when the number of people that came to Sweden rose drastically) options of returning and/or acceptable reception in the home country neither have been investigated nor been regarded as relevant.

2.5 Interpreters

Only four out of twenty respondents feel that they have access to interpreters that master LGBTQ related terminology. Nine say they don't have the same access. One respondent explains that ze has that through their office, but not through the Migration Agency, which ze means uses interpreters who are less educated, are on a lower level and have a smaller vocabulary. Another points out that there aren't even authorized interpreters in all the languages that LGBTQ people speak. A third says that ze has had varying experiences of interpretation in the cases where ze has used an interpreter. A fourth says that ze has had to do with interpreters who don't want to use certain words, like words regarding genitals, which in the

Do you feel that you have adequate access to interpreters with LGBTQ competency that master LGBTQ related and -specific terms?



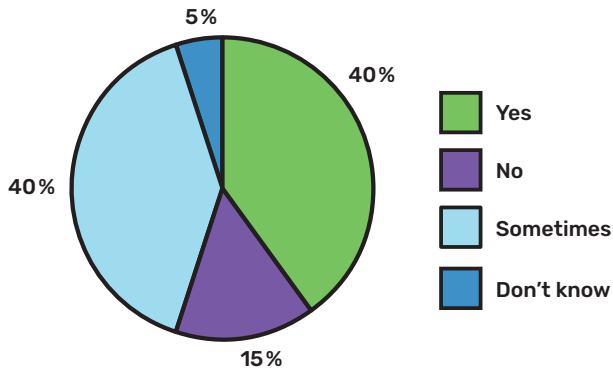
worst-case scenario can inhibit the asylum seeker from talking about their grounds for asylum. Ze points out that the interpreters have an important role and that it therefore is important that they have a good LGBTQ competency.

2.6 Changing public counsels

The majority of the respondents have not been denied by the Migration Agency representing an asylum seeker that has chosen them because they have an understanding of LGBTQ issues. For some of those who have been denied the asylum seeker has instead gotten another public counsel with less knowledge about LGBTQ related issues. Some respondents explain that they've had to fight to be approved in a change.

One respondent means that the Migration Agency most of the time tries to cater to a wish to change but that some caseworkers only make one attempt to reach the desired public counsel while others make several attempts. Another believes that it's generally difficult to change public counsels. In order for it to be done you need special circumstances. Ze feels that it should be deemed as a special circumstance if your public counsel lacks LGBTQ competency. A third respondent, who only accepts cases where ze has been requested, concludes that the Migration Agency ignores the client's right to choose counsel and instead provides a public counsel at random.

Do you feel that the Migration Agency are considerate enough when it comes to the asylum seekers choice of public counsel in their case?



3. The work as a public counsel

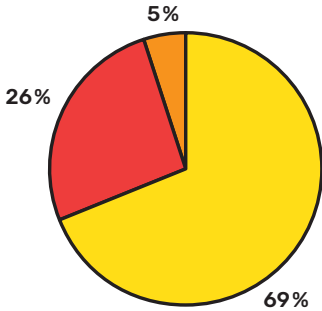
3.1 The Migration Agency's double roles

The Migration Agency is the authority that provides a public counsel and at the same time the authority where the public counsel represents the asylum seeker. This has raised questions about the public counsels' independence and possibility to work on a case without the fear of being perceived as difficult or inconvenient by their employer, i.e. the Migration Agency.

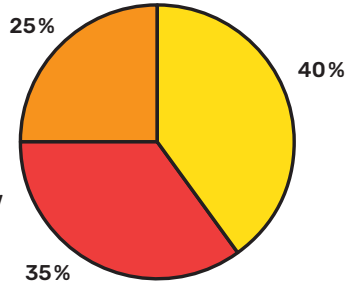
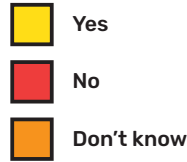
More than half of the respondents thought that the Migration Agency's double roles in the asylum process is a problem. One respondent points out that the double roles are most inconvenient for the asylum seeker, another respondent thinks that the double roles are inappropriate.

All of the respondents state that they are independent enough vis-a-vis the Migration Agency in their role as public counsel to represent and cater to the asylum seeker's interests in the best way. However, one fourth have at some point felt that they haven't been able to cater to their client's needs because of pressure from the Migration Agency, for example by putting in less hours on the case than what they think is necessary to cater to the asylum seeker's interests.

Do you feel that the Migration Agency's double roles in the asylum process presents a problem?



Do you think that the Migration Agency's double roles affect public counsels to oblige the Migration Agency in order to increase their opportunity for future assignments?



One respondent feels that it's up to them as public counsels to not put themselves in a position of dependence towards the Migration Agency. Another points out that the double roles brings a responsibility for the counsel to guard their own independence and to always put their client first, which is also in line with Advokatsamfundet's ethical rules.

One respondent explains that it's not good for the Migration Agency when public counsels don't do their job, for example by not meeting with their client or gather evidence, since that makes the Migration Agency's work more difficult. Ze points out that it's really in the next instance (court at an appeal) that the Migration Agency's double roles become visible. Many respondents confirm this view.

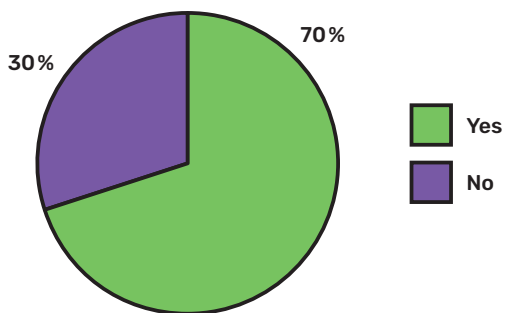
More than half of the respondents say that they haven't felt that the Migration Agency has rejected a public counsel that the Migration Agency has felt has been difficult. At the same time more than one fourth says that they have experienced this. One respondent says that ze has colleagues that have been threatened to be exchanged, but ze has not experienced it himself.

3.2 Catering to the client's interest

The majority of the respondents have been criticized by the Migration Agency because of behaviour that the agency has perceived as difficult, but which the

respondent has felt has been in the asylum seeker's best interest. One respondent says that ze hasn't gotten direct criticism but rather was questioned by the Migration Agency. Ze explains that it shows that the caseworkers are under pressure to keep time limits and save costs and that you easily get the feeling that you're in the way. Another answered that ze had been reprimanded by the Migration Agency for example when interpreters and caseworkers have felt insulted because ze has interrupted them and said that they shouldn't express themselves in a certain way or use or say certain words about or to their clients.

Have you ever received criticism from the Migration Agency because of behaviour that's been perceived as inappropriate by the Migration Agency but that you have thought was in the asylum seeker's best interest?



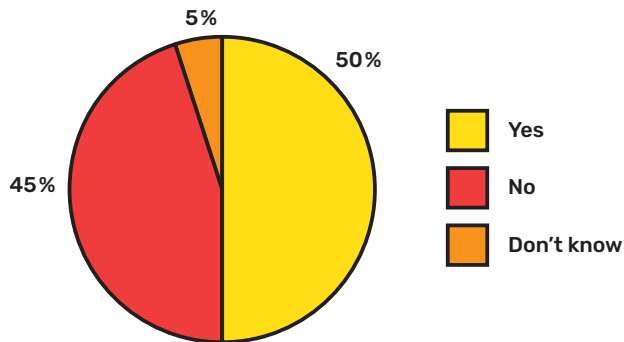
At the same time nearly everybody have answered that they haven't adapted their behaviour in relation to the Migration Agency, consciously or unconsciously. One respondent explains that ze rather has been tactical based on their client's needs by adapting their behaviour or to ask questions based on what caseworker or investigator that's in charge of the case.

Half of the respondents say that they have come across public counsels that neglect the asylum seeker's interest in favour of the Migration Agency's interest. One respondent points out that it often happens that public counsels neglect the asylum seeker's interests in favour of themselves or their employers by taking on more cases than they can handle time wise, to earn money. It is the case that public counsels or firms get paid the same amount regardless if the result is rejection or residence permit.

3.3 Time and money

The majority of the respondents get more than half of their cases from the Migration Agency. Two respondents get all their cases from the Migration Agency and one gets none. In spite of that so many get their cases from the Migration Agency more than half said that they're not dependent on cases from the Migration Agency from a financial point of view. A third of the respondents however says that they are dependant on these cases.

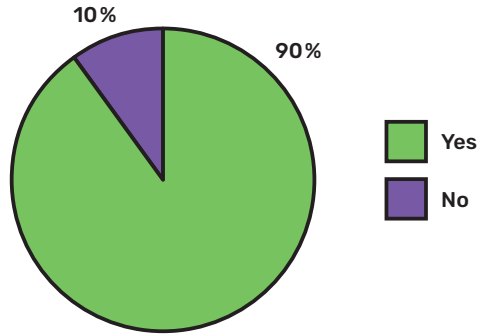
Have you ever experienced that public counsels ignore the asylum seekers interests in favour of the Migration Agency's interests?



The time that the respondents put into each asylum case varies. Most think that the question can't be answered because it varies so much depending on the case. Of those who ventured a guess most said it took about between 10 to 20 hours per case. What is clear is that the majority of the respondents feel that the quality of work could be increased if they had more time per case.

The majority of the respondents feel that the compensation they get per case by the Migration Agency isn't adequate. All but two feel that they do administrative tasks that mean unpaid labour. These tasks are, among other things, seeking country information, putting documents together and working with written evidence.

Do you feel that you do administrative work that means unpaid labor?



Many respondents say that the Migration Agency doesn't compensate for all work hours that are actually needed in a case. This can be because the Migration Agency feel that some administrative tasks are not to be compensated or that the Migration Agency has an idea of how long a task should take that isn't realistic. One respondent explains that the Migration Agency thinks that an hour and a half should be enough to talk to the client and that two hours should be enough for the legal written petition, something that the respondent means actually takes a lot longer. The respondents also feel that one and a half hours is too little to get to know the client and to build trust. This means that the respondents often don't get paid for the work they actually put in.

Another respondent points out that it's unreasonable of the Migration Agency to expect that all public counsels should know all countries' country information since they don't get paid for that. Especially since the Migration Agency has employed experts who work only with this task. Many respondents agree that country information is a task that takes a long time but that they're not paid for.

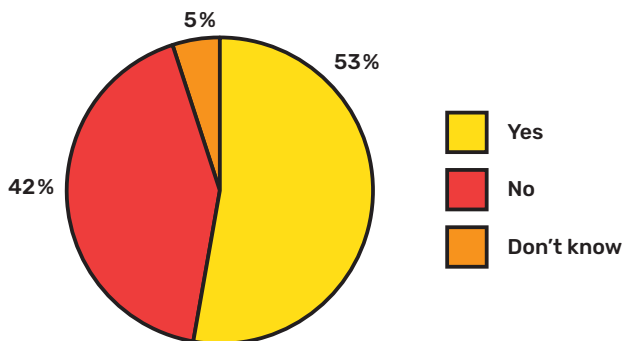
"I constantly spend more time than I'm paid for. But if I adjusted to the Migration Agency's view on reasonable time I wouldn't cater to my client's right in the best way and follow good legal ethics. But I have understood that others see things differently, unfortunately!"

One respondent also addresses the pressure in response time that counsels have, which is viewed as extremely short. Another says that ze also has had to pay for interpretation themselves. Ze ends by saying *"it would have paid off to do a lesser job but I refuse to"*.

3.4 Checking LGBTQ competency

When it's been clear or there has been reason to believe that the asylum seeker is an LGBTQ person almost all respondents say that they haven't been asked by the Migration Agency's caseworkers if they are knowledgeable in LGBTQ issues in their role as public counsel. Three answered that they had been asked this by the Migration Agency's caseworkers. One answered that the caseworker themselves had contacted them to check if they could take the case since the caseworker had realized that the asylum seeker was an LGBTQ person.

Have you ever felt that public counsels ignore the asylum seekers interests in favour of the Migration Agency's interests?



4. Summary

1. The Migration Agency

The answers vary very much on the question of if the Migration Agency's LGBTQ specialists have lead to a better asylum process for LGBTQ people. What is clear, however, is that the respondents think that the LGBTQ specialists should remain at the Migration Agency, but also that all actors that are involved in the asylum process at the Migration Agency should be given a basic competency education in LGBTQ. This because the competency varies greatly from caseworker to caseworker. This education should also include information on the Migration Agency's own guidelines since the respondents feel that these are breached by caseworkers.

Apart from LGBTQ education the respondents feel that the employees at the Migration Agency should be educated in child competency. Here it's also the great variation in reception between different caseworkers that is the basis of this request. It's also important that new employees get access to the education as soon as they start.

The respondents point out that some caseworkers need to be more accommodating, for example when it comes to meeting times. The time scheduling should be done together with all actors in the case, and not only be based on the caseworker's own calendar. It also emerges that it's problematic when a caseworker in a case is changed since this can lead to that the one making the decisions is someone that hasn't even met the asylum seeker.

We find it worrying that some respondents state that it happens that families are interviewed together and not individually. Separate interviews with the children must be carried out so that they can formulate their own possible grounds for asylum that they might not disclose before their family, like for example gender identity and/or sexual orientation.

2. The asylum process

In our investigation it emerges that the credibility assessment is disastrous. It is permeated by preconceptions about how LGBTQ people are supposed to be and decisions are made on a stereotypical and random basis. Moreover there is no consideration of that it can be hard for people to talk about their experiences or express themselves verbally if they're not used to talking about their gender identity and/or sexual orientation. This is especially true for children.

It is felt that there is a reluctance from the Migration Agency to understand that the authorities in the home country can be behind the persecution or at least are not doing anything to stop it even though they know it's happening. That feeling is based on that the Migration Agency in their rejections refers to that protection can be provided by the authorities or by an internal refuge alternative.

Yet another problem in the asylum process is that there are too few LGBTQ competent interpreters. An interpreter that doesn't master LGBTQ related terms or refuses to use certain words can inhibit the asylum seeker in disclosing their grounds for asylum. At the same time it's important that the asylum seeker is given a public counsel with LGBTQ competency, or can switch to a counsel with this competency. Public counsels should not have to fight for such a switch to take place with the pressing risk that if it isn't granted the asylum seeker has to continue their case with a public counsel without LGBTQ competency. That a public counsel lacks LGBTQ competency in an LGBTQ case should be reason enough for an asylum seeker to get to switch counsels. It would make it much easier if the Migration Agency right from the start appoints a public counsel with LGBTQ competency. RFSL Ungdom can, for example, help through their network "hbtq-juristerna".

3. Work as a public counsel

The Migration Agency's double roles are a problem, not least when a case is appealed and ends up in the Migration Court. It also creates uneasiness in public counsels, which can lead to that they don't dare express themselves in a certain way that is necessary for the case because they are afraid to be perceived as inconvenient and that that should lead to them not getting any cases in the future.

Public counsels are not paid for the time they spend on the case. In spite of time being important to the case and the asylum seeker's possibility to get their rights catered to. The Migration Agency's template for compensation is too tight, the time estimation non-realistic and some important tasks, such as for example seeking country information, are not compensated for. If public counsels were to limit themselves to the time the Migration Agency thinks a case should take the results would be poorer and the legal security of the asylum seeker would be compromised.

5. Recommendations

- The LGBTQ specialists at the Migration Agency should remain
- Employees at the Migration Agency should be given LGBTQ competency as well as knowledge in children's rights
- Separate interviews should be held with all children who come with their family
- The Migration Agency should desist with random credibility assessments based on stereotypical ideas about LGBTQ people
- The Migration Agency should consider every individual's ability to express themselves
- The Migration Agency should guarantee a safe and secure asylum process and not jeopardise the person's safety in the home country in a possible rejection
- Potential protection in the home country should be thoroughly investigated by the Migration Agency before a rejection is based on that protection can be given in the home country. Countries where LGBTQ people's rights are not catered to can never be seen as safe countries for LGBTQ people
- The Migration Agency must guarantee that the interpreters they employ have LGBTQ competency
- The Migration Agency should appoint LGBTQ competent public counsels for LGBTQ people when possible
- That a public counsel lacks LGBTQ competency in an LGBTQ case should be enough to get to change public counsels
- The government should investigate if another authority can take on the role of employer of public counsels to eliminate the problems with double roles
- The Migration Agency's template for compensation should be looked at so that public counsels are paid for the work they do and maintain the legal security of the asylum seeker

Also see RFSL Ungdom's asylum- and migration political statement!



Newcomers Youth

Newcomers Youth is a project within RFSL that is aimed at young LGBTQ people between 15-25 who are to seek or are seeking asylum or are newly arrived (young newcomers). Among other things we offer legal counselling, safe meeting spaces and creative workshops to the target group. We also educate people that come in contact with the target group, like for example legal practitioners, legal guardians and interpreters. Newcomers Youth is a three-year project funded by Arvsfonden.

