

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.² 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.³ Helped by the internet, which serves as an 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.



Stamping out homophobia.

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 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.

Agathe Fauchier agathefauchier@gmail.com is a lawyer who has previously worked with the UN and OSCE. This article is based on the opinions

and experiences of an anonymous LGBT rights activist from Kosovo interviewed by the author.

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.
2. *Unknown people: The vulnerability of sexual and gender identity minorities and the Swedish Migration Board's Country of Origin Information System*, January 2010, EU European Refugee Fund
<http://tinyurl.com/Unknown-People-2010>
3. UNHCR 2010 *The Protection of Lesbian, Gay, Bisexual, Transgender and Intersex Asylum-Seekers and Refugees*
www.unhcr.org/refworld/pdfid/4cff9a8f2.pdf para 1.