



Welcome to the first edition of

# Immigration Law

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## “Sex, Lies and Video Tapes”

The DO NOT's of adducing evidence in asylum claims based upon sexual orientation.

Whilst it appears a rather settled subject, time and time again Representatives and Appellant's seek to try and adduce explicit evidence to prove sexuality. Video footage taken by mobile phone, or images posted on social media websites, along with Whatsapp, text messages other forms of sexually explicit conversations with the other individual/s.

Even some Counsel, appear unaware of the long standing judicial guidance on this area. The key decision is A, B, C vs Staatssecretaris van Veiligheid en Justitie [2014] EUECJ-- C-148/13, C-149/13 and C-150/13. The cases involved A, B and C all asserting they were Homosexuals and seeking status. The case is worth reading because it neatly summarises the well-established approach to evidence taking by authorities. The Court was asked a series of questions and from their answers the following can be derived:

1. The authorities have a duty to avoid seeking to assess sexuality by asking questions based only upon stereotyped notions concerns in that case homosexuality. Article 4(3)(c) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85.
2. The authorities must not carry out detailed questioning as to the sexual practices of an applicant for asylum. Article 4 of Directive 2004/83, read in the light of Article 7 of the Charter.
3. The authorities must preclude the acceptance of evidence such as the performance by the applicant for asylum concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or, yet, the production by him of films of such acts. Article 4 of Directive 2004/83, read in the light of Article 1 of the Charter.
4. The authorities must preclude a finding that the statements of the applicant for asylum lack credibility

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merely because the applicant did not rely on his declared sexual orientation on the first occasion he was given to set out the ground for persecution. Article 4(3) of Directive 2004/83 and Article 13(3)(a) of Directive 2005/85

This is a very helpful decision and should be put before Judges. Therefore, it is not admissible or appropriate to try and file evidence on behalf of a lay client; which shows him or her performing or involved in anything sexual, when trying to seek to prove their sexuality. The Court gave some very good reasons for this, not least because such evidence does not necessarily have any probative value and such evidence would of its nature infringe human dignity, the respect of which is guaranteed by Article 1 of the Charter. The Court highlighted the very real concern the effect of “authorising or accepting such types of evidence would be to incite other applicants to offer the same and would lead, de facto, to requiring applicants to provide such evidence.”

It is our duty as an officer of the court to ensure the right type of evidence is placed before the Tribunal. Never ask a court or Tribunal to view a video or footage you have not viewed and assessed first! I would say always read absolutely everything your lay client gives you carefully first. Then only when you are sure it is appropriate should you file it. If in doubt ask a more experience colleague, or Counsel, to filter it for you.



# Next Edition, January 2020



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