the claims of LGBT asylum seekers from countries considered generally safe, such as Jamaica, are often summarily denied.

COI is also used to establish whether a trans asylum seeker would be safe if they relocated internally. Relocation is based on the idea that a specific, local group is responsible for the persecution but in the case of transgender persons the agents of persecution typically are police and society at large, thus internal relocation is not likely to effect a significant improvement in conditions for trans people. In addition, there is no objective measure of what constitutes ‘safety’.

While the GII guidance document goes some way towards attempting to capture the complex and varying nature of gender identity issues, these efforts are negated by a conflicting notion that trans status is something that can be tested and proven. This misapprehension is the cause of most of the hardships which the UKBA subjects trans applicants to – from expectations of immediate, coherent evidence of persecution to reliance on incomplete COI and the burden of proving an internal feature of identity. And in turn this has allowed the UK government (and many others) to detain and ‘fast track’ LGBT asylum seekers in order to return people who have legitimate fears for their well-being to the site of their persecution.

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http://tinyurl.com/LU-migrancy-research-group

3. www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

Kosovo: what does the future hold for LGBT people?

Agathe Fauchier

Rising numbers of people from Kosovo are seeking asylum in other European countries on grounds of persecution for their sexual orientation. States considering such claims need to look beyond Kosovo’s apparently progressive constitution to the rather different reality on the ground.

Despite Kosovo being one of only ten European states to have constitutionally banned discrimination on the ground of sexual orientation, its society remains deeply traditional and even hostile towards sexual minorities. This contrast between progressive legal protection and conservative social attitudes is hardly surprising. Kosovo’s constitution is, from a human rights point of view, largely based on the constitutions of western European countries such as France and Germany.

Many international actors, including the United States, were heavily involved in advising Kosovo on the substance of its constitutional framework and advocated for its compliance with international and European human rights standards – hence the inclusion of the term ‘sexual orientation’ in the anti-discrimination article of the Constitution (Article 24). This gave rise to much criticism during the drafting process, with some delegates walking out in protest.1 Another key provision – the definition of marriage – was also liberally drafted so as not to not make any specific reference to gender. These provisions do not stem from local opinion or practice but rather have been parachuted in on the basis of international advice.

Walking around the busy streets of Kosovo’s capital, Pristina, it is hard to imagine that there is an LGBT community here. There are...
no visible signs of them and certainly no gay bars or clubs. Social conventions dictate that most young people in Kosovo live with their families until they marry; those who ‘come out’ as LGBT risk being kicked out of the family home, ostracised by their families and marginalised by their community. Some are married off as their family attempts to control their sexuality or ‘cure’ them. Indeed, many in Kosovo believe that LGBT individuals are deviant or suffer from a mental illness. Despite this, the LGBT community in Kosovo is very much alive and recently a small number of LGBT individuals have dared to break the silence and speak out.

In Kosovo, discrimination against LGBT people is social rather than official – perpetrated by non-state actors such as the asylum seeker’s family or close community. As in theory there are legal guarantees in place in Kosovo to prevent discrimination, officials considering asylum claims by people from Kosovo on the basis of sexual orientation or gender identity expect them to have access to legal remedies to enforce their rights; Kosovo is therefore usually classified as a country where LGBT people are not in danger of persecution. In reality, says a source, there is a significant gap between legal protection on paper and implementation on the ground. Reports of discrimination against LGBT people are apparently seldom taken seriously by the police and to date no discrimination case on the ground of sexual orientation has been brought before the courts.

Added to this is the fact that the risk faced by an asylum seeker has to be assessed on the basis of so-called ‘secure information’. However, in Kosovo this kind of information is not readily available, as there is a lack of up-to-date, detailed, published data pertaining to the vulnerability of the LGBT community. Interestingly, when the lack of ‘secure information’ is problematic, states handling asylum claims originating from Kosovo have relied on information provided by local interest groups and NGOs with specific insights into LGBT rights. This information is of course informal, and should certainly be considered with care, but it has the advantage of being first-hand and relying on the statements of people in direct and extensive contacts with the LGBT community on the ground. “Kosovo is a small place and LGBT people are a tight community”, an activist says. These groups provide an appraisal of the situation of a specific LGBT individual, who is in all likelihood known within the local LGBT community.

**Grounds for asylum**

It is increasingly common for asylum seekers from Kosovo to claim sexual orientation as a ground of persecution; indeed, this is not unique to Kosovo but rather part of a regional trend. Helped by the internet, which serves an as important platform for Kosovo’s repressed and underground LGBT community, LGBT people are becoming increasingly aware of their human rights. They no longer feel the need to conceal the real reasons – their sexual orientation and gender identity – when seeking refuge from violence in countries of asylum.

However, an LGBT rights activist based in Kosovo estimates that less than a third of asylum seekers invoking sexual orientation or gender identity in their claims are genuine. According to this activist, many are desperate to leave to find a better life in richer countries and not necessarily because they have a well-founded fear of persecution owing to their sexual orientation or gender identity in Kosovo.

Kosovo is reported to have the lowest employment rate in the Western Balkans and many young people – LGBT and non-LGBT alike – struggle to see any viable future for themselves and their families there. While people from Kosovo claimed asylum during and in the aftermath of the 1990s’ conflict on the basis of ethnic and political persecution, sources indicate that these grounds are no longer accepted by many states as the political and security situation between the ethnic communities in Kosovo has now mostly stabilised.
Belonging to a sexual minority is believed by many in Kosovo to enhance an asylum claim’s chances of success and therefore, according to a source, many LGBT people exaggerate the level of threat they face and others falsely claim to belong to a sexual minority. A member of the LGBT community interviewed by the author goes as far as to say that “claiming to be persecuted as an LGBT person has become the only potentially successful way to get out of Kosovo”. Another LGBT rights activist says that states looking into the merit of asylum claims originating from Kosovo are rightly exercising an appropriate degree of caution. Unfortunately, this undermines the credibility of actual LGBT people rightfully seeking protection against grave human rights abuses.

**Transgender: a case apart**

Contrary to gays and lesbians, transgender people are not acknowledged by the Constitution and although there are no laws actively criminalising transgender behaviour, this cannot be taken to mean that transgender people’s rights are protected. While gays and lesbians are slowly working towards gaining more visibility and social acknowledgement, this is far from being the case for the sub-group of trans-genders. People in Kosovo do not grasp the more complicated aspects of gender identity and, even within the LGBT community itself, there is a lack of education and awareness about transgender issues. Furthermore, few transgender people in Kosovo identify as such; they are isolated, often unable to articulate their gender identity and do not form a tight community. In these circumstances, those in positions of handling asylum claims need to ask the right questions and to consider the particular vulnerability of this sub-group. At the moment there is no indication that this happens.

Nearly five years after the adoption of Kosovo’s Constitution, protection for LGBTI individuals in Kosovo remains uncertain,
and the gap between the legal provisions for protection and the facts on the ground is not generally recognised when asylum cases are evaluated by potential receiving countries. Kosovo may be knocking at the door of the European Union but it still has a long way to go in implementing human rights protection for LGBT people to a European standard.

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1. ‘On Constitution Writing: The Case of Kosovo’, Interview with Professor Louis Aucoin, 2008 http://tinyurl.com/Tufts-Aucoin2008 Protection against discrimination on the ground of sexual orientation was also incorporated into Kosovo's anti-discrimination law.


City planning for sexual diversity: new policies in Bogotá

Marcela Ceballos and Juan Carlos Prieto

Bogotá is the primary destination of those internally displaced by violence in Colombia. The places of origin of the population displaced by violence are also the areas with the highest levels of violations of the rights of LGBT people, mainly transgender women. Guerrillas and paramilitary groups direct violence against sectors considered to be opposed to the social order they wish to maintain since they see them as symptoms of ‘social decay’. The sectors they victimise include drug users, homeless people, individuals linked to prostitution, those living with HIV/AIDS, members and leaders of unions and community organisations – and homosexuals and transgender individuals.

30% of displaced LGBT people now living in Bogotá cite the reasons for their flight as associated with their sexual orientation and/or gender identity. Relating to the first, for example, the district housing subsidy for the low-income population now recognises same-sex couples as a family unit with the right to benefit from this assistance.

Implementation of this policy requires strengthening those organisations and leaders who have a role to play in supporting LGBTI rights. The authorities need improved information systems to monitor displacement due to sexual orientation and gender identity. The majority of trans individuals who arrive in Bogotá have low educational levels and tend to enter society in informal and trans-sexualised activities (hair and beauty, prostitution, tailoring, etc) with precarious working conditions; the network of institutions – such as community centres – which are responsible for catering to the specific needs of vulnerable groups and displaced people needs to be extended, and the social inclusion of these groups should be promoted through strategies for cultural change.

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1. transgender person with a female gender identity
2. 42% of transgender women find it difficult to rent a home and 27% are victims of violence at the hands of their partners. 100% of the transgender women surveyed had suffered some form of aggression or had been harmed by abusive or offensive sexual approaches. (Taken from Bogotá’s Baseline Public Policy for the Full Guarantee of Rights of LGBT, 2010.)