

#SAFE4ALL LEGAL INITIATIVE

REFUGEE STORIES



Introduction	2
Key Case: Ahmed	2
LGBTIQ+ refugees in the asylum procedure	4
Ismael	4
Ahmed	4
Kamil	5
Firas	5
Dawit	6
What legal remedies are available?	6

INTRODUCTION

These Refugee Stories, part of the [#Safe4All](#) campaign, further highlight the challenges faced by LGBTIQ+ refugees in Malta's asylum procedure. In particular, Malta's asylum legislation denies the right to appeal negative decisions to refugees coming from countries considered to be 'safe'.

Our observations seem to indicate that, in these cases, the primary consideration is the person's country of origin and not the substance of the person's asylum claim.

We hope the Refugee Stories underline the inhumanity of the 'safe country of origin' approach, and how it may easily lead to situations of Malta returning refugees to countries that criminalise LGBTIQ+ identities or behaviour.

KEY CASE: AHMED

Ahmed arrived in Malta by boat on 13 June 2021. He applied for International Protection, and was detained upon arrival. Since he is from one of countries the Home Affairs Minister decided is 'safe', he was put into the 'accelerated asylum procedure'. This means that his asylum interview was held in Safi shortly after his arrival without him having ever met any NGOs, lawyers, social workers or anyone who could explain



#Safe4All

Pride 2022

to him the meaning of asylum, the relevance of his LGBTIQ+ identity. He also had nobody to talk to about the terrible sexual violence he had suffered as a child, and received no support.

Despite mentioning the sexual abuse and trauma endured throughout his childhood, Ahmed's asylum application was rejected as 'manifestly unfounded', since he is from a 'safe country of origin'. He was notified of this decision on 24 September 2021. Maltese law clearly states that there is no appeal from such decisions, but simply a 'review'. Like all others, Ahmed was not allowed to appear before this review, or to make any written submissions. It was all done in his absence.

Being a rejected asylum-seeker, Ahmed was issued with a removal order and kept in detention as arrangements were being made to return him home. His fear of returning home, the difficult living conditions in detention and the harassment received from other detained men escalated and aggravated his feelings of shame and humiliation. Ahmed tried to take his life. On 28 September 2021 he was admitted to Mount Carmel Hospital to receive the necessary medication and treatment. Doctors diagnosed him with post-traumatic stress disorder (PTSD) and severe depression.

A psychiatrist referred Ahmed to Aditus Foundation as she was not aware of his legal status and wanted to see if there was any way we could support him. She was worried that his looming return would only aggravate his situation. Humanitarian Protection (THP). At Mount Carmel, he was supervised on a 24/7 basis by Detention Service officers: he was not allowed to walk on MCH ground. His doctors informed us that this was preventing any improvement in his mental health. His condition was degenerating and, if his situation would have not improved, his doctors would have had to proceed with shock therapy to treat the depression.

After a first meeting with Ahmed, our lawyers realised that he went through the asylum procedure without ever mentioning that he is LGBTIQ+. On the basis of this 'new' fact, we filed a subsequent application on 30 March 2022. Following our request, the Agency for the Welfare of Asylum Seekers (AWAS) carried out a vulnerability assessment and we presented this to the Principal Immigration Officer (PIO), requesting his immediate release from detention.

On 7 April 2022, Ahmed was released from detention and his removal order was lifted. Some days later, he was discharged from MCH and accommodated by AWAS in one of their centres. He resides there to this day. Once his application was deemed

admissible – but not yet decided – Ahmed’s mental health improved greatly, and in fact he started working.

His second asylum interview with the IPA was originally set June 2022. However, we requested a postponement as he is not yet mentally fit yet, as also confirmed by a psychiatrist’s report.

Ahmed is anxiously awaiting the date for the asylum interview since the IPA has requested an update on his mental health status. He still lives in fear of his community discovering his true identity, and of being returned to his country. Because of these fears, he refuses to live his LGBTIQ+ identity.

In November 2022, Ahmed was once again admitted to Mount Carmel Hospital following a severe deterioration in his mental health situation.

LGBTIQ+ REFUGEES IN THE ASYLUM PROCEDURE

In our experience, most LGBTIQ+ asylum-seekers applicant don’t mention their sexual orientation to IPA or AWAS during the first instance procedure in detention. The information below summarises the experiences of LGBTIQ+ refugees in Malta’s asylum procedure, particularly following Malta’s decision to rely on the ‘safe country of origin’ concept.

ISMAEL

Ismael did not come out to the case-worker during his asylum interview. Instead, they opened up to UNHCR during their removal procedure and were subsequently referred to us for legal assistance.

AHMED

Ahmed, whose case is summarised above, was referred to us by professionals at Mount Carmel Hospital following a suicide attempt whilst detained at Safi Barracks pending removal back to their country of origin. Despite not revealing their LGBTIQ+ identity during the asylum interview, Ahmed painfully shared details about episodes of sexual violence they suffered indicating their LGBTIQ+ identity.

Ahmed was rejected as manifestly unfounded on the basis of lack of credibility. To make matters worse, Ahmed suffered verbal abuse from their co-detainees after they had read the interview transcript in detention.

KAMIL

Kamil did not come out during his first asylum interview. The IPA rejected his application. He was kept in detention for several months, despite the authorities being aware that his removal was not possible since his country of origin was being disputed.

As with most other LGBTIQ+ cases, he went through this entire procedure alone, without ever having met anyone to explain the procedure and the relevance of his LGBTIQ+ identity. aditus foundation lawyers discovered him by pure chance as his name was included in a list of names of persons scheduled for removal.

Once released from detention, thanks to our intervention, Kamil applied for a subsequent application wherein he mentioned his sexual orientation and provided details about sexual experiences in his country of origin - including of a forced and exploitative nature. He also presented a statement from his present partner, confirming their relationship and Kamil's membership of MGRM.

IPA commented that Kamil *"should have been aware of"* his sexual orientation during his first interviews, and that this *"could have (been) submitted."* It stated that it was unable to verify the authenticity of electronic conversations between Kamil and other men. It also concluded that Kamila's partner's statement was a *"mere declaration"* that IPA was unable to verify. This despite the fact that Kamil's partner lives in Malta and was willing to appear before the IPA.

Kamil's subsequent application was declared inadmissible, meaning IPA concluded that he failed to submit any new evidence. This decision was confirmed by the Tribunal, leaving Kamil rejected and unable to pursue the matter further.

FIRAS

More recently, we successfully identified as LGBTIQ+ an applicant before their asylum interview during a visit to detention. We immediately referred Firas to the Agency for the Welfare of Asylum-Seekers (AWAS). This was possible because Firas also claimed to be a child, which claim was eventually confirmed following AWAS' age assessment procedure. Throughout the 2-month long age assessment procedure, Firas remained

in detention where they suffered physical abuse from their co-detainees. Firas was eventually released from detention on the basis of AWAS' conclusions.

DAWIT

Dawit, also detained, actually first declared their LGBTIQ+ identity during their asylum interview to IPA and then also to AWAS, before coming out to us. Despite a report from AWAS confirming the credibility of Dawit's claim, the Principal Immigration Officer (PIO) only released them once they realised Dawit was not, in fact, from a country considered 'safe'. The PIO later declared that they was never provided with AWAS' conclusions and were therefore was unaware of Dawit's vulnerability during the 2 months that passed between the assessment's conclusions and the release.

Some refugees we are working with waited until being released from detention to come out, including persons who since have become active in supporting other LGBTIQ+ refugees.

WHAT LEGAL REMEDIES ARE AVAILABLE?

Asylum-seekers whose claims are rejected and channeled to the accelerated procedure are not provided any legal possibility to appeal their rejection. This includes all persons coming from countries listed as 'safe' in Malta's International Protection Act.

The only way their removal to their countries of origin may be prevent is if they are identified before this happens. In practice, they need to be 'lucky enough' to meet someone with the necessary sensitivity and understanding. Due to the way Malta implements its detention regime, the chances of this happening are quite low.

Rejection



Removal Order + Detention



Removal

In nearly all cases that we have worked on, we had to file a subsequent application. These are particularly challenging since we are require to explain why our client failed to come out during the first asylum interview.

Generally, this failure followed by a late disclosure is considered to be an abuse of the asylum procedure, an attempt to circumvent removal, and an intention to mislead the authorities. With this mind-set, the system is set up to reject LGBTIQ+ refugees.

So far, we only received one decision on a subsequent application: rejection on credibility.

In our experience, LGBTIQ+ refugees who actually disclosed identities during their asylum interview were also rejected on credibility. Furthermore, confirmation of LGBTIQ+ claims from MGRM or AWAS professionals are not taken into account by the International Protection Agency (IPA). On the contrary we have witnessed cases where these reports were actually relied upon by the IP to reach negative conclusions on credibility.



#Safe4All

Pride 2022