

CROSSING BORDERS, CARRYING QUEER RIGHTS

Thursday 17 September 2026 1:30-2:30pm – Ashworth Centre, Lincoln's Inn
Conference Panel • Fact Sheet

Queer Refugees – Criminalisation Should Amount to Persecution

Dr S Chelvan

Dch@33br.co.uk and S.Chelvan@soton.ac.uk

Barrister, Head of Immigration, Public Law & Civil Liberties, 33 Bedford Row Chambers, London, UK and Adjunct Professor, Centre for International Law and Globalisation, Southampton Law School, University of Southampton, UK. 'Diary of a Strategic Litigation Lawyer: HJ (Iran) and HT (Cameroon) Beacon of Hope or Template for Exclusion' (chapter) in 'Landmark Cases in International Refugee Protection' (KirstenMcConnahie and Sarah Singer eds.) Hart (Bloomsbury publishing) (2026) ([link](#))

A: Queer Strategic Litigation – Homophobic and Transphobic Legislation – Existence of Laws or Lack of Laws must amount to Discrimination amounting to Persecution/Serious Harm

Forms of Discriminatory Legal/Administrative/Judicial Measures that Should amount to Persecution:

Criminalisation of Adult/Consensual/Private Same-Sex Conduct – Lack of State Recognition of Gender Identity or Expression – Lack of Legal Recognition of Same-Sex Relationships – Lack of Access to Puberty Blockers.

B: When will Refugee Status Determination authorities accept 'mere' criminalisation amounts to persecution?

66 countries currently criminalise consensual private-adult same-sex conduct – 12 provide for the death penalty!

Source: Human Dignity Trust (15 September 2026)¹

C: Transcending the Whirligig – from Strasbourg Court to Luxembourg Court (please repeat cycle):

C1: The Article 8 ECHR (private life) unjustifiable interference:

The 'Yes in My Bedroom (including more than 2 people)' Canon of ECtHR Case Law: Dudgeon v UK (1981) ([link](#)), Norris v Ireland (1988) ([link](#)), Modinos v Cyprus (1993) ([link](#)) and ADT v the United Kingdom (2000) ([link](#))

¹ https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/?type_filter_submitted=&type_filter%5B%5D=crim_lgbt (last accessed 15 September 2026).

No requirement for actual enforcement – mere criminalisation amounts to an unjustifiable interference with private life rights. Decriminalisation is a standard requirement for Council of Europe Membership. This wave of consciousness steps up a gear with required legal recognition of same-sex relationships see *Oliari v Italy* (2015) ([link](#)).

C2: But NOT for those facing expulsion to non-Council of Europe Contracting States:
See *F v the United Kingdom* (2004) ([link](#)) and *I.I.N v the Netherlands* (2004) ([link](#))

C3: Fortress Europe Lowers the Drawbridge with EU Law:
Starting with the 2004 EU Minimum Standards Qualification Directive to now ...

The 2024/1347 EU Regulations on Standards for the Qualification of Third Country Nationals and Stateless Persons to International Protection, came into force 22 May 2024 ([link](#)):²

‘Article 9 – Acts of Persecution:

1. An act shall be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention where it is:

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the ECHR; or

(b) an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner to an act referred to in point (a).

2. Acts of persecution as qualified in paragraph 1 may, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment which is disproportionate or discriminatory;....’

C4: Mere criminalisation does not amount to persecution – but does establish ‘difference’ for Particular Social Group Convention reason and does amount to lack of effective State Protection:
United Kingdom, Strasbourg’ Court and Luxembourg Court

- (1) See *OO (Sudan) and JM (Uganda) v Secretary of State for the Home Department* [2009] EWCA Civ. 1432 [21] (as per Sir David Keene) ([link](#)) C.f August 2016 UK Home Office Asylum Policy instruction on ‘Sexual orientation in asylum claims’, ‘Discrimination amounting to Persecution’, page 16 ([link](#));
- (2) (November 2013) CJEU X, Y and Z v. *Minister voor Immigratie en Asiel* ([link](#));
- (3) (2020) *B and C v. Switzerland* (blackmail and non-state agent persecution without effective protection) ([link](#)) and (2024) *M.I. V Switzerland* (prosecution amounts to persecution) ([link](#)); and
- (4) (21 April 2026) C-726/22 *Commission v Hungary* ([link](#)) Articles 1, 7 (private life), 12 (freedom of expression) and 21 (non-discrimination) of the EU Charter - **fundamental human rights violations** arising from the 2021 Child Protection Law ([link](#)).

² https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401347 (last accessed 15 September 2026). The 2024 regulations are cross-referenced in EU Regulation 2024/1348 that came into force on 27 February 2026, see https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401348 (last accessed 15 September 2026). Notwithstanding the United Kingdom’s Brexit, these provisions were transposed originally into the Immigration rules, and are now transposed into primary legislation from 28 June 2022 (section 31(2) and (3) of the Nationality and Borders Act 2022 ([link](#))).